



## POPIA OPERATOR POLICY INCLUDING MANDATE TO PROCESS

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This Personal Information Operator Agreement ("**Operator Agreement**") is entered into between yourself ("**Operator**") and Tourvest Duty Free (Pty) Ltd (registration number 2015/365472/07), located at 2 South Arm Road, V&A Waterfront, Cape Town, 8001, South Africa ("**Responsible Party**") in relation to your processing of Personal Information for which the Responsible Party is responsible. This Operator Agreement is effective as of the date of consent hereto or the effective date of any main agreement incorporating the terms of this Operator Agreement by reference ("**Agreement**"), whichever is earlier.

### 1. **INTRODUCTION**

- 1.1. **WHEREAS** the Responsible Party processes Personal Information subject to the Protection of Personal Information Act, 2013 as amended from time to time ("**POPIA**"). The processing of Personal Information together with the collection, transfer and use of the Data Subject's Personal Information is both covered and protected in terms of POPIA;
- 1.2. **WHEREAS** the Operator process or shall process Personal Information on behalf of the Responsible Party; and
- 1.3. **WHEREAS** POPIA requires an Operator Agreement to be entered into in such circumstances.

### 2. **INTERPRETING THE AGREEMENT**

- 2.1. The following expressions bear the meanings assigned to them below and the cognate expressions bear corresponding meanings:
  - 2.1.1. "**Confidential Information**" means any information (including Personal Information) received by one Party from the other Party and is marked as confidential or a similar notice (if disclosed in writing or a tangible form), identified as confidential (if disclosed verbally) or should reasonably be treated as confidential under the context in which such disclosure was made.
    - 2.1.1.1. Confidential information shall not include information that the Party receiving the information can demonstrate:
      - 2.1.1.1.1. is lawfully in the public domain at the time of disclosure thereof;
      - 2.1.1.1.2. subsequently becomes lawfully part of the public domain by publication or otherwise;
      - 2.1.1.1.3. is or becomes available to the Party receiving such information from a source other than the Party revealing the information, which source was lawfully entitled without any restriction on disclosure to disclose such information to a third party.
    - 2.1.1.2. The Party receiving the Confidential Information will:



- 2.1.1.2.1. safeguard Confidential Information with the same degree of care as it exercises with its own Confidential Information, but no less than reasonable care;
- 2.1.1.2.2. not disclose any Confidential Information to third parties; and
- 2.1.1.2.3. will use the other Party's Confidential Information solely in the exercise of the rights and obligations under this Operator Agreement and for no other purpose.
- 2.1.1.3. The Party so receiving the Confidential Information may disclose same only pursuant to a requirement or request by operation of law, regulation or court order, but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed.
- 2.1.2. "**Data Subject**" means the party to whom Personal Information relates;
- 2.1.3. "**Interruption Event**" means theft, strike, lock-out, load shedding, blackout, fire, explosion, flood, riot, war, accident, act of nature, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, server downtime, government interference or control, or any other cause or contingency beyond the control of the Party concerned;
- 2.1.4. "**Interrupted Party**" means a Party prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Operator Agreement by reason of an Interruption Event;
- 2.1.5. "**Operator**" (as defined under POPIA) means the Party which receives Personal Information from the Responsible Party for processing;
- 2.1.6. "**Operator Agreement**" means this Operator agreement and all annexures or schedules thereto;
- 2.1.7. "**Parties**" means the parties to this Operator Agreement, being the Operator and the Responsible Party, and "**Party**" shall mean either one of them;
- 2.1.8. "**Personal Information**", means personal information relating to any identifiable, living, natural person, and an identifiable, existing juristic person, as defined in section 1 of POPIA;
- 2.1.9. "**processing**" / "**process**" or "**processed**", means in relation to Personal Information, the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; dissemination by means of transmission, distribution or making available in any other form; merging, linking, together with restriction, degradation, erasure or destruction of information; or sharing with, transfer and further processing, including physical, manual and automatic means;



2.1.10. "**Responsible Party**" means Tourvest Duty Free (Pty) Ltd (registration number 2015/365472/07), located at 2 South Arm Road, V&A Waterfront, Cape Town, 8001, South Africa; and

2.1.11. "**Scope**" means the scope of the mandate as set out in clause 4.

