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IMPLEMENTATION AGREEMENT

entered into between

TSOGO SUN HOTELS LIMITED

(Registration number 2002/006356/06)

("Offerco")

and

HOSPITALITY PROPERTY FUND LIMITED

(Registration number 2005/014211/06)

("HPF")

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WHEREBY IT IS AGREED AS FOLLOWS:**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 1.1.1. **"Agreement"** means this implementation agreement and all schedules and annexures hereto, if any;
- 1.1.2. **"Agreement Conditions Precedent"** means the conditions precedent contained in clause 3.1;
- 1.1.3. **"Business"** means the business conducted by HPF as at the Signature Date;
- 1.1.4. **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in South Africa and **"Business Days"** shall be construed accordingly;
- 1.1.5. **"Certificated HPF Shareholders"** means HPF Shareholders who hold physical share certificates in respect of HPF Shares;
- 1.1.6. **"Closing Date"** means:
 - 1.1.6.1. if the Scheme is implemented, the Scheme Implementation Date;
 - 1.1.6.2. if the General Offer is implemented, the General Offer Closing Date; and
 - 1.1.6.3. if neither the Scheme nor the General Offer are implemented, the date on which it is determined that the General Offer Conditions Precedent have failed;
- 1.1.7. **"Companies Act"** means the Companies Act, 71 of 2008, as amended;
- 1.1.8. **"Companies Regulations"** means the regulations published in terms of section 223 of the Companies Act;
- 1.1.9. **"Court"** means the applicable High Court of South Africa having jurisdiction in respect of the matter or dispute;
- 1.1.10. **"Covid-19"** means the infectious respiratory illness caused by a novel coronavirus which has been classified by the World Health Organization as a global pandemic;
- 1.1.11. **"CSD"** means a central securities depository duly licensed as such in terms of the FMA;



- 1.1.12. "**CSDP**" means a central securities depository participant, being a person authorised by a licensed CSD to perform custody and administration services or settlement services or both in terms of the rules of the CSD, or as otherwise defined under "participant" in the FMA;
- 1.1.13. "**Delisting**" means the proposed delisting of HPF Shares from the Main Board of the JSE pursuant to the Tsogo Offer;
- 1.1.14. "**Delisting Resolution**" means an ordinary resolution adopted by HPF Shareholders approving the Delisting, in accordance with the JSE Listings Requirements;
- 1.1.15. "**Dematerialise**" means the process whereby physical share certificates are replaced with electronic records evidencing ownership of shares, for the purpose of Strate, as contemplated in the FMA;
- 1.1.16. "**Dematerialised HPF Shareholders**" means HPF Shareholders who hold HPF Shares that have been Dematerialised;
- 1.1.17. "**Documents of Title**" means original versions of share certificates, transfer deeds, balance receipts or any other physical documents constituting or representing valid legal title to Scheme Shares and/or General Offer Shares (as applicable);
- 1.1.18. "**Encumbrance**" includes any pledge, lien, notarial bond, hypothecation, security, cession, charge, assignment or any agreement or arrangement, whether conditional or not and whether relating to existing or future assets, having the effect of providing a security interest or preferential treatment to a person over another person's assets (including set-off, retention or reciprocal fee arrangements, or any arrangement to give effect to any form of security interest or preferential treatment to a person over another person's assets); and "**Encumber**" shall be construed accordingly;
- 1.1.19. "**FMA**" means the Financial Markets Act, 19 of 2012, as amended from time to time;
- 1.1.20. "**Fulfilment Date**" means, notwithstanding the Signature Date, the date upon which the last of the Agreement Conditions Precedent is fulfilled or waived (to the extent legally permissible);
- 1.1.21. "**General Offer**" means the general offer made by Offerco to the HPF Shareholders (other than Offerco and TSI) to acquire all HPF Shares for the

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General Offer Consideration, which acquisition shall be subject to the General Offer Conditions Precedent;

- 1.1.22. **"General Offer Conditions Precedent"** means the conditions precedent to the implementation of the General Offer, contained in clause 6.2;
- 1.1.23. **"General Offer Consideration"** means the consideration payable for the HPF Shares which are acquired by Offerco in terms of the General Offer, which shall comprise the General Offer Consideration Shares;
- 1.1.24. **"General Offer Consideration Shares"** means Tsogo Shares to be issued by Offerco to those HPF Shareholders who accept the General Offer, in settlement of the General Offer Consideration, being 1.77 (one point seven seven) Tsogo Shares for every HPF Share sold by a General Offer Participant on the General Offer Closing Date, rounded down to the nearest whole number of Tsogo Shares;
- 1.1.25. **"General Offer Closing Date"** means the closing date for acceptances by the HPF Shareholders (other than Offerco and TSI) of the General Offer, as specified in the Offer Circular;
- 1.1.26. **"General Offer Participants"** means the HPF Shareholders (other than Offerco and TSI) who are registered as such in the Register on the General Offer Closing Date and who validly accept the General Offer and are therefore entitled to receive the General Offer Consideration;
- 1.1.27. **"General Offer Payment Date"** means the date on which the General Offer Consideration is due to be paid to a HPF Shareholder who accepts the General Offer, as determined in terms of the Offer Circular and the Companies Regulations;
- 1.1.28. **"General Offer Shares"** means all of the HPF Shares held by the General Offer Participants;
- 1.1.29. **"HPF"** means Hospitality Property Fund Limited (Registration No. 2005/014211/06), a company duly incorporated in accordance with the laws of South Africa;
- 1.1.30. **"HPF Board"** means the board of directors of HPF, as constituted from time to time and **"Director"** shall mean any one of the directors of HPF, as the context may require;
- 1.1.31. **"HPF Independent Board"** means those Directors who, in terms of the Companies Regulations, are appointed by the HPF Board as the independent



board for the purpose of considering the Tsogo Offer and the proposed Delisting in terms of the requirements of the Companies Regulations and the JSE Listings Requirements;

