



TOMSA LEVY COLLECTOR AGREEMENT
RELATING TO THE TOURISM MARKETING LEVY FOR
INTERNATIONAL MARKETING

1. **PARTIES**

This Agreement is concluded between:

1.1 **TOURISM MARKETING SOUTH AFRICA (Association Incorporated Under Section 21)**

(Registration number: 1999/009965/08)

herein represented by

MS MMATSATSI EMMAH RAMAWELA

in her capacity as Chief Executive Officer

duly authorised thereto

of

3 Amethyst Avenue
Lyttleton Manor
Centurion

("TOMSA")

AND

1.2
(Registration number:)
herein represented by

.....

in his/her capacity as
duly authorised thereto

of

("the Participant").

2. **INTRODUCTION**

2.1 TOMSA is:

2.1.1 A company incorporated under Section 21 of the Old Companies Act which continues to exist as a company in terms of the Companies Act;

- 2.1.2 A private sector initiative established to raise additional funds for the marketing of Destination South Africa. The funds are collected on a voluntary basis through the Tourism Marketing Levy ("the Tourism Levy") collected through TOMSA.
- 2.2 Tourism Business Council of South Africa (Association incorporated under Section 21) (Registration number: 2008/011486/08) ("TBCSA") is the custodian of TOMSA.
- 2.3 TBCSA delegated the authority to collect the Tourism Levy to TOMSA. TOMSA collects the Tourism Levy from TOMSA Levy Collectors (as defined in clause 3.8) in South Africa, who in turn collect the Tourism Levies voluntarily paid by Customers (as defined in clause 3.4). The purpose of the Tourism Levy is to grow the number of tourists coming to South Africa through International marketing activities.
- 2.4 The Participant:
 - 2.4.1 Agreed to participate in TOMSA's endeavours and to collect the Tourism Levy from its Customers; and
 - 2.4.2 Acknowledges that the Participant shall directly and/or indirectly enjoy the benefits of participation by virtue thereof that the Participant operates in the Industry.
- 2.5 The parties wish to record the terms and conditions of their agreement in writing.
- 2.6 In the event of the participant failing to pay over the prescribed levies as collected, TOMSA reserves the right to take legal action as and when required.

3. **DEFINITIONS AND INTERPRETATION**

In addition to the words, terms and phrases defined in the other clauses of this Agreement, the following words, terms and phrases in this Agreement shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:

- 3.1 **"AGREEMENT"** means the agreement contained in this document;
- 3.2 **"B-BBEE"** means Broad-Based Black Economic Empowerment as contemplated in the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;
- 3.3 **"CODE OF CONDUCT"** means TOMSA's Code of Conduct as amended or revised from time to time;
- 3.4 **"CUSTOMER"** means a customer, guest or client of the Participant;
- 3.5 **"EFFECTIVE DATE"** means the date referred to in clause 4.1;
- 3.6 **"PARTIES"** refer to TOMSA and the Participant, and **"Party"** shall be a reference to any one of them;
- 3.7 **"SIGNATURE DATE"** means the date on which this Agreement is signed by the party last in time to sign;
- 3.8 **"TOMSA LEVY COLLECTORS"** means all tourism – related establishments that are registered TOMSA levy collectors;
- 3.9 **"VAT"** means Value-added Tax payable in terms of the VAT Act or any similar or replacement tax;
- 3.10 **"VAT ACT"** means the Value-added Tax Act, No. 89 of 1991 as amended from time to time.

4. **PERIOD**

4.1 Notwithstanding the Signature Date, this Agreement will come into effect on the first day of the month following the Signature Date and will, unless terminated under the provisions of clauses 4.2 or 4.3 or otherwise, endure until terminated by either party on 3 months' written notice to the other party.

4.2 The Participant shall only be entitled to terminate this Agreement if the Participant, concurrently with such termination, furnishes TOMSA with written confirmation from the Participants' sworn affidavit that the Participant is no longer collecting the Tourism Levies.

4.3 TOMSA shall, notwithstanding the provisions of clause 4.1, be entitled to terminate this Agreement with immediate effect on the occurrence of any of the following events:

4.3.1 A Statutory National Tourism Levy or a Statutory Provincial Tourism Levy coming into force; and/or

4.3.2 The Management Board of TBCSA resolved that the Tourism Levies are no longer required and/or to be collected.

4.4 This Agreement will, as from the Effective Date, supersede all previous agreements and arrangements between the parties pertaining to the Tourism Levy.

