

SURETYSHIP

I/We, the undersigned,

Name : _____

Identity / Passport number : _____

Residential address

(read with clause 15, below) : _____

do hereby bind myself/ourselves *in solidus* (jointly and severally), as surety/ies and co-principal debtor/s, to and in favour of

_____ - **(correct landlord to be completed – Outward, Apex, Spearhead, Ambit, Redefine)**

(Registration number: _____) **(correct reg number for landlord to be completed – Outward, Apex, Spearhead, Ambit, Redefine)**

(hereinafter styled "the creditor/s"),

for the payment on demand of all sums of money which

_____ **please enter tenant's full legal name here** _____

(Registration number: _____)

(hereinafter styled "the debtor/s")

may now and from time to time hereafter owe or be indebted in to the creditor/s, from whatsoever cause arising, together with any interest and/or any other charges and costs (including attorney and client costs) which the debtor/s may be or may become liable from time to time to pay the creditor/s, whether such indebtedness be incurred by the debtor/s solely or jointly or in partnership with any other person or persons, company or companies, and for the due and punctual performance of all obligations of the debtor/s in connection the agreement(s) of lease entered into between the creditor/s and debtor/s in respect of the premises situated at:

Premises : _____

Building : _____

Address : _____

TERMS AND CONDITIONS OF THIS SURETYSHIP

I/We jointly and severally agree that:-

1. This suretyship shall apply to, cover and secure the creditor's respective successors in title, orders or assigns.
2. It shall always be in the discretion of the creditor/s to determine the extent, nature and duration of the facilities (if any) to be allowed to the debtor/s.

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3. The creditor/s shall be at liberty to release securities for the debtor/s, or to extend any leniency or extension of time, or compound or make other arrangements with, the debtor/s or me/us or any of us, or any other surety or sureties for the debtor/s, and no such action on the part of the creditor/s shall affect or in any way be construed or operate as a waiver or abandonment of any of the creditor/s rights or claims against me/us or any of us hereunder.
4. All acknowledgements of indebtedness and admissions by the debtor/s shall be binding on me/us.
5. In the event of the insolvency, liquidation, sequestration, assignment or placing under judicial management of the estate/s of the debtor/s, or in the event of a compromise between the debtor/s and any creditors of the debtor/s:
 - (a) I/We undertake not to prove a claim against the debtors' estate/s or any amount I/we may be called upon to pay under this suretyship, until all amounts (including interests and costs) due by the debtor/s to the creditor/s have been paid in full;
 - (b) I/We hereby agree that notwithstanding any part payment by or on behalf of me/us or any of us, to the creditor/s, I/we shall have no right to any cession of action in respect of such part payment, and shall not be entitled to take any action against the debtor/s or against any other surety for the debtor/s respect thereof, unless and until the indebtedness of the debtor/s to the creditor/s shall have been discharge in full;
 - (c) I/We agree that any dividend received from the debtor/s by the creditor/s in respect of the creditor's claims against the debtor shall be appropriated in the first instance to the payment of that part (if any) of the debtor's indebtedness to the creditor/s which is not covered by this suretyship;
 - (d) No dividends or payments which the creditor/s will receive from the debtor/s or any other surety or sureties or from me/us or any of us, shall prejudice the creditor/s right to recover from me/us or the other or others of us, to the full extent of this suretyship, any sum which, after the receipt of such dividends or payments, will remain owing to the creditor/s by the debtor/s, but nothing herein contained will be deemed to limit the provisions of clause 13 hereafter;
 - (e) Notwithstanding any payments received by the creditor/s from me/us or any of us hereunder the creditor/s shall be entitled to prove against the estate/s of the debtor/s for the fill amount of the indebtedness of the debtor/s, at the date of insolvency, liquidation, assignment, judicial management or compromise, as the case may be.
6. The creditor/s shall have the right to appropriate any moneys received by the creditor/s from me/us or any of us hereunder, to such indebtedness of the debtor/s to the creditor/s as the creditor/s shall decide.

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7. Without prejudice to anything hereinbefore contained, this suretyship shall apply to and cover the creditor/s in respect of claims which the creditor/s may have acquired or in the future may acquire against the debtor/s from any party whomsoever or whatsoever and including any renewal of the lease agreement for which this suretyship is concluded, but not in any way detracting from the general liability aforesaid.
8. This suretyship shall remain of full force as continuing covering security, notwithstanding any intermediate settlement of or fluctuations in the indebtedness of the debtor/s to the creditor/s for the time being, and notwithstanding the death or legal disability of any of us, until the creditor/s will have agreed in writing to cancel this suretyship, and this suretyship shall further remain in full force as a continuing covering security binding upon the other or others of us, notwithstanding that it may on any ground in whole or part have ceased to be binding on any one or more of us.
9. This suretyship shall be in addition and without prejudice to any other suretyship/s or security/ies now or at any time hereafter held by the creditor/s in respect of any of the liabilities or obligations of the debtor/s to the creditor/s.
10. Should the creditor/s cede the creditor/s claim/s against the debtor/s to any third party/ies, then this suretyship shall be deemed to have been given by me/us to such cessionary/ies, who shall be entitled to exercise all rights in terms of this deed of suretyship as if such cessionary/ies were the creditor/s.
11.
 - (a) The amount of the debtor/s indebtedness and of me/us hereunder to the creditor/s at any time and the fact that the due date of payment of the whole, or as the case may be, portion of such amount has arrived, shall be determined and proved by a certificate signed by a director, company secretary, credit manager or internal accountant of the creditor/s or of the agent of the creditor/s.
 - (b) A certificate in terms of (a) shall be:-
 - (i) binding on me/us;
 - (ii) *prima facie* (factually apparent) proof of the amount of my/our indebtedness hereunder; and
 - (iii) valid as a liquid document against me/us in any competent court for the purpose of obtaining provisional sentence or judgments against me/us thereon.
 - (c) At the option of the creditor/s any claim against me/us, arising hereunder; may be brought in any Magistrates Court having jurisdiction, notwithstanding that the amount of the claim may exceed the jurisdiction of the said Magistrate's Court.