- 1.1.32. **"HPF Meeting"** means the shareholders meeting of HPF Shareholders to be convened pursuant to the publication of the Offer Circular, for the purpose of *inter alia* approving the Scheme and the Delisting;
- 1.1.33. **"HPF Shareholder Appraisal Rights"** means the rights in terms of section 164 of the Companies Act which those dissenting HPF Shareholders who comply with the requirements in the Companies Act will be entitled to exercise pursuant to the approval of the Scheme;
- 1.1.34. **"HPF Shareholder"** means a registered holder of HPF Shares;
- 1.1.35. **"HPF Shares"** means ordinary shares of no par value in the share capital of HPF;
- 1.1.36. **"Independent Expert"** means:
- 1.1.36.1. the independent expert to be appointed by the HPF Independent Board in respect of the Tsogo Offer, in terms of section 114(2) of the Companies Act and regulation 110(1) read with regulation 81(h) of the Companies Regulations; and/or
- 1.1.36.2. the independent expert appointed by the HPF Independent Board in respect of the Delisting pursuant to the General Offer, in terms of paragraph 1.15(d) of Section 1 of the JSE Listings Requirements;
- 1.1.37. **"JSE"** means the securities exchange operated by JSE Limited;
- 1.1.38. **"JSE Limited"** means the JSE Limited (Registration Number 2005/022939/06), a public company incorporated and registered in accordance with the laws of South Africa licensed as an exchange under the FMA;
- 1.1.39. **"JSE Listings Requirements"** means the listings requirements of the JSE from time to time;
- 1.1.40. **"Material Adverse Event"** means the occurrence of any event, change, circumstance or effect which has arisen or occurred or might reasonably be expected to arise or occur in the future (alone or together with any other such actual or potential adverse event, change, circumstance or effect), and which, in the opinion of Offerco, acting reasonably, could be expected to:



- 1.1.40.1. have a adverse effect on the Business, financial condition, operating results, assets or liabilities of HPF;
- 1.1.40.2. materially reduce the actual or potential value of HPF and/or the HPF Shares; and/or
- 1.1.40.3. have a material impact on the Tsogo Offer;
- 1.1.41. "**Offerco**" means Tsogo Sun Hotels Limited (Registration No. 2002/006356/06), a company duly incorporated in accordance with the laws of South Africa;
- 1.1.42. "**Offerco Resolutions**" means the resolution to be proposed and adopted by the shareholders of Offerco to approve of the implementation of the Tsogo Offer, including the ordinary resolution required in terms of Section 9 of the JSE Listings Requirements to approve the Tsogo Offer as a Category one transaction;
- 1.1.43. "**Offer Circular**" means the joint offer circular to be prepared by HPF and Offerco, which shall be provided to the HPF Shareholders in respect of the Tsogo Offer and pursuant to which the HPF Meeting will be convened;
- 1.1.44. "**Ordinary Course of Business**" means, with reference to the relevant entity, in the ordinary normal course of such entity's business as conducted by it in accordance with past prudent and reasonable practice, in accordance with all laws, and undertaken by it in good faith and not for the purposes of evading or avoiding any covenant, restriction or undertaking in this Agreement;
- 1.1.45. "**Parties**" means the parties to this Agreement, namely HPF and Offerco, and "**Party**" means any one of them as the context may indicate;
- 1.1.46. "**Register**" means the securities register of HPF Shareholders;
- 1.1.47. "**Scheme**" means the scheme of arrangement in terms of section 114 of the Companies Act to be proposed by HPF to the HPF Shareholders (other than Offerco and TSI) in terms of which Offerco shall, upon fulfilment of the Scheme Conditions Precedent, acquire the Scheme Shares;
- 1.1.48. "**Scheme Conditions Precedent**" means the conditions precedent to the implementation of the Scheme, contained in clause 5.2;
- 1.1.49. "**Scheme Consideration**" means the consideration to be paid in terms of the Scheme by Offerco to the Scheme Participants for the acquisition by Offerco of the Scheme Shares, which consideration will comprise the Scheme Consideration Shares;

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- 1.1.50. **"Scheme Consideration Shares"** means the Tsogo Shares to be issued by Offerco to each of the Scheme Participants in payment of the Scheme Consideration, being 1.77 (one point seven seven) Tsogo Shares for every Scheme Share held by a Scheme Participant on the Scheme Record Date;
- 1.1.51. **"Scheme Implementation Date"** means the date on which the Scheme is implemented, being the 1st (first) Business Day after the Scheme Record Date;
- 1.1.52. **"Scheme Participants"** means the HPF Shareholders (other than Offerco and TSI) who are registered as such in the Register on the Scheme Record Date and are therefore entitled to receive the Scheme Consideration;
- 1.1.53. **"Scheme Record Date"** means the time and date on which HPF Shareholders must be recorded as shareholders in the Register in order to participate in the Scheme and receive the Scheme Consideration;
- 1.1.54. **"Scheme Resolutions"** means each of the following resolutions to be passed by the HPF Shareholders in relation to the Scheme, namely a resolution:
- 1.1.54.1. approving the Scheme in terms of section 115(2)(a) of the Companies Act, subject to the Scheme becoming unconditional (save for any condition relating to this resolution being passed);
- 1.1.54.2. authorising the members of the HPF Board to do all things and sign all documents required to give effect to and implement the resolutions contemplated herein;
- 1.1.55. **"Scheme Shares"** means all of the HPF Shares held by the Scheme Participants;
- 1.1.56. **"Signature Date"** means the date when the last Party signing this Agreement does so;
- 1.1.57. **"South Africa"** means the Republic of South Africa;
- 1.1.58. **"Strate"** means Strate Proprietary Limited (Registration No. 1998/022242/07), a private company incorporated in accordance with the laws of South Africa and registered as a CSD in terms of the FMA;
- 1.1.59. **"Takeover Regulations"** means the regulations prescribed by the Minister of Trade and Industry in terms of sections 120 and 223 of the Companies Act;
- 1.1.60. **"Transfer Secretaries"** means Computershare Investor Services Proprietary Limited (Registration No. 2004/003647/07), a company duly incorporated in accordance with the laws of South Africa;



