

# **SALE AGREEMENT**

Between

**ASAMBE INVESTMENT HOLDINGS (PTY) LIMITED**

(Registration number: )

and

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<sup>1</sup> The details, including the address, of the purchaser to be inserted when available.

## **SALE AGREEMENT**

### **PART 1: INTERPRETATION AND PRELIMINARY**

#### **1. INTERPRETATION AND PRELIMINARY**

The headings to the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1 words importing any one gender include the other two genders, the singular include the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;

1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely-

1.2.1 "acquired points" means points purchased by the purchaser and any bonus points issued to the purchaser;

1.2.2 "administration charge" means a market related portion of the monthly debit order determinable by TTC, which shall be a minimum of fifteen rands (R15) excluding VAT but not to exceed 10% (ten percent) of the purchaser's debit order, which represents TTC's charges for expenditure incurred and work performed in the general administration of points, including, without limitation, administering the receipt and crediting of the debit orders, issuance of points and bonus points, the redemption of points by the purchaser and arranging benefits for club members;

1.2.3 "approved supplier" means any supplier of goods and/ or services (including the tour operator) to the club, which has been approved or appointed by TTC to supply goods and/or services to benefit club members;

- 1.2.4 "ASAMBE" means Asambe Investment Holdings (Proprietary) Limited;
- 1.2.5 "benefits" means savings, negotiated prices, organized packages, consierge and other similar services offered by TTC;
- 1.2.6 "bonus points" means such TTC points as may be credited, as fully paid up points, by TTC at its sole discretion to the purchaser;
- 1.2.7 "club benefits" means all benefits and entitlements vested in the points, which include, without limitation, holiday package (subject to sufficient number of points), welcome pack, vendor discounts (as applicable from time to time), bonus points, and such other benefits as may be arranged from time to time by TTC for club members;
- 1.2.8 "club card" means a card to be issued to the purchaser;
- 1.2.9 "club member" means the purchaser and all other purchasers of TTC points from time to time;
- 1.2.10 "commencement date" means the commencement date written on the application form on which when the first debit order shall be deducted;
- 1.2.11 "debit order" means the debit order signed and authorized by the purchaser in favour of the seller to discharge the price payable for points;
- 1.2.12 "discretion" means a sole, absolute and unfettered discretion;
- 1.2.13 "own package" means a travel package arranged and/or booked by the client with no recourse to TTC and for which TTC shall charge a ten percent (10%) commission;
- 1.2.14 "holiday package" means the variety of holiday, leisure and travel packages arranged from time to time by the tour operator through TTC;

- 1.2.15 "joining fee" means a fee of two hundred rands (R200) charged by TTC to a purchaser upon joining the TTC from time to time;
- 1.2.16 "points" means TTC points offered for sale by the seller to the general public, at the rate of 1 (one) point for R1,00 (one rand) less administration charges, which offer the purchaser has accepted;
- 1.2.17 "purchaser" means the person identified in clause 1 above as the purchaser;
- 1.2.18 "sale" means the sale of points by the seller to the purchaser as contemplated in this agreement;
- 1.2.19 "seller" means TTC;
- 1.2.20 "Service Fee" means a fee charged by TTC in respect of each redemption by the purchaser ranging in accordance with the fee schedule attached hereto as Annexure 1;
- 1.2.21 "TTC" means ASAMBE trading as The Travel Club;
- 1.2.22 "terminal incapacity" means a physical and/or mental condition, certified by a medical practitioner, which permanently incapacitates the purchaser to the extent that he/she is unable to partake in any holiday package or club benefit;
- 1.2.23 "tour operator" means the tour operator appointed by TTC from time to time to arrange holiday packages;
- 1.2.24 "travel package" means an individual specific travel package which is arranged by TTC or tour operator;
- 1.2.25 "unpaid charge" means charge to the purchaser's point account determinable by TTC but not exceeding R50, which represents TTC's charges for expenditure incurred and work performed in the administration of points in the event of a default by the purchaser to purchase points in terms of this agreement;

1.2.26 "vendor discounts" means discounts to club members arranged by TTC from time to time, with various retailers

affording pre-determined percentage discounts to club members on the purchase of such retailer's products;

1.2.27 "welcome pack" means a collection of discounts which TTC is able to arrange with various tourism suppliers and or tour operators, retailers etc from time to time for the benefit of club members including but not limited to vendor discounts and the club card;

1.3 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligation 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 which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words 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 definitions;

1.8 where 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, 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 the term has not been defined in this interpretation clause; and

- 1.9 the rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.