### 3. **MANDATE**

3.1. Section 20 of POPIA requires that an Operator only process Personal Information on behalf of a Responsible Party with the knowledge and authorisation of the Responsible Party. As such, the Parties enter into this Operator Agreement for the purposes of authorising the Operator to process Personal Information on behalf of the Responsible Party.

3.2. The Responsible Party hereby mandates and appoints the Operator to process the Personal Information strictly in accordance with this Operator Agreement and the Scope, which mandate and appointment the Operator hereby accepts.

### 4. **SCOPE**

4.1. The Operator may process the following Personal Information:

4.1.1. First name;

4.1.2. Last name;

4.1.3. Date of birth;

4.1.4. ID number;

4.1.5. Passport number;

4.1.6. Email address;

4.1.7. Phone number;

4.1.8. Address;

4.1.9. Company name;

4.1.10. Company registration number;

4.1.11. Credit card information;

4.1.12. Bank information; and/or

4.1.13. Tax numbers.

4.2. The Personal Information is required in order for the Operator to provide goods and/or services to the Responsible Party.



- 4.3. The Personal Information may be processed and retained for no longer than necessary.
- 4.4. The Operator may share the Personal Information with the following categories of third parties:
  - 4.4.1. Companies within the Tourvest group of companies;
  - 4.4.2. Auditors;
  - 4.4.3. South African Revenue Service (SARS);
  - 4.4.4. Customs and Excise (a division of SARS);
  - 4.4.5. Customs clearing service providers;
  - 4.4.6. Shipping and courier service providers;
  - 4.4.7. Web and mail-hosting service providers; and/or
  - 4.4.8. Selected suppliers of duty-free goods.
- 4.5. The Personal Information may also be shared with the above parties who are outside of South Africa, residing or operating in the United Kingdom.

## 5. **OBLIGATIONS OF THE OPERATOR**

- 5.1. The Operator expressly warrants and undertakes in favour of the Responsible Party that it will:
  - 5.1.1. ensure that the Personal Information is processed strictly in accordance with POPIA, this Operator Agreement, any main Agreement which may be concluded as between the Operator and the Responsible Party, as well as any specific instructions provided to it by the Responsible Party as may occur from time to time;
  - 5.1.2. not use the Personal Information for any other reason save as contained in the Scope together with, any main Agreement (where applicable) as concluded between the Operator and the Responsible Party together with any specific instructions provided to it by the Responsible Party from time to time;
  - 5.1.3. disclose, transfer and / or hand over the Personal Information to only those person(s) identified under the Scope, and which are subject to confidentiality obligations;
  - 5.1.4. treat all Personal Information as strictly confidential and not disclose it to any unauthorised parties, unless required by law to do so, and in that event, only once it has provided the Responsible Party with adequate warning of this requirement to disclose and the related details thereof, which warning shall include the identity of the party who is to receive the Personal Information and the reason for the disclosure;



- 5.1.5. ensure that appropriate technical and organisational measures to protect and safeguard the Personal Information are in place so as to prevent against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access, and which shall further provide a level of security appropriate to the risk represented by the processing and the nature of the Personal Information which is required to be protected, which safeguards are to comply with the requirements set out under POPIA;
- 5.1.6. immediately notify the Responsible Party in circumstances where it has reasonable grounds to suspect that the Personal Information in its possession has been lost, destroyed, or accessed or acquired by any unauthorised person;
- 5.1.7. not use the Personal Information for any direct marketing or advertising, research or statistical purposes. Further, if authorised to conduct such activity by the Responsible Party, the Operator shall at all times ensure that this is done strictly in compliance with the requirements of POPIA, especially those applicable to direct marketing detailed under section 69 and the related regulations;
- 5.1.8. not treat the Personal Information as its own, with it expressly acknowledging that it has been tasked with processing the Personal Information in its capacity as an Operator only, and that ownership of all the records housing the Personal Information and any records comprising such Personal Information pertaining to the Data Subject, will always remain with the Responsible Party and not divest in it at any time or for any reason;
- 5.1.9. not sell, alienate, export or otherwise part with the Personal Information or any of the records housing the Personal Information; and
- 5.1.10. ensure that any and all persons acting under the authority of the Operator, including any employee or third party, shall be obligated to process the Personal Information only on instructions from the Operator and strictly in accordance with this Operator Agreement.
- 5.2. The Operator hereby warrants that it has the legal authority to give and fulfil the abovementioned warranties and undertakings contained in this Operator Agreement.
- 5.3. The Responsible Party will be permitted, during business hours, to itself, or through a third party, conduct an inspection and/or audit the Operator's facilities, files together with any other data processing documentation or records required in order to perform the inspection and/or audit so as to satisfy itself that the warranties and undertakings contained in this Operator Agreement have been complied with.