- 1.1.61. "TRP" means the Takeover Regulation Panel established in terms of section 196 of the Companies Act;
- 1.1.62. "Tsogo Offer" means the single offer made by Offerco to the HPF Shareholders, other than Offerco and TSI, comprising:
- 1.1.62.1. the Scheme; or
- 1.1.62.2. if the Scheme is cancelled or otherwise not successfully implemented for any reason whatsoever, the General Offer;
- 1.1.63. "Tsogo Shares" means authorised ordinary no par value shares in the share capital of Offerco;
- 1.1.64. "TSI" means Tsogo Sun Investments Proprietary Limited (Registration No. 2018/626851/07), a company duly incorporated in accordance with the laws of South Africa and a wholly-owned subsidiary of Offerco; and
- 1.1.65. "Valid Demands" means demand/s made in terms of section 164(5) of the Companies Act, within the time period contemplated in section 164(7) of the Companies Act, by one or more HPF Shareholders who comply with the requirements of section 164(5)(a) and (c) of the Companies Act, in terms of which such HPF Shareholder/s demand that HPF pay such shareholder/s the fair value for all of the HPF Shares which such shareholder/s holds;
- 1.2. words importing:
- 1.2.1. any one gender include the other of masculine, feminine and neuter;
- 1.2.2. the singular include the plural and *vice versa*; and
- 1.2.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;



- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.6. if figures are referred to in numerals and in words and if there is any conflict between the two, the numerals shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.10. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.11. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.12. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.13. where this Agreement requires a Party to use "**Reasonable Endeavours**" in relation to an action or omission, that Party shall do all such things as are or may be necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, each of the Parties shall consult and co-operate with each other and continue to take action (including any action agreed between the Parties pursuant to such consultation) so as to achieve that action or omission until each of

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Parties agree that it is not reasonable to take the action or is reasonable to omit taking the action, provided that any actions or omissions required to be undertaken:

- 1.13.1. shall at all times be commercially reasonable as regards all Parties;
 - 1.13.2. shall not be such as to result in a breach of fiduciary duty or contravention of any applicable laws; and
 - 1.13.3. shall not be construed as requiring a Party to take any step other than one which a prudent, determined and reasonable business person, acting in his own interests and desiring to achieve that result, would in that circumstance undertake;
- 1.14. any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented; and
- 1.15. the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible.

2. INTRODUCTION

- 2.1. It is hereby recorded that:
- 2.1.1. the nature of the business of Offerco and HPF are substantially similar and have in-principle the same economic drivers. Hotels owned by HPF and operated by Offerco and/or its subsidiaries make up the vast majority of both groups' economic value;
 - 2.1.2. furthermore, Offerco currently owns more than 75% of the issued share capital of HPF;
 - 2.1.3. in order to simplify the Offerco group's decision making processes and the regulatory environment in which it operates, as well as the costs associated with maintaining two separate listings on the JSE, Offerco wishes to delist the HPF Shares from the JSE;
 - 2.1.4. in order to achieve its objective of simplifying its decision-making processes, and having regard to the significant overlap in the nature of its business and that of Offerco, Offerco has agreed to submit the Tsogo Offer to HPF shareholders so that, pursuant to the acquisition of HPF shares by Offerco in exchange for the issue of Tsogo Shares, the HPF shareholders will be exposed to substantially the same industry risks and rewards as they are currently exposed to;

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- 2.1.5. the Tsogo Offer will provide HPF shareholders with the opportunity to swap into Tsogo Shares, which is particularly relevant in light of the limited liquidity in Hospitality Shares as recently traded on the JSE; and
- 2.1.6. the offer will be made by Offerco as a single offer comprising the Scheme and, failing the successful implementation of the Scheme, the General Offer.
- 2.2. The Parties wish to enter into this Agreement to provide for certain arrangements in relation to the implementation of the Tsogo Offer and matters incidental thereto.

3. **CONDITIONS PRECEDENT**

- 3.1. Save for clauses 1 and 2, this clause 3, clauses 12 to 23 ("**Immediately Operative Provisions**"), which are of immediate and lasting effect, this Agreement is subject to the following conditions precedent, namely:
- 3.1.1. the appointment by the HPF Board of the HPF Independent Board in accordance with Companies Regulation 108(9); and
- 3.1.2. the approval by the HPF Independent Board of the conclusion of this Agreement by HPF,
- (collectively the "**Agreement Conditions Precedent**").
- 3.2. The Parties undertake to co-operate in using their Reasonable Endeavours to procure the fulfilment of the Agreement Conditions Precedent, to the extent that the fulfilment thereof is within their control.
- 3.3. The Agreement Conditions Precedent are expressed for the benefit of the Parties, who shall be entitled to, upon written agreement between them, waive the requirement for fulfilment of any Agreement Condition Precedent (to the extent legally permissible).
- 3.4. This Agreement, save for the Immediately Operative Provisions, shall be of no force or effect if any of the Agreement Conditions Precedent are not fulfilled (or waived in terms of clause 3.3) on or before midnight on the 15th (fifteenth) day from and including the date of written notice given by either Party to the other of them, requiring that those Agreement Conditions Precedent referred to in clause 3.1 which, at the date of the written notice have not been fulfilled or waived, be fulfilled or, where legally possible, waived, provided that no such notice may be given on or before 30 September 2020..
- 3.5. Should this Agreement (save for the Immediately Operative Provisions) cease to be of any force or effect by reason of clause 3.4 above then:

- 3.5.1. the Parties shall be restored as near as may be possible to the position in which they would have been had this Agreement not been entered into; and
- 3.5.2. no Party shall have any claim against the other Party as a result of the Agreement Conditions Precedent not having been fulfilled or waived (to the extent legally permissible), except for such damages, if any, resulting from a breach of the provisions of clause 3.2 or the Immediately Operative Provisions.