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12. Should I/we at any time in defending any action based on this suretyship, allege that -
- (a) no money was paid over by the creditor/s, and/or
 - (b) there is no reason or cause for the obligations of the debtor/s and/or
 - (c) errors have been made in the calculation of the amount claimed,
- then the onus of proving such a defense will rest on me/us.
13. I/We renounces the benefits of -
- (a) excussion - by renouncing this benefit, I/we understand that the creditor/s become/s entitled to sue me/us for the full amount owing under this suretyship without first proceeding against the debtor/s;
 - (b) division - by renouncing this benefit, I/we understand that where there is no more than one surety for the debtor/s obligations, the creditor/s will be entitled to sue each such surety for the full amount owing under this suretyship and not only for a pro rata share;
 - (c) cession of action - by renouncing this benefit I/we understand that the creditor/s become/s entitled to sue me/us without first ceding the creditors right of action against the debtor/s to me/us.
14. In as much as any signatory/ies hereto is/are a company/ies or a close corporation/s, then such company or close corporation does hereby warrant and represent to the creditor/s that it is duly empowered by its Memorandum of Association or founding statement, as the case may be, to enter into this suretyship, and that it has a material interest in securing the indebtedness covered by this suretyship, which is entered into for its direct or indirect benefit. The person/s signing this suretyship on behalf of any company or close corporation shall be deemed by virtue of such signature/s to be party to the foregoing warranties and representation in his/her/their personal capacity/ies jointly and severally, and jointly and severally with the said company or close corporation, and shall further be deemed to warrant and represent to the creditor/s that such person/s is/are duly authorised to execute this suretyship on behalf of such company or close corporation.
15. (a) I/We choose *domicilium citandi et executandi* (place at which all notices and legal notices may be served) for all purposes herein at the above address/es set out against my/our name/s;
- (b) all notices addressed to me/us shall be sent by prepaid registered post to my/our respective address/es above and shall be deemed to have been delivered to me/us 3 (three) after such posting thereof.
16. As security for the due payment by me/us of all liabilities to the creditor/s arising under this suretyship, and for the due performance of all my/our other obligations arising hereunder; I/we hereby cede, assign transfer and make over to the creditor/s all my/our right, title and interest in and to all claims of whatsoever nature and howsoever arising which I/we may now or in the future have against the debtor/s.

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paragraph 16 (continued)

I/we undertake to do all such things as are necessary, whenever requested so to do by the creditor/s to enable the creditor/s to prove any such claim against the debtor/s for the amount/s so ceded to the creditor/s to enable the creditor/s to calculate the exact amount of such claim/s and without limiting the generality of the aforesaid, I/we undertake to make available to the creditor/s upon being requested to do so, all such books, documents and other vouchers as reflected or prove any portion of my/our said claim/s hereby ceded.

17. By my/our signature hereunder, I/we bind ourselves as sureties and co-principal debtors in terms of this suretyship irrespective of whether any other person/s or company or close corporation referred in this suretyship as surety and co-principal debtor sign/s this document.
18. Without derogating from any of the provisions of this suretyship, my/our liability shall include all damages which the creditor/s may suffer as a result of the cancellation of any lease between the creditor/s and debtor/s, including any termination of such lease which takes place pursuant to the provisions of sections 37(1) or (2) of the Insolvency Act No.24 of 1936, as amended.
19. In the event of the creditor/s ever having to instruct its attorneys in order to enforce any of the creditor's rights against me/us in the terms of this suretyship then I/we agree to pay all costs so incurred including legal fees on an attorney client basis, tracing fees and collection commission.
20. In so far as the National Credit Act (act number 34 of 2005) does not apply to the agreement of lease connected with this suretyship, the surety waives and renounces:
 - (a) any right to claim an accounting from the creditor/s before making payment under this suretyship;
 - (b) the benefits of error of calculations, *non causa debiti* (no cause of debt) and *non numeratae pecuniae* (money not paid)
21. Without derogating from any of the prior terms and conditions contained herein, this suretyship is for the amount of R_____.
22. For the purposes of this suretyship, the surety warrants that (s)he is:
 - (c) unmarried*
 - (d) married under an ante-nuptial contract*
 - (e) married in community of property*

*please delete the incorrect alternatives

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In the event that the surety is married in community of property,
the surety must obtain his or her spouse's signature of consent.

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The signatures on this page are in connection with the terms and conditions of the suretyship provided by the undersigned as contained on pages 1-to-5 of this document:

SIGNED AT _____ ON THIS _____ DAY OF _____ 20 _____

AS WITNESSES:

Surety's signature

1. _____

2. _____

Name of surety: _____

Spouse's consent (if the surety is married in community of property):

SIGNED AT _____ ON THIS _____ DAY OF _____ 20 _____

AS WITNESSES:

Spouse's signature

1. _____

2. _____

Name of spouse: _____

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