## **2 RECORDAL**

It is recorded that: -

- 2.1 one of the principal objectives of TTC is to facilitate affordable and accessible holiday travel, leisure and other lifestyle benefits to club members;
- 2.2 the purchaser wishes to purchase points from the seller to enable the purchaser to participate in holiday packages, leisure and lifestyle benefits made available to club members by TTC from time to time; and
- 2.3 the parties wish to record the terms of the sale agreement in writing.

## **PART II - SALE**

### **3 CONDITION**

The conclusion, validity and enforcement of this agreement is conditional on the purchaser being a living natural person. The death or terminal incapacity of the purchaser will constitute non-fulfillment of this condition, thereby terminating this agreement with the consequences contemplated in clause 12 below.

#### **4 SALE OF POINTS**

The seller hereby sells to the purchaser, who purchases such number of points, which in aggregate will constitute a voucher entitling the purchaser to a holiday package and/or club benefits depending on the value of the voucher, but no less than 95 (ninety five) points, as the purchaser in his/her discretion wishes to acquire.

#### **5 PRICE AND PAYMENT BY THE PURCHASER**

5.1 The price payable by the purchaser to the seller after taking into account payment of Administration Charge and Value Added Tax for the purchase of points is at the rate of R1. 00 (one rand) for 1 (one) point, where the minimum aggregate amount payable per month is R200, 00 (two hundred rand).

5.2 The Administration Charge is payable monthly and will be deducted from the purchase price mentioned in paragraph 5.1 above.

5.3 In each calendar month for the duration of this agreement the purchaser will be -

5.3.1 obliged to pay a minimum of [            ]<sup>2</sup> to purchase points from the seller; and

5.3.2 entitled to purchase such additional points as he/she may in his/her discretion determine, provided that the points shall be in tranches/multiples of R50,00 (fifty rand).

5.4 The price payable for points shall be paid by the purchaser by way of debit order and/or direct deposit onto the TTC

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<sup>2</sup>The minimum amount should be included when it has been fixed and agreed with the purchaser.



Account which direct deposit shall be evidenced by a deposit slip (scanned and sent to the seller). The purchaser is entitled to increase and decrease his/her monthly debit order on 30 (thirty) days written notice to the seller, provided that any decrease will not be less than the minimum amount referred to in clause 5.3.1 above.

- 5.5 The seller shall be obliged to issue the commensurate of points to the purchaser within 30 (thirty) days of the receipt of each debit order payment less the Administration Charge and the Value Added Tax payable in terms of clause 5.2 above.

### **PART III - RIGHTS AND OBLIGATIONS ATTACHING TO THE POINTS**

#### **6 ISSUANCE OF POINTS AND ACCOUNTING**

- 6.1 On receipt of the first payment, the Seller shall: -
- 6.1.1 apply such amount towards the payment of the joining fee and/or administration charges and costs associated with the issuance of the club card and the welcome pack and VAT;
  - 6.1.2 the Seller shall apply the balance, if any, towards the purchase of points, and issue the commensurate number of points to the purchaser; and
  - 6.1.3 provide the purchaser with a welcome pack within 60 days.
- 6.2 On receipt of any subsequent payments from the purchaser, the seller shall: -
- 6.2.1 firstly deduct the Administration Charge and the Value Added Tax there from, and allocate the balance to the purchase of points;

6.2.2 within (two) months of receipt of the first payment, and thereafter on an annual basis account to the purchaser on, inter alia, the number of points acquired, the amount of the administration charge, the number of bonus points he has acquired (if any), available holiday packages for which the purchaser qualifies and club benefits.

6.3 Bonus points will be issued at the discretion of the seller.

## **7 OWNERSHIP OF POINTS**

7.1 All right, title, interest and risk in acquired points shall vest in the purchaser on acquisition by, and issuance of the points to the purchaser thereof.

7.2 The seller warrants that no other person, including the seller, shall have any right to ownership of the acquired points.

7.3 Notwithstanding the vesting of ownership of acquired points in the purchaser, the purchaser, shall not, at any time, be entitled to: -

7.3.1 transfer, sell, cede, delegate, donate or pledge the acquired points, ownership in or any right or obligation attaching to acquire points to any person;

7.3.2 trade, exchange, or barter either the acquired points or the rights or the rights and/or obligations attaching thereto; and

7.3.3 Negotiate or deal with the acquired points save by redeeming same as contemplated in clause 7.4 below.

7.4 The purchaser is only entitled to deal with acquired points by redeeming same with TTC for a holiday package, travel package or any club benefit, which requires point redemption for participation.