4. TSOGO OFFER

- 4.1. With effect from the Fulfilment Date, Offerco hereby submits the Tsogo Offer to the HPF Board, in accordance with the terms of this Agreement.
- 4.2. HPF undertakes to propose to the HPF Shareholders the Scheme between HPF and the HPF Shareholders in accordance with the terms of the Tsogo Offer and this Agreement.
- 4.3. Should the Scheme not be implemented for any reason, the Tsogo Offer shall be implemented by way of the General Offer in accordance with the provisions of clause 6 below.
- 4.4. It is recorded that:
 - 4.4.1. the Scheme and the General Offer shall constitute a single alternative offer in accordance with the Companies Act and the Takeover Regulations; and
 - 4.4.2. the General Offer shall be a continuation of the affected transaction as defined in section 117 of the Companies Act.

5. THE SCHEME

- 5.1. The Scheme shall be proposed by the HPF Board to HPF Shareholders, in accordance with section 114 of the Companies Act and the Takeover Regulations.
- 5.2. The implementation of the Scheme shall be subject to the following conditions precedent, namely:
 - 5.2.1. the JSE and TRP approving the Offer Circular;
 - 5.2.2. the JSE approving of the Delisting pursuant to the implementation of the Scheme, in accordance with paragraph 1.14 of Section 1 of the JSE Listings Requirements;
 - 5.2.3. each of the Scheme Resolutions being approved by the requisite majority of votes as contemplated in the Companies Act and the JSE Listings Requirements;

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- 5.2.4. each of the Offerco Resolutions as may be necessary in terms of the Companies Act and the JSE Listings Requirements being approved by shareholders of Offerco to authorise the implementation of the Tsogo Offer;
 - 5.2.5. the admission to listing on the main board of the JSE of the Scheme Consideration Shares, and the approval by the JSE of all documentation required by the JSE to be submitted to it in connection with such listing;
 - 5.2.6. in respect of the HPF Shareholder Appraisal Rights, no Valid Demands are received by HPF or, if any Valid Demands are received by HPF, such Valid Demands are received from HPF Shareholders who, in aggregate, hold less than the aggregate number of HPF Shares as Offerco and HPF may agree;
 - 5.2.7. if any person who voted against the Scheme Resolutions applies to Court for a review of the Scheme in terms of section 115(3)(b) and section 115(6) of the Companies Act, either:
 - 5.2.7.1. leave to apply to Court for any such review is refused; or
 - 5.2.7.2. if leave is so granted, the Court refuses to set aside the Scheme Resolutions;
 - 5.2.8. the Independent Expert(s) provides:
 - 5.2.8.1. a "fair and reasonable" opinion in relation to the Scheme, as required by the Takeover Regulations; and
 - 5.2.8.2. a fairness opinion to the extent required in terms of paragraph 1.15(d) of Section 1 of the JSE Listings Requirements;
 - 5.2.9. the TRP having issued a compliance certificate in respect of the Scheme in terms of section 119(4)(b) of the Companies Act;
 - 5.2.10. Offerco having provided written notice to HPF prior to the date that is 12 (twelve) Business Days after the date on which the Scheme Resolutions are considered and voted upon by HPF Shareholders, confirming that it is satisfied that no Material Adverse Event has occurred on or prior to the date of such notice,
- (collectively, the "**Scheme Conditions Precedent**").
- 5.3. The Parties undertake to co-operate in using their Reasonable Endeavours to procure the fulfilment of the Scheme Conditions Precedent, to the extent that the fulfilment thereof is within their control.

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- 5.4. The Scheme Conditions Precedent in clauses 5.2.6 and 5.2.10 are expressed for the benefit of Offerco, who shall be entitled, upon written notice to HPF, to waive the requirement for fulfilment of such Scheme Conditions Precedent. The remainder of the Scheme Conditions Precedent are expressed for the benefit of the Parties, who shall be entitled, upon written agreement between them, to waive the requirement for fulfilment of such Scheme Conditions Precedent (to the extent legally permissible).
- 5.5. The Scheme shall not be implemented and shall be of no force or effect if the Scheme Conditions Precedent are not fulfilled (or waived in terms of clause 5.4) on or before midnight on the 15th (fifteenth) day from and including the date of written notice given by either Party to the other of them, requiring that those Conditions Precedent referred to in clause 5.2 which, at the date of the written notice have not been fulfilled or waived, be fulfilled or, where legally possible, waived, provided that no such notice may be given on or before 14 November 2020.
- 5.6. Should the Scheme not be implemented by reason of clause 5.5 above then:
- 5.6.1. the General Offer shall be made in accordance with the provisions of clause 6;
and
- 5.6.2. no Party shall have any claim against the other Party as a result of the Scheme Conditions Precedent not having been fulfilled or waived (to the extent legally permissible), except for such damages, if any, resulting from a breach of the provisions of clause 5.3.
- 5.7. In the event that the Scheme Conditions Precedent are fulfilled and the Scheme is implemented, then on the Scheme Implementation Date:
- 5.7.1. the Scheme Participants (whether they voted in favour of the Scheme or not or abstained or refrained from voting) shall have disposed of their respective Scheme Shares, together with all right, title and interest therein and free from of all Encumbrances, to Offerco;
- 5.7.2. Offerco shall have acquired registered and beneficial ownership of the Scheme Shares, free from of all Encumbrances;
- 5.7.3. the disposal and transfer by each Scheme Participant of the Scheme Shares held by each such Scheme Participant to Offerco, and the acquisition and ownership of those Scheme Shares by Offerco, pursuant to the provisions of the Scheme, will be effected, and no further act or instrument shall be required to give effect to such transfer of the Scheme Shares;
- 5.7.4. the Scheme Participants shall be entitled to receive the Scheme Consideration;
and

