

# Propriété Générale Document

DATED January 18, 2021

BETWEEN

(1) **“XPTO Hotels”**

and

(2) **“Propriété Générale”**

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**MUTUAL NON-DISCLOSURE AGREEMENT**

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## MUTUAL NON-DISCLOSURE AGREEMENT

This agreement is made on (18/01/2021).

### Between

**XPTO Hotels, a company based in Macau with its registered office in London, here represented by Craig Simon, as CEO**

(1) with powers to bind. (hereinafter referred to as “First Party”)

(2) **Propriété Générale**, company incorporated in accordance with the laws of, and with its registered office in Lisbon, here represented by, **Luorenço Ribeiro** as Hospitality Real Estate Consultant, with powers to bind, (hereinafter referred to as “Second Party”),

Each a “Party” and together referred to as “Parties”.

### Recitals

**A.** Each Party wishes to disclose Confidential Information to the other Party(ies) in relation to the Purpose.

**B.** Each Party wishes to ensure that the other Party(ies) maintains the confidentiality of its Confidential Information.

**C.** In consideration of the benefits to the parties of the disclosure of the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information. 1.1 In this agreement the following words and phrases shall, unless contrary intention appears, have the following meanings: (a) the fact that discussions and negotiations are taking place concerning the (b) the existence and terms of this agreement; (c) any information that would be regarded as confidential by a reasonable business person relating to:

### It is agreed as follows:

#### 1. INTERPRETATION

**1.1.1** Business Day – a day (other than a Saturday, Sunday or public holiday) when banks in Portugal are open for business.

**1.1.2** Confidential Information – all information relating to the Purpose (however recorded, preserved or disclosed) disclosed by a Party or its Representatives to the other Party(ies) and that Party’s Representatives before, on or after the date of this agreement, including but not limited to:

- a) Purpose and the status of those discussions and negotiations;
  - b) the existence and terms of this agreement;
  - c) any information that would be regarded as confidential by a reasonable business person relating to:
    - i. the business, affairs, contacts, customers, technology, patented material clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Group; and
    - ii. the operations, processes, product information, knowhow, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's Group;
  - d) any information or analysis derived from Confidential Information; but not including any information that:
    - e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this agreement or of any other undertaking of confidentiality addressed to the Party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
    - f) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or
    - g) the parties agree in writing is not confidential or may be disclosed; or
    - h) is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.
- 1.1.3** Disclosing Party – a party to this agreement which discloses or makes available directly or indirectly Confidential Information.
- 1.1.4** Group – in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.
- 1.1.5** Purpose – the consideration and evaluation of a potential investment in **Hotel XXXXXXXX, address in XXXXXX for XXM€.**
- 1.1.6** Recipient – the Party(ies) to this agreement which receives or obtains directly or indirectly Confidential Information.
- 1.1.7** Representative – in relation to each Party:
- (a) its directors, officers and employees and those of its Group that need to know the Confidential Information for the Purpose;

(b) its professional advisers or consultants who are engaged to advise that Party in connection with the Purpose; and

(c) any other person to whom the other Party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

**1.2** In this agreement unless the context otherwise requires:

**1.2.1** Words denoting any one gender include all other genders and words denoting the singular shall include the plural and vice versa;

**1.2.2** A reference to:

(a) A “subsidiary” or “holding company” shall be construed in accordance with initial description of the parties, as in force at the date of this agreement;

(b) A document in the “agreed form” is a reference to a document in the form approved and, for the purpose of identification, initialed by the parties;

(c) A “clause” is a reference to a clause of this agreement;

(d) A person includes a reference to a body corporate, an unincorporated association or a partnership and that person’s legal and personal representatives and successors;

(e) Any statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this agreement).

**1.3** Headings are for ease of reference only and shall not affect the interpretation of this agreement

## **2. OBLIGATIONS OF CONFIDENTIALITY**

**2.1** The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall:

**2.1.1** not use or exploit the Confidential Information in any way except for the Purpose;

**2.1.2** not utilise the Confidential Information to obtain any commercial advantage over the Disclosing Party or to compete with it, directly or indirectly;

**2.1.3** not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement;

**2.1.4** not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party); and

**2.1.5** apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorized disclosure, copying or use.

**2.1.6** never use any information, contacts, names, or any potential benefit from the Confidential Information, as well never get in contact directly with any partner, client, developer, promoter or owner of the assets disclosed.

**2.2** The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives or potential investors who need to know this Confidential Information for the Purpose, provided that:

**2.2.1** it informs its Representatives of the confidential nature of the Confidential Information before disclosure;

**2.2.2** it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this agreement as if they were the Recipient and, if the Disclosing Party so requests, procure that any relevant Representative enters into a confidentiality agreement with the Disclosing Party on terms equivalent to those contained in this agreement, and it shall at all times be liable for the failure of any Representative to comply with the terms of this agreement.

**2.3** A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including, without limitation, any recognized stock exchange or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the other Party in relation to the content of this disclosure.

