

DEED OF SURETYSHIP

I/We the undersigned

A. _____
SURETY

With address at : _____

and

B. _____
SURETY

With address at : _____

In my/our personal capacity do hereby bind myself/ourselves, jointly and severally in favour of **ESQUIRE SYSTEM TECHNOLOGY (PTY) LTD** its successors in title or legal representatives, (hereinafter referred to as ESQ for the sake of brevity) as surety/sureties for and co-principal DEBTOR(s) *in solidum with*:

(NAME OF CUSTOMER)

(hereinafter referred to as the DEBTOR) for the due payment of every sum of money which may now or at any time hereafter be or become owing by the DEBTOR to ESQ from whatsoever cause or causes arising, and for the due performance of every other obligation howsoever arising, which the DEBTOR may now or at any time hereafter be or become bound to perform in favour of ESQ.

I/We hereby agree:

1. That these presents shall establish a continuing covering liability on my/our part(s) for whatever amounts and whatever other obligation will be owing by the DEBTOR to ESQ for the time being, notwithstanding any intermediate discharge or settlement of, or fluctuations in the account and, notwithstanding the death, insolvency (which term shall for all the intents and purposes of these presents include sequestration, surrender, winding-up or judicial management) or legal disability of the DEBTOR or of any other surety for and/or co-principal DEBTORS with the DEBTOR until ESQ will have agreed in writing to cancel these presents, provided that if I/we, at any time when:
 - 1.1 there is no contract in force between ESQ and the DEBTOR;
 - 1.2 every indebtedness and liability of the DEBTOR to ESQ has been liquidated and the amount thereof ascertained and/or determined; and
 - 1.3 no facts or circumstances exist which can give rise to any subsequent indebtedness or liability of the DEBTOR to ESQ;
 - 1.4 give written notice to ESQ, terminating these presents and simultaneously pay ESQ the aggregate amount then owed by the DEBTOR to ESQ for all causes, whether due for payment or not, including such interest as will have accrued in favour of ESQ, to the date of such payment, and upon ESQ receiving such notice and such payment, ESQ shall be obliged to cancel these presents.
2. That these presents shall be and remain binding on the other or others of us, notwithstanding the death, insolvency or other legal disability of any one or more of us, and notwithstanding that it may for any other reason cease to be binding the whole or in part on any one or more of us.

3. That, without restricting the generality of anything hereuntofore contained, my/our liability herein shall not only be limited to the principal sum of any indebtedness of the DEBTOR to ESQ, but shall also cover all other amounts making up the indebtedness including, in particular, the interest, discounting charges, exchange, legal fees, costs on an attorney-and-own-client basis, including collection charges.
4. That it shall, at all times, be in the discretion of ESQ to determine the extent and nature, duration and terms of any facilities to be allowed to the DEBTOR, and it shall not be necessary for ESQ to consult me/us in this matter.
5. That all admission or acknowledgements of indebtedness by the DEBTOR shall be binding on me/us.
6. That a certificate signed by the Manager and/or Secretary and/or Accountant, or persons who may act in these capacities of ESQ, and whose appointment as such ESQ shall not be required to prove, wherein is set out the amount, together with interest thereon, due and payable by the DEBTOR to ESQ, shall constitute prima facie proof that such amount is due and payable, and shall be sufficient proof for purposes of provisional sentence and summary judgment against me/us or any one of us in any Court of competent jurisdiction of the existence of the debt referred to in such certificate, the amounts due, the ruling rate of interest from time to time which is certified therein, and the fact that such amounts are liquidated and due and payable and has not yet been paid.
7. That no extension of time or other indulgence in respect of any payment or performance, no delay or permission in demanding or enforcing any payment or performance, no whole or partial release from liability and no compromise or other arrangement in respect of the outstanding amount, its duration of payment or extant amount, duration, reduction or postponement of liability granted or allowed by ESQ to the DEBTOR or to any one or more of us or to any other sureties for, and/or principal DEBTOR with the DEBTOR and no realization, release or abandonment, whether wholly or partially, of any security for any indebtedness covered hereby, shall discharge me/us or the others of us, as the case may be, from liability hereunder in solidum.
8. That, in the case of the death, insolvency or any other legal disability of, or any general assignment, compromise, composition, scheme or arrangement entered into by or affecting the debts or obligations of the DEBTOR or any one or more of us or any other surety and/or co-principal DEBTOR with the DEBTOR:
 - 8.1 ESQ shall be entitled to prove a claim against the estate concerned or in the winding-up, judicial management, assignment, compromise, composition scheme or arrangement concerned to the full extent of such claim and, neither the proof of such claim nor the expected receipt of any dividend and/or payment in respect thereof shall in any way affect or derogate from ESQ's right to recover from me or us or the others of us, as the case may be, the amount for which such sum is provided and any other amount for which we or the others of us, as the case may be, may become liable to ESQ hereunder;
 - 8.2 Any dividend or other payments actually received by ESQ from the estate concerned or out of the winding-up or judicial management concerned or in terms of such assignment, compromise, composition, scheme or arrangement shall, insofar as I/we or, as the case may be, the others of us may be concerned, can according to the sole discretion of ESQ:-
 - 8.2.1 Be applied on account of the DEBTOR's indebtedness to ESQ without releasing me or us or the others of us from liability to ESQ for the balance of such indebtedness; or
 - 8.2.2 Be treated and held by ESQ as cash security for the liability hereunder of me/us or the others of us as the case may be, to ESQ until such time as ESQ would choose to apply the same towards such liability or, whichever is the sooner, until ESQ will have recovered the full amount of such liability, provided that, after ESQ will have recovered from all sources, the full amount of the indebtedness, any surplus of such cash security then held by ESQ, shall be paid over by ESQ to me/us in equal shares or, as the case may be, the other of us in equal shares, and provided further, that ESQ shall not be liable for the payment of interest on any such cash security; and
 - 8.2.3 All costs of and incidental to the proof of ESQ's claim against such estate or in such winding-up, judicial management, assignment, compromise, composition, scheme or arrangements as well as all costs and expenses of maintaining, conserving and/or realising any security which ESQ may hold for its claim and all sums, including any contribution, payable by ESQ in consequence of the proof of its claim, shall be recoverable by ESQ from me/us jointly and severally or the other of us or the others of us, jointly and severally, as the case may be.