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- 5.7.5. the Scheme Consideration Shares will be allotted and issued to the Scheme Participants in consideration for the sale and transfer of the Scheme Shares of which they are the registered holders to Offerco in terms of the Scheme.
- 5.8. The Scheme shall be subject to such further conditions and shall be proposed on such further terms as may be set out in the Offer Circular. The Offer Circular shall be subject to the approval of Offerco prior to it being posted to the HPF Shareholders.
- 5.9. HPF undertakes to comply with the provisions of the Companies Act and the Companies Regulations applicable to it in terms of the Tsogo Offer and the Scheme, including:
- 5.9.1. that the HPF Independent Board will, after having received and taken into cognisance the Independent Expert's report and opinion and such other matters as the HPF Independent Board considers relevant, communicate its opinion to the HPF Shareholders as to whether the Scheme Consideration is fair and reasonable as contemplated in Companies Regulation 110;
- 5.9.2. to do all things required or deemed advisable of HPF and/or the HPF Independent Board in terms of this Agreement in order to convene the HPF Meeting for the purpose of the HPF Shareholders considering and voting on the approval of the Scheme;
- 5.9.3. if the Scheme is approved by the HPF Shareholders, to do all things required to implement the Scheme; and
- 5.9.4. without derogating from the generality of the provisions of clause 5.9.3 above, to procure that upon receipt by the Transfer Secretaries of the payment by Offerco of the Scheme Consideration in terms of clause 5.7.5 above, the Transfer Secretaries perform all the steps provided for in clause 7 below such that Offerco will become the owner and registered holder of the Scheme Shares.
- 5.10. Following the implementation of the Scheme, Offerco shall apply for the Delisting of the HPF Shares from the Main Board of the JSE.

6. THE IMPLEMENTATION OF THE GENERAL OFFER

- 6.1. It is the intention of the Parties that the Tsogo Offer shall be implemented by way of the Scheme. Accordingly, the General Offer shall only be implemented, and the Parties shall only procure the implementation of the General Offer and the fulfilment of the General Offer Conditions Precedent, upon the failure of the Scheme to be implemented in accordance with its terms.

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- 6.2. The implementation of the General Offer shall be subject to the following conditions precedent, namely:
- 6.2.1. the JSE and TRP approving the Offer Circular;
 - 6.2.2. the Delisting Resolution is approved by the requisite majority of votes as contemplated in the JSE Listings Requirements;
 - 6.2.3. each of the Offerco Resolutions as may be necessary in terms of the Companies Act and the JSE Listings Requirements being approved by shareholders of Offerco to authorise the implementation of the General Offer;
 - 6.2.4. the Independent Expert(s) provides:
 - 6.2.4.1. a "fair and reasonable" opinion in relation to the General Offer, as required by the Takeover Regulations; and
 - 6.2.4.2. a fairness opinion required in terms of paragraph 1.15(d) of Section 1 of the JSE Listings Requirements, confirming that the General Offer is fair insofar as the HPF Shareholders (excluding any related party/ies if it/they are equity securities holders) are concerned;
 - 6.2.5. the TRP having issued a compliance certificate in respect of the General Offer in terms of section 119(4)(b) of the Companies Act;
 - 6.2.6. the JSE grants its approval for the Delisting pursuant to the implementation of the General Offer, in accordance with paragraph 1.14 of Section 1 of the JSE Listings Requirements;
 - 6.2.7. Offerco having provided written notice to HPF prior to the date that is 12 (twelve) Business Days after the date on which the Delisting Resolution is considered and voted upon by HPF Shareholders, confirming that it is satisfied that no Material Adverse Event has occurred on or prior to the date of such notice,
- (collectively, the "**General Offer Conditions Precedent**").
- 6.3. Subject to clause 6.1, the Parties undertake to co-operate in using their Reasonable Endeavours to procure the fulfilment of the General Offer Conditions Precedent, to the extent that the fulfilment thereof is within their control.
- 6.4. The General Offer Conditions Precedent in clauses 6.2.2, 6.2.6 and 6.2.7 are expressed for the benefit of Offerco, who shall be entitled, upon written notice to HPF, to waive the requirement for fulfilment of such General Offer Condition Precedent. The remainder of the General Offer Conditions Precedent are expressed for the benefit of both Parties, who shall

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be entitled to, upon written agreement between them, waive the requirement for fulfilment of the General Offer Conditions Precedent (to the extent legally permissible).

- 6.5. The General Offer shall not be implemented and shall be of no force or effect if the General Offer Conditions Precedent are not fulfilled (or waived in terms of clause 6.4) on or before midnight on the 15th (fifteenth) day from and including the date of written notice given by either Party to the other of them, requiring that those Conditions Precedent referred to in clause 6.2 which, at the date of the written notice have not been fulfilled or waived, be fulfilled or, where legally possible, waived, provided that no such notice may be given on or before 14 November 2020.
- 6.6. Should the General Offer shall not be implemented by reason of clause 6.5 above then:
- 6.6.1. the Tsogo Offer shall be deemed to have failed and shall not be implemented;
and
- 6.6.2. no Party shall have any claim against the other Party as a result of the General Offer Conditions Precedent not having been fulfilled or waived (to the extent legally permissible), except for such damages, if any, resulting from a breach of the provisions of clause 6.3.
- 6.7. The General Offer shall be subject to such further conditions and shall be proposed on such further terms as may be set out in the Offer Circular. The Offer Circular shall be subject to the approval of Offerco prior to it being posted to the HPF Shareholders.
- 6.8. The General Offer will be a continuation of the affected transaction commenced with the Scheme, as defined in section 117 of the Companies Act. The General Offer will be implemented in accordance with the Companies Act and the Companies Regulations and will be regulated by the TRP.