**2.4** The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorized access or use.

**2.5** No Party shall make, or permit any person to make, any public announcement concerning this agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. No Party shall make use of the other Party's name or any information acquired through its dealings with the other Party for publicity or marketing purposes without the prior written consent of the other Party.

### **3. RETURN OF INFORMATION**

**3.1** At the request of the Disclosing Party, the Recipient shall:

**3.1.1** destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;

**3.1.2** erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and

**3.1.3** certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this agreement. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient.

**3.2** If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

### **4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

**4.1** All Confidential Information shall remain the property of the Disclosing Party. Each Party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a Party's Confidential Information are granted to the other Party and no obligations are imposed on the Disclosing Party other than those expressly stated in this agreement.

**4.2** Except as expressly stated in this agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information, and accordingly, no liability will attach to the Disclosing Party or its Representatives as a result of reliance on the Confidential Information by the Recipient.

**4.3** The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Purpose or the development or supply of any product or service to which the Confidential Information may relate.

**4.4** The parties agree that neither the execution of this agreement nor the receipt of any Confidential Information will preclude them now or in the future from evaluating potential transactions in relation to, acquiring an interest in, entering into commercial agreements with or otherwise doing business with competitors (or potential competitors) of the other Party, save where such activities result in a breach of this agreement by either Party or their Representatives.

**4.5** The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to seek the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.

**4.6** Should any unauthorized disclosure of Confidential Information take place by the Recipient or its Representatives, the Disclosing Party shall in addition to any other remedy, be entitled by written notice to the Recipient to terminate all obligations to provide Confidential Information to the Recipient (if any) in relation to the Purpose with immediate effect.

## **5. WARRANTY**

**5.1** Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorize the Recipient to use such Confidential Information for the Purpose.

**5.2** Each Party warrants that it is able to, and the signatory to this Agreement has the authority to execute this Agreement.

## **6. TERM AND TERMINATION**

**6.1** If either Party decides not to become or continue to be involved in the Purpose with the other Party it shall notify the other Party in writing immediately. The obligations of each Party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of two (2) years from the last date that Confidential Information is disclosed to the Recipient or its Representatives under this agreement.

**6.2** Termination of this agreement shall not affect any accrued rights or remedies to which either Party is entitled.

## **7. GENERAL**

**7.1** This agreement and the documents referred to in it contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersede all previous agreements between the parties relating to these transactions.



**7.2** Each Party acknowledges that in entering into this agreement it has not relied on any representation, warranty, agreement, statement or other assurance (except those set out in this agreement) made by or on behalf of any Party and that (in the absence of fraud) it will not have and it hereby explicitly waives any right or remedy arising out of any representation, warranty, agreement, statement or other assurance not set out in this agreement.

**7.3** No variation or agreed termination of this agreement shall be of any force or effect unless in writing and signed by each Party.

**7.4** Any failure to exercise or any delay in exercising any right or remedy under this agreement shall not constitute a waiver of that right or remedy or a waiver of any other right or remedy and no single or partial exercise of any right or remedy under this agreement will prevent any further exercise of that right or remedy or the exercise of any other right or remedy.

**7.5** This agreement is personal to the parties and no Party shall, without the prior written consent of each other Party, assign, declare itself as trustee or otherwise dispose of or sub-contract, delegate, mortgage or charge any interest under this agreement. No Party shall sub-contract or delegate in any manner any or all of its obligations under this agreement to any third party or agent. Each Party is acting on its own behalf and not for the benefit of any other person.

**7.6** A person who is not a Party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **8. NOTICES**

**8.1** Any notice or other communication under or in connection with this agreement shall be in writing and shall be delivered personally or by commercial courier to the parties due to receive the notice or communication at its address set out above, or at such other address as the relevant Party may specify by notice in writing to the other parties.

**8.2** Any notice or other communication shall be deemed to have been duly given if delivered personally when left at the address referred to in the immediately preceding clause, or delivered by commercial courier on the date of signature of the courier's receipt.

## **9. GOVERNING LAW**

**9.1** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Portugal.

**9.2** The parties irrevocably agree that the Faro Tribunal have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## 10. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but the counterparts together shall constitute one and the same instrument.

## 11. NON-SOLICITATION

**11.1** Neither Party nor their Representatives shall, without the prior written consent of the other Party, at any time from the date of this agreement to the date of termination of this agreement as contemplated in clause 6:

**11.1.1** directly or indirectly solicit or entice away from that other Party or employ or attempt to employ any person who is, at any time during the negotiations relating to the Purpose, an employee of or consultant to that other Party or their Group; and/or

**11.1.2** contact or seek the custom of any person who is, or was, a client or customer of the other Party or their Group.

## 12. NON-CIRCUMVENT

**12.1** The Recipient warrants that they will not nor cause any other party, directly or indirectly, to circumvent the other party(ies) in any transaction or opportunity mentioned in or derived from the Confidential Information.

**IN WITNESS** whereof the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

(1) Signed for and on behalf of **XPTO Hotels** (First Party)

Name: **Craig Simon**

Title: **CEO**

(2) Signed for and on behalf of, (Second Party)

Name: **Lourenço Ribeiro**

Title: **Hospitality Real Estate Consultant**