5. **TOURISM LEVIES**

The Participant agrees and undertakes to:

5.1 Charge and collect from its customers the Tourism Levies in an amount equivalent to 1% (One *per centum*) of the charges and fees raised by the

Participant against the customer. The 1% Tourism Levy is exclusive of VAT which shall be charged in addition thereto (for the sake of clarity: The total amount to be collected is 1% of _____ raised by the Participant against the customer plus VAT thereon).

- 5.2 Pay the collected Tourism Levies over to TOMSA within 15 days from the end of each accounting month of the Participant for which Tourism Levies were collected.

6. **PROCEDURES AND SCHEMES**

- 6.1 TOMSA shall be entitled to require from time to time from the Participant to submit a certificate by the Participant's auditors:

6.1.1 Reflecting the Tourism Levies collected during the period concerned (as determined by TOMSA); and

6.1.2 Setting out the basis upon which such collections were made.

- 6.2 TOMSA will, after the Participant has made payment in full of all Tourism Levies collected by the Participant during a consecutive 6-month period, provide the Participant with a certificate issued by TOMSA for *inter alia* B-BBEE purposes certifying the Participant as a TOMSA Levy Collector "*in good standing*".

- 6.3 The recommended wording to appear against the itemised entry on the Customer's account or the invoice issued by the Participant to the Customer is "*Tourism Levy*".

- 6.4 All payments made by Customers (including without limitation payments in cash, by credit card, cheque or electronic funds transfer) shall, for purposes of this Agreement, be deemed to have been collected and received on the date the Customer settles his account.

7. **ADDITIONAL RIGHTS AND OBLIGATIONS OF TOMSA**

TOMSA agrees and undertakes, in addition to its other rights, obligations and undertakings stipulated in this Agreement:

- 7.1 That all Tourism Levies less reasonable operating expenses and administrative charges will be held in trust until such amounts are paid over to South African Tourism as per the agreement in force at the relevant time;
- 7.2 That the reasonable operating expenses and administrative charges shall not exceed 7% (Seven *per centum*) of the Tourism Levies collected;
- 7.3 To make its Annual Financial Statements available at its Annual General Meeting and to forward a copy thereof to the Participant on request.

8. **ADDITIONAL RIGHTS, OBLIGATIONS AND UNDERTAKINGS OF THE PARTICIPANT**

The Participant, in addition to its other rights, obligations and undertakings stipulated in this Agreement:

- 8.1 Agrees and undertakes to adhere to and punctually comply with the Code of Conduct;
- 8.2 Acknowledges that, in collecting the Tourism Levies, it will act as a collection agent for TOMSA and that it will not have any right or entitlement to the Tourism Levies.

9. **CONSUMER PROTECTION ACT**

The parties are of the opinion that the Consumer Protection Act, No. 68 of 2008 ("the Consumer Protection Act") does not apply to this Agreement or the transactions contemplated herein. If any provision of this Agreement shall be

found by any court or administrative body of competent jurisdiction to be in conflict with the Consumer Protection Act and/or to be invalid or unenforceable for whatever reason, the validity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute a provision for any invalid or unenforceability provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

SIGNED AT ON THIS THE DAY OF20..

AS WITNESSES:

**TOURISM MARKETING SOUTH AFRICA
(Association Incorporated Under Section
21)**

1.


2.

SIGNED AT ON THIS THE DAY OF20..

AS WITNESSES:

1.

2.

								
Please state Province You In:								
B&B	Car Hire	Guest House	Game lodge	Hotel	Resort	Travel Agency	Tour Operator	Conference venue
PAYMENT TO BE MADE MONTHLY								
Company Name:								
Trading Name:								
VAT No: (Important)								
Postal Address:								
Postal Code:								
Physical Address:								
Postal Code:								
Website Address: (Important)								
Accountant Contact:(Important)								
Title(Mr, Mrs etc):								
Email Address: (Important)								
Telephone No:								
Financial Manager:(Important)								
Title(Mr, Mrs etc):								
Email Address: (Important)								
Telephone No:								
General Manager: (Important)								
Title(Mr, Mrs etc):								
Email Address: (Important)								
Telephone No:								