7. DELIVERY OF THE SCHEME SHARES AND THE SCHEME CONSIDERATION SHARES

- 7.1. In the event that the Scheme Conditions Precedent are fulfilled and the Scheme is implemented, then the Scheme will be implemented on the Scheme Implementation Date by:
- 7.1.1. the delivery by HPF to Offerco of documentary proof, satisfactory to Offerco, acting reasonably, that the Scheme Shares have been registered in the name of Offerco by the Transfer Secretaries; and
- 7.1.2. the issue by Offerco of the Scheme Consideration Shares to the Scheme Participants registered as such by the Transfer Secretaries on the Scheme Record Date, *pro rata* to their holdings of Scheme Shares in payment of the Scheme Consideration.



7.2. The Scheme Participants shall:

7.2.1. if they are Certificated HPF Shareholders, against the surrender by them of their Documents of Title in respect of their Scheme Shares, duly completed transfer forms and/or surrender forms, as stipulated in the Offer Circular, to the Transfer Secretaries and the specification of a valid account with a CSDP or broker into which the Scheme Consideration is to be transferred, receive the Scheme Consideration which will be in Dematerialised form; and

7.2.2. if they are Dematerialised HPF Shareholders, have their Scheme Shares transferred to Offerco and the Scheme Consideration transferred to their CSDP or broker, by the crediting of their accounts with the Scheme Consideration, in terms of the custody agreement entered into between such Scheme Participants and their CSDP or broker (as the case may be).

8. **OWNERSHIP, RISK AND BENEFIT TO SCHEME SHARES AND SCHEME CONSIDERATION SHARES**

8.1. Upon delivery to Offerco of the Scheme Shares, Offerco shall:

8.1.1. become the owner of the Scheme Shares; and

8.1.2. be entitled to all benefits and subject to all risks attaching to the Scheme Shares.

8.2. Upon issuance and delivery to the Scheme Participants (or to the Transfer Secretaries acting for and on behalf of the Scheme Participants) of the Scheme Consideration Shares, the Scheme Participants shall:

8.2.1. become the unconditional owners of the Scheme Consideration Shares; and

8.2.2. be entitled to all benefits and subject to all risks attaching to the Scheme Consideration Shares.

9. **DELIVERY OF THE GENERAL OFFER SHARES AND GENERAL OFFER CONSIDERATION SHARES**

9.1. In the event that the General Offer Conditions Precedent are fulfilled and the General Offer is implemented, then the General Offer will be implemented on the General Offer Payment Date by:

9.1.1. the delivery by HPF to Offerco of documentary proof, satisfactory to Offerco, acting reasonably, that the General Offer Shares have been registered in the name of Offerco by the Transfer Secretaries; and

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9.1.2. the issue by Offerco of the General Offer Consideration Shares to the General Offer Participants registered as such by the Transfer Secretaries on the General Offer Closing Date, *pro rata* to their holdings of General Offer Shares in payment of the General Offer Consideration.

9.2. The General Offer Participants shall:

9.2.1. if they are Certificated HPF Shareholders, against the surrender by them of their Documents of Title in respect of their General Offer Shares, duly completed transfer forms and/or surrender forms, as stipulated in the Offer Circular, to the Transfer Secretaries and the specification of a valid account with a CSDP or broker into which the General Offer Consideration is to be transferred, receive the General Offer Consideration which will be in Dematerialised form; and

9.2.2. if they are Dematerialised HPF Shareholders, have their General Offer Shares transferred to Offerco and the General Offer Consideration transferred to their CSDP or broker, by the crediting of their accounts with the General Offer Consideration, in terms of the custody agreement entered into between such General Offer Participants and their CSDP or broker (as the case may be).

10. OWNERSHIP, RISK AND BENEFIT TO GENERAL OFFER SHARES AND GENERAL OFFER CONSIDERATION SHARES

10.1. On delivery to Offerco of the General Offer Shares, Offerco shall:

10.1.1. become the unconditional owner of the General Offer Shares; and

10.1.2. be entitled to all benefits and subject to all risks attaching to the General Offer Shares.

10.2. On delivery to the General Offer Participants (or to the Transfer Secretaries acting for and on behalf of the General Offer Participants) of the General Offer Consideration Shares, the General Offer Participants shall:

10.2.1. become the unconditional owners of the General Offer Consideration Shares; and

10.2.2. be entitled to all benefits and subject to all risks attaching to the General Offer Consideration Shares.

11. THE INDEPENDENT EXPERT'S REPORT

11.1. As soon as reasonably possible after the Signature Date, the HPF Independent Board will appoint an Independent Expert to:

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- 11.1.1. prepare a report for the HPF Independent Board in terms of section 114(3) of the Companies Act and regulation 90 of the Companies Regulations;
 - 11.1.2. express an opinion on whether the Tsogo Offer is fair and reasonable as required in Companies Regulation 110(1) and defined in Companies Regulation 81(h) of the Companies Regulations; and
 - 11.1.3. express an opinion required in terms of paragraph 1.15(d) of Section 1 of the JSE Listings Requirements as to whether the Scheme and General Offer are fair insofar as the HPF Shareholders (excluding any related party/ies if it/they are equity securities holders) are concerned.
- 11.2. HPF undertakes to use its Reasonable Endeavours to procure delivery by the Independent Expert of the report and opinion referred to in clause 11.1 above as soon as possible after the appointment of the Independent Expert.
- 11.3. The costs incurred by the HPF Independent Board in respect of the appointment and report referred to in clause 11.1 above will be for the account of HPF.