## 6. **LIABILITY OF THE OPERATOR AND THIRD-PARTY RIGHTS**

- 6.1. The Operator shall be liable for all damages, losses and claims it causes as a result of a breach of this Operator Agreement and POPIA, suffered by the Responsible Party, Data



Subject, or any third party. The Operator hereby indemnifies the Responsible Party against all liabilities, losses, damages and claims in this regard, or as a result of the Operator's unlawful conduct, wilful misconduct, negligence and/or gross negligence.

- 6.2. The Operator agrees to make payment of all claims under this clause on demand.
- 6.3. The Operator will, upon request by the Responsible Party, provide the Responsible Party proof of its financial resources, which shall be sufficient to fulfil its responsibilities which are specifically set out in clause 6.1 and this Operator Agreement in general, which may include insurance coverage or other forms of collateral.

## 7. **APPLICABLE LAW**

- 7.1. This Operator Agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

## 8. **TERMINATION**

- 8.1. This Operator Agreement shall be terminated:
  - 8.1.1. with immediate effect, when the processing of the Personal Information by the Operator having been completed in accordance with the mandate;
  - 8.1.2. if either Party elects to terminate this Operator Agreement on one month's written notice to the other Party;
  - 8.1.3. with immediate effect, when an application having been filed for the placing of the Operator under business rescue, liquidation, administration, or winding up whether interim or final, which application is not dismissed within the applicable period for such dismissal under applicable law, or any equivalent event in any jurisdiction occurs.
- 8.2. The Parties agree that the termination of the Operator Agreement does not exempt them from the rights and obligations set out under this Operator Agreement with regards to the processing of the Personal Information read together with the obligations under POPIA.
- 8.3. If the Operator Agreement is terminated the Operator undertakes:
  - 8.3.1. to restore, return to the Responsible Party, or destroy, at the Responsible Party's election, any and all Personal Information and documents containing Personal Information provided to it. For the purposes of destruction, a senior representative of the Operator shall confirm in writing that all documentation containing Personal Information has been destroyed within 5 days of a request being sent.
  - 8.3.2. to confirm in writing simultaneously on the transfer referred to in clause 8.3.1, that all such Personal Information will be kept confidential as per the provisions of clause 5.1.3 and that it



will not under any circumstances or for any reason whatsoever make use of the aforementioned information.

- 8.4. Clauses 8.2, 6, 7 and 8.2 will, notwithstanding termination of the Operator Agreement and the Agreement (where applicable) irrespective of the reason therefor, survive any such termination.

## 9. **CONFIDENTIALITY**

- 9.1. The provisions of this clause 9 apply in addition to any other confidentiality obligations in this Operator Agreement.

- 9.2. Neither Party shall, without the prior written consent of the other Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of the Party called upon to disclose the Confidential Information) disclose such Confidential Information to any person, and/or make use of such Confidential Information for any purposes other than in connection with the processing of Personal Information.

- 9.3. The Party receiving the Confidential Information may disclose same to its officers, employees, advisors and subcontractors but only to the extent required for the purposes of processing the Personal Information.

- 9.4. The Party receiving the Confidential Information shall inform any officer, employee, advisor or subcontractor to whom it discloses such Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Operator Agreement), on the basis that the party disclosing the Confidential Information is responsible for any disclosure, in breach of this clause 9, by the person to whom it is disclosed.

## 10. **BREACH**

- 10.1. Subject to any other provision of this Operator Agreement providing for the remedy of any breach of any provision hereof, should either Party ("the Offending Party") commit a breach of any provision of this Operator Agreement and fail to remedy such breach within 10 days of receiving written notice from the other Party ("the Aggrieved Party") requiring the Offending Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law to -

- 10.1.1. terminate this Operator Agreement, provided the breach in question is a breach going to the root of this Operator Agreement; or

- 10.1.2. claim specific performance of all of the Offending Party's obligations whether or not due for performance,



in either event, without prejudice to the Aggrieved Party's right to claim damages.