## **8 REDEMPTION OF POINTS**

- 8.1 When the acquired points are sufficient in number to enable the purchaser to redeem same for any holiday, lifestyle, leisure package or benefit then available and he/she wishes redeem same, the purchaser shall notify TTC or an approved supplier in writing at least (fourteen) working days before his/her preferred dates to travel with his/her travel package choice. For travel intended for any day in December and January the purchaser shall notify TTC on or by 15 November preceding such travel.
- 8.2 On receipt of the purchaser's written notification in terms of clause 8.1 above, TTC shall verify the number of acquired points and procure that the purchaser's request is processed as per the notification.
- 8.3 TTC or an approved supplier shall endeavour to revert to the purchaser within 48hrs of receipt of his/her written notification on the sufficiency and/or availability of acquired points for the chosen travel package, and availability or non-availability of the chosen holiday package for the purchaser's preferred date.
- 8.4 TTC shall charge the purchaser the appropriate Service Fee in respect of each such redemption/package.
- 8.5 The availability of the chosen holiday package and travel dates will be confirmed in writing by TTC to the purchaser.
- 8.6 The purchaser shall not be entitled to cancel confirmed travel arrangements or the redemption of the points in respect thereof. In the event that there is nevertheless a cancellation of the redemption of the acquired points, the purchaser will be penalized for such cancellation. TTC will be entitled to deduct points equal to R100, 00 from the purchaser.

## **9 PUBLICITY**

TTC shall, at its discretion from time to time through its approved suppliers, media, (print and electronic) and newsletters to club members and such other medium as it may deem appropriate, provide the purchaser with information pertaining to: -

9.1 Holiday packages available;

9.2 Club benefits then available; and

9.3 Vendor discounts.

## **10 DEATH OF PURCHASER**

Notwithstanding any other provision in this agreement, if at any time during the currency of this agreement the purchaser dies or becomes permanently incapacitated, then:-

10.1 The agreement shall be terminated on written notice to the purchaser's estate or curator (as the case may be) against documentary proof to TTC's satisfaction of either the death or permanent incapacity of the purchaser;

10.2 On termination of this agreement, with effect from the day immediately proceeding the date of the written notice to the purchaser's estate or curator, the seller may, at its sole discretion, allow the purchaser's beneficiary/ies or nominee to redeem his/her points;

10.3 the purchaser's estate or curator (as the case may be) shall, on cancellation be obliged to destroy the club card issued to the purchaser.

## **11 EXCLUSION OF LIABILITY**

11.1 TTC makes and offers no warranty in respect of any holiday package and club benefit, and the purchaser shall have no claim against TTC arising from or out of any loss, damage, injury or the like or any cause whatsoever suffered or incurred during, before or after any holiday travel and/or club benefit participation.

11.2 TTC does not make or offer any warranty in respect of any club benefit, and does not warrant seamless availability thereof.

## **12 TERMINATION**

12.1 The following events shall constitute default events (breach) by the purchaser, namely should-

12.1.1 any debit order payment or any other amount payable by the purchaser not be paid on commencement date and should the purchaser fail to pay such debit order payment or other amount within 7 (seven) days after commencement date; or

12.1.2 the purchaser withdraw, or attempt to withdraw the debit order authorization, save as provided for in clause 12.4 below; or

12.1.3 the purchaser commit or suffer or permit the commission of any other breach of any of the other terms of this agreement, whether or not such breach goes to the root of this agreement, and fails to remedy such breach within 14 (fourteen) days of breach (provided that the seller shall be entitled to exercise the rights provided below immediately and without further notice to the purchaser, should it have given the purchaser notice, as aforesaid, on two or more occasions in any calendar year in respect of the same or similar breach of this agreement and

the purchaser, thereafter, again commits the same or similar breach within such calendar year).

12.2 On the occurrence of any one or more of the default events referred to in clause 12.1 above the seller shall be entitled, but no obliged, notwithstanding any previous waiver or anything to the contrary herein contained, forthwith to cancel this agreement and,; -

12.2.1 if the purchaser's acquired points less administrative cancellation fees by reason of the purchaser's breach or of the premature cancellation are sufficient to redeem for any holiday package, require the purchaser to redeem same and travel within 6 (six) months of the occurrence of the default event/s. If the purchaser fails, for any reason whatsoever to travel on a holiday package within such 6 (six) month period all acquired points will be forfeited to the seller as penalty in lieu of any damages that the seller shall suffer by reason of the purchaser's breach or of the premature termination of this agreement;

12.2.2 if the acquired points are insufficient to redeem a holiday package available as at the date of the purchaser's breach, then any and all acquired points shall be forfeited as penalty to the seller by reason of the purchaser's breach or of the premature cancellation.

12.2.3 on cancellation of the agreement in terms of clause 12.2 above, the purchaser shall not be entitled to any club benefits, save for the sole purpose of undertaking the travel contemplated in clause 12.2.1 above.