12. WARRANTIES AND REPRESENTATIONS

- 12.1. The warranties contained in clause 12.4 are hereby given and made by each of the Parties to the other of them.
- 12.2. Unless specifically otherwise stated each warranty is given or made at both the Signature Date and the Closing Date and during the intervening period between those two dates.
- 12.3. All warranties, representations and undertakings contained in clause 12.4 below and elsewhere in this Agreement are limited and qualified to the extent to which any fact or circumstance giving rise to such limitation or qualification has been disclosed in writing or has been publicly announced.
- 12.4. Each Party warrants to the other Party that:
- 12.4.1. it is and shall remain validly incorporated in accordance with all applicable laws;
 - 12.4.2. it has and shall continue to have the necessary legal capacity to enter into and perform each of its obligations under this Agreement; and
 - 12.4.3. the execution of this Agreement and performance by it of its obligations hereunder do not and shall not:
 - 12.4.3.1. contravene any law or regulation to which it is subject; or
 - 12.4.3.2. contravene any provision of its founding documents; or

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12.4.3.3. conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party or subject or by which its assets are bound;

12.4.4. it will continue to operate its business in the Ordinary Course of Business, taking into consideration the extraordinary circumstances presented by Covid-19.

13. INDEMNITIES

Without prejudice to any of the other rights of the Parties arising from any of the provisions of this Agreement, HPF on the one part and Offerco on the other part, indemnify each other against all direct loss, liability, damage or expense which the counterparty may suffer as a result of or which may be attributable to a breach of any warranty given in this Agreement to the counterparty.

14. CESSION AND ASSIGNMENT

Neither this Agreement nor any interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by a Party without the prior signed written consent of the other Party, save as may otherwise be expressly provided for herein.

15. GOOD FAITH AND CO-OPERATION

The Parties hereby undertake during the existence of this Agreement to:

15.1. at all times show to each other the utmost good faith in their dealings with each other;

15.2. co-operate with each other to the fullest extent; and

15.3. do all such reasonable things, perform all such reasonable actions and take all such reasonable steps as may be open to them and necessary for and incidental to the implementation and/or maintenance of the terms and conditions of this Agreement.

16. BREACH

16.1. Should a Party (the "**Defaulting Party**") commit a breach of any of the provisions of this Agreement, then the other Party (the "**Aggrieved Party**") shall, if it wishes to enforce its rights hereunder, be obliged to give the Defaulting Party not less than 10 (ten) Business Days written notice to remedy the breach, which notice shall specify, in sufficient detail, the breach and the conduct required to rectify it.

16.2. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement or to claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party's obligations in respect of which it is in breach of this Agreement, in either event without prejudice to the Aggrieved Party's rights to claim damages.



16.3. Notwithstanding anything to the contrary contained in this Agreement, the Aggrieved Party shall not be entitled to cancel this Agreement for any breach by the Defaulting Party:

16.3.1. prior to or on the Closing Date, unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment in money, or if it is capable of being remedied by a payment in money, the Defaulting Party fails to pay the amount concerned within 10 (ten) Days after such amount has been finally determined and payment thereof by the Defaulting Party has been demanded in writing by the Aggrieved Party; or

16.3.2. after the Closing Date.

17. CONFIDENTIALITY

The Parties agree to keep the contents of this Agreement confidential and not to disclose it or publish it to any person save as may be agreed to by them in writing or as they may be required to disclose by law or in terms of the rules and/or listing requirements of any stock or securities exchange (including, for the avoidance of doubt, the JSE Listings Requirements) or to the extent that any such disclosure is made to an advisor for the purposes of obtaining advice with regard to this Agreement.

18. NOTICES AND DOMICILIA

18.1. For the purposes of the giving of notices and the serving of legal process in terms of this Agreement, each of the Parties chooses a *domicilium citandi et executandi* ("**domicilium**") as follows:

18.1.1. HPF:

Physical address: Palazzo Towers West, Montecasino Boulevard,
Fourways, Gauteng

Attention: Mara de Lima and Riaan Erasmus

E-mail address: marad@hpf.co.za and riaane@hpf.co.za

18.1.2. Offerco:

Physical address: Palazzo Towers West, Montecasino Boulevard,
Fourways, Gauteng

Attention: Marcel von Aulock and Laurelle McDonald

E-mail address: Marcel.vonAulock@tsogosun.com and
Laurelle.McDonald@tsogosun.com

- 18.2. Any Party may at any time, by notice in writing to the other Party, change its domicilium to any other address which is not a post office box.
- 18.3. Any notice given in connection with this Agreement shall, save where a particular form of notice is stipulated, be:
- 18.3.1. delivered by hand; or
 - 18.3.2. sent by courier; or
 - 18.3.3. sent by post; or
 - 18.3.4. sent by e-mail,
- to the domicilium chosen by the Party concerned.
- 18.4. A notice given as set out above shall be deemed to have been duly given (unless a disputing Party proves the contrary):
- 18.4.1. if delivered by hand, on the date of delivery; or
 - 18.4.2. if sent by courier, on the date of delivery by the courier service concerned; or
 - 18.4.3. if sent by post, on the 5th (fifth) Business Day after the date of posting; or
 - 18.4.4. if sent by e-mail, on the 1st (first) Business Day after the date of transmission.
- 18.5. Any written notice (including any e-mail) actually received by a Party shall be valid, notwithstanding that it may not have been given in accordance with the preceding provisions of this clause 18.

19. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 19.1. This Agreement will be governed by and construed in accordance with the laws of South Africa.
- 19.2. Should any dispute, disagreement or claim arise between the Parties concerning this Agreement (the "**Dispute**"), the Parties shall endeavour to resolve the Dispute by negotiation.
- 19.3. This entails one Party inviting the other in writing to meet and to attempt to resolve the Dispute within 10 (ten) Business Days from the date of written invitation.
- 19.4. If the Dispute has not been resolved by negotiation within 10 (ten) Business Days of the commencement thereof, the Parties shall submit the Dispute to arbitration in accordance with clause 20 below.