## 11. **DISPUTES**

- 11.1. In the event of any dispute or difference arising between the Parties relating to or arising out of this Operator Agreement, including the implementation, execution, interpretation, rectification, termination or cancellation of this Operator Agreement, the chief executive officers of the Parties or any of their designated officials shall upon request by any Party meet to attempt to settle such dispute or difference, and failing settlement within a period of 7 (seven) business days from such a request, the said dispute or difference shall on demand by any Party be submitted to arbitration in Johannesburg in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.
- 11.2. The Parties irrevocably agree that the decision in any arbitration proceedings:
  - 11.2.1. will be binding on all of them;
  - 11.2.2. will forthwith be carried into effect;
  - 11.2.3. may be made an order of any court of competent jurisdiction.
- 11.3. Nothing herein contained shall be deemed to prevent or prohibit either Party from applying to the appropriate court for urgent relief.
- 11.4. The provisions of this clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

## 12. **INTERRUPTION EVENT**

- 12.1. An Interrupted Party shall be relieved of its obligations in terms of this Operator Agreement during the period that the Interruption Event and its consequences continue, only to the extent so prevented, and shall not be liable for any Losses which the other Party may suffer as a result.
- 12.2. The Interrupted Party shall notify the other Party of an Interruption Event in writing as soon as it becomes reasonably aware of the Interruption Event as such.
- 12.3. In the event that an Interruption Event exceeds –
  - 12.3.1. 20 (twenty) consecutive days, and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, the Parties agree to meet and negotiate the suspension, termination or restructuring of this Operator Agreement; or
  - 12.3.2. 3 (three) consecutive months, and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, either Party may terminate this





Operator Agreement and shall only remain liable for performance under this Operator Agreement which fell due immediately prior to the Interruption Event.

### 13. **DOMICILIUM AND NOTICES**

13.1. The Parties choose *domicilium citandi et executandi* ("domicilium") for all purposes arising from or pursuant to this Operator Agreement:

13.1.1. In respect of the Responsible Party:

Physical Address: 2 South Arm Road, V&A Waterfront, Cape Town, 8001, South Africa

Email Address: [aneesah@tvtdf.com](mailto:aneesah@tvtdf.com)

13.2. Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number, and shall be in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.

13.3. All notices, demands, communications or payments intended for any Party shall be made or given at such Party's domicilium for the time being.

13.4. A notice sent by one Party to another Party shall be deemed to be received:

13.4.1. on the same day, if delivered by hand;

13.4.2. one day after transmission if sent by email;

13.4.3. on the third day after dispatch, if sent by prepaid courier.

13.5. If any notice is sent by email, the provisions of the Electronic Communications and Transactions Act 25 of 2002 governing receipt of data messages, shall apply.

13.6. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

### 14. **MISCELLANEOUS**

14.1. Each Party hereto acknowledges that it has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Operator Agreement and that it has either taken such independent legal advice or dispensed with the necessity of doing so. Further, each Party hereto acknowledges that all of the provisions of this Operator Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Operator Agreement.



- 14.2. The Operator shall not be permitted to cede, assign or otherwise transfer any or all of its rights, interests or obligations under and/or in terms of this Operator Agreement without the prior written consent of the Responsible Party. The Responsible Party may cede, assign or otherwise transfer any or all of its rights, interests or obligations under and/or in terms of this Operator Agreement without the written consent of the Operator.
- 14.3. This Operator Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties, other than those set out herein, are binding on the Parties.
- 14.4. No contract varying, adding to, deleting from or cancelling this Operator Agreement, and no waiver of any right under this Operator Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties. Writing shall not be construed as email correspondence signed by means of email signatures.
- 14.5. No latitude, extension of time or other indulgence, which may be given or allowed by a Party to another in respect of the performance of any obligation hereunder or enforcement of any right arising from this Operator Agreement and no single or partial exercise of any right by any Party shall, under any circumstances, be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Operator Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 14.6. Each undertaking, covenant and agreement in each clause and sub-clause of this Operator Agreement is separate and severable, and in the event that any undertaking, covenant, agreement or other provision contained herein shall be determined to be void or unenforceable or illegal in whole or in part for any reason whatsoever, such invalidity, unenforceability or illegality shall not affect the remaining undertakings, covenants, agreements and provisions hereof which shall remain of full force and effect and binding on all Parties hereto.