12.2.4 the purchaser shall be entitled, on no less than 30 (thirty) days' written notice to that effect to the seller to cancel this agreement, provided that if such option is given whilst the

purchaser is in breach, the provision of clause 12 will prevail. On the acceptance of such cancellation notice by seller, the seller shall: -

12.2.4.1 if there are no sufficient points to travel the agreement shall terminate within 30 (thirty) from receipt of such cancellation notice, the seller may less administrative cancellation fees of no more than R250, request the purchaser to redeem their acquired points for any holiday package, and travel within 6(six) months of the cancellation; and

12.2.4.2 if the purchaser fails to travel within the 6 months period the agreement shall termination on the expiry of the 6th month.

12.3 Following a default or breach in terms of clause 12.1, the purchaser shall be liable for a non-payment fee of 50 points/R50 per month and an administration fee of 15 points/R15 per month.

#### **PART IV- GENERAL**

### **13 BREACH**

If any party breaches any material provision or term of this agreement (other than those which contain their own remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it or him/her to do so (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances) then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it or him/her at law or under this agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.

### **14 ARBITRATION**

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 out of (i) the interpretation of, or (ii) the carrying into effect of, or (iii) the termination or purported termination of or arising from the termination of this agreement, or iv) out of or pursuant to this agreement or (v) on any matter which in terms of this agreement requires agreement by the parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by informal arbitration on the following basis-

- 14.1 no legal representatives shall be allowed;
- 14.2 the parties shall use their best endeavours to ensure that the arbitration is held and concluded and a decision handed down within 7 (seven) days after the arbitration has been demanded;
- 14.3 the arbitrator shall be a person nominated by the parties or failing agreement between them within 7 (seven) days after the arbitration has been demanded shall be a person appointed by the Chief Executive Officer of the Arbitration Foundation of South Africa (AFSA);
- 14.4 the arbitrator shall have the fullest and freest discretion with regard to the proceedings;
- 14.5 the arbitrator's decision shall be final and binding. The arbitrator may make an award as to his costs; and
- 14.6 the provisions of the Arbitration Act, 1965 shall apply to this arbitration.



- 15.1 This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 15.2 No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 15.3 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms or this agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 15.4 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

**16 DOMICILIUM**

- 16.1 The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

16.1.1 Seller-

Physical:

ASAMBE HOUSE  
34 Douglas Street Highlands  
North Ext 3,  
2192 Gauteng

Postal:

Asambe The Travel Club  
PO Box 71372  
Bryanston  
2021

Tel: 0861 555 999

Telefax: (011) 786 4670

Attention: The Managing Director

16.1.2 Purchaser -

Physical:

Postal:

Telefax:

Attention:

- 16.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 16.3 Either party may by notice to the other party change the physical address chosen as its domicillium citandi et executandi to another physical address or its telefax number, provided that the change shall become effective on the business day from the deemed receipt of the notice by the other party

16.4 Any notice to a party-

16.4.1 Sent by prepaid registered post (by airmail) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 10th business day after posting (unless the contrary is proved);

16.4.2 Delivered by hand to a responsible person during ordinary business hours at the physical address chose as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

16.4.3 Sent by telefax to its chosen telefax number stipulated in clause 16.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

16.5 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.

**17 NO CESSION OR ASSIGNMENT**

The purchaser shall not be entitled to cede his/her rights or assign his/her rights and obligations hereunder to any third party. The seller shall be entitled to cede and assign its rights hereunder.

**18 NO LIABILITY TO PERFORM WHILST PURCHASER IN BREACH**

Save as provided for in clause 12.2.1 above the seller shall not be obliged to perform any obligation or pay any amount in terms of this agreement at any time whilst the purchaser is in breach of this agreement and, to the extent

necessary the date for performance of any obligation or payment of any such amount by the seller shall be extended from the due date until the date upon which the purchaser remedies the breach in question.

**19 JOINT AND SEVERAL LIABILITY OF PURCHASER**

The obligations of the persons comprising the purchaser vis-a-vis the seller shall be joint and several.

**20 CONSUMER PRICE INDEX ADJUSTMENT**

All rand amounts referred in this agreement, save the R1,00 (one rand) in respect of the conversion ratio of points, it shall apply in the first year from the effective date and shall escalate or decrease thereafter annually in accordance with the changes in the consumer price index or to the discretion of TTC but no more than R25 per annum. Where consumer price index shall mean the weighted average consumer price index, all the items of the 12 (twelve) areas specified in the notice published by the Governmental Statistical Services with commencement date being July 2007, provided that in the event of the publication being discontinued, or of any change in the basis of computation of that index, an index prepared or recommended by auditors of the company shall be adopted in the place of the consumer price index.