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- 19.5. Notwithstanding anything to the contrary in this clause 19, any Party shall be entitled to apply for, and if successful, be granted, an interdict or other interim and/or urgent relief from any competent court having jurisdiction.
- 19.6. The Parties agree that the written demand by a Party in terms of clause 19.3 for the dispute or difference be submitted to negotiation, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

20. **ARBITRATION**

- 20.1. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a Dispute which arises in regard to this Agreement or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) and in respect of which the negotiation referred to in clause 19.2 has not been successful, shall be submitted to and decided by arbitration.
- 20.2. That arbitration shall be held:
- 20.2.1. with only the Parties and their legal representatives present thereat;
- 20.2.2. in Johannesburg.
- 20.3. Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa, but solely and exclusively applying the rules of the Arbitration Foundation of Southern Africa. If any provision of this clause 20 is inconsistent with the rules of the Arbitration Foundation of Southern Africa in force at that time, the provisions of this clause shall prevail.
- 20.4. The arbitrator shall be an impartial retired judge, or an impartial practising advocate of not less than 10 (ten) years' standing or an impartial admitted attorney of not less than 10 (ten) years' standing appointed by the Parties or, failing agreement by them within 5 (five) Business Days of the first of them nominating a person for appointment as arbitrator, at the request of either Party, shall be nominated by the President for the time being of the Cape Law Society (or if this title has changed, or if this office no longer exists, the equivalent office), whereupon the Parties shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination or if any such office does not exist, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 20.5. Within 10 (ten) Business Days after the pleadings have closed, the arbitrator shall determine the period within which the hearing will be concluded, taking into account the particular circumstances of the Dispute. The arbitrator shall be entitled to extent the aforesaid time



period under exceptional circumstances. The determination made by the arbitrator as regards the period within which the hearing will be concluded and/or the commencement date and/or the recommencement date shall be final. Neither Party may raise as good and sufficient cause for the absence of that Party to the arbitration proceedings the unavailability of that Party's legal representative.

- 20.6. The arbitrator shall be obliged to give his/her award in writing fully supported by reasons and shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- 20.7. Either Party shall be entitled to have the award made an order of court of competent jurisdiction.
- 20.8. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 20.9. The arbitrator shall have the power to give default judgment if either Party fails to make submissions on due date and/or fails to appear at the arbitration.
- 20.10. The arbitrator, but acting as an expert and not as an arbitrator, may "make the contract" as between the Parties, by completing any gaps in this Agreement or by determining any matter which has been or is left to be agreed upon by the Parties and on which they have not reached agreement. In such a case, the arbitrator shall be entitled to reject any submissions made by the Parties and to make his/her own independent decision. The arbitrator's decision shall be final and binding on the Parties to the arbitration.
- 20.11. The Parties, together with the arbitrator, will agree from time to time on the arbitrator's remuneration and when and how it shall be paid in the interim. Should the Parties fail to reach agreement in this regard within the period stipulated by the arbitrator in this regard, the arbitrator shall determine his remuneration and when and how it should be paid. The Parties shall, pending the final determination of the arbitrator as to which Party shall ultimately be liable for the costs of the arbitration, fund the costs (such as the costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the arbitration) which need to be paid in the interim, equally. If at any time a Party does not pay its portion of the costs when required in the interim, that Party will be excluded from participating in the arbitration and the other Party shall be entitled to request a final award from the arbitrator as regards that Party. Within 10 (ten) Business Days of the making by the arbitrator of a final determination as to which Party shall bear the costs of the arbitration, the Party against which such determination has been made shall reimburse to the other Party the costs borne by such Party in the interim together with interest thereon, if the arbitrator so awards.

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20.12. The provisions of this clause shall remain in effect even if this Agreement is terminated for any reason.

20.13. If it is alleged that this Agreement was induced by a fraudulent misrepresentation or if this Agreement is void or voidable on any other ground, then notwithstanding that the remainder of this Agreement may be void or voidable the Parties agree that the provisions of this clause are severable from the rest of this Agreement and shall remain in effect. In such circumstances any dispute relating to any such fraudulent misrepresentation or relating to whether this Agreement is void or voidable shall be submitted to and decided by arbitration in accordance with this clause.

21. GENERAL

21.1. No relaxation, indulgence or extension of time granted by any Party ("the Grantor") to the other Party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of the terms of this Agreement or estop the Grantor from enforcing strict and punctual compliance with the terms of this Agreement.

21.2. No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of this Agreement (including this clause 21.2) shall be of any force or effect unless it is reduced to writing and signed by a duly authorised representative of each of the Parties.

21.3. This Agreement constitutes the entire agreement between the Parties in relation to the subject matter hereof and no Party shall accordingly be bound by any undertaking, representation or warranty not recorded herein.

22. COUNTERPARTS

22.1. This Agreement may be executed in a number of counterparts and by the same Parties in different counterparts, but shall only be deemed to have been concluded when each Party has executed at least one counterpart.

22.2. Each counterpart, when executed, shall be an original, but all counterparts together constitute the same document.


22.3. Each Party shall be provided with an original copy of the Agreement signed by all the Parties (whether in counterparts or otherwise).

23. COSTS

Each Party shall bear their own costs in relation to the preparation and implementation of this Agreement.



FOR: TSOGO SUN HOTELS LIMITED


Signature: 
who warrants that he / she is duly authorised thereto

Name: MARCEL VON AULOCK

Date: 07 OCTOBER 2020

Place: JOHANNESBURG

FOR: HOSPITALITY PROPERTY FUND LIMITED

Signature: 
who warrants that he / she is duly authorised thereto

Name: Mara de Lima

Date: 6 October 2020

Place: Johannesburg