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- 8.3 ESQ shall, at all times, be entitled to apply any amounts received by it from the DEBTOR or from me/us or from any one or more of us or from any other surety for and/or co-principal DEBTOR with the DEBTOR or from the proceeds of any relevant security or otherwise to such debt of the DEBTOR as ESQ may in its absolute and exclusive discretion decide and whenever ESQ may in its discretion think fit to do so.
9. That each of us shall be bound in solidum in terms of these presents, irrespective or not the other or others of us referred to herein will have executed this document or become bound in terms thereof.
10. That, without prejudicing anything hereuntofore contained, these presents shall apply to and cover ESQ in respect of:-
- 10.1 Any claims which ESQ may have acquired or may in future acquire against the DEBTOR from any other company, person, partnership, association or other legal persons whomsoever and whatsoever, whether by cession or otherwise; and
- 10.2 Any present or future liability of the DEBTOR to ESQ be it as surety and/or co-principal DEBTOR and/or indemnifier and/or intercessor for or with any other person, firm, company, partnership or association whomsoever or whatsoever and that the proviso to clause 1 above, shall be construed accordingly.
11. I/We renounce the benefits of the legal exceptions of *excussion, division, cession of action, non causa debiti, no value received, revision of accounts, and deduobus vel pluribus reis debendi* with the full meaning and effect whereof I/we declare ourselves to be fully acquainted.
12. That, if the DEBTOR is a company or a close corporation, I/we hereby, in addition to and without derogation from the foregoing provisions of these presents bind myself/ourselves, jointly and severally in favour of ESQ as surety and co-principal DEBTOR with each and every subsidiary of the DEBTOR for the due payment of every sum of money which may now or at any time hereafter be or become owing by such subsidiary to ESQ from whatsoever cause or causes arising, and for the due performance of every other obligation whatsoever arising which such subsidiary may now or at any time hereafter be or become due to perform in favour of ESQ on the same terms and conditions, mutatis mutandis as these presents hereuntofore set forth. For the purposes hereof a subsidiary of the DEBTOR shall mean any company which is, on the date hereof or becomes, on any date hereafter, a subsidiary of the DEBTOR, notwithstanding that it may subsequently cease, or have ceased, to be a subsidiary of the DEBTOR.
13. In terms of Section 45 of the Magistrate's Court Act, or any amendment thereto or substitution thereof, I/we hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction under Section 28 of the said Act, or any amendment thereto or substitution thereof, in respect of any action to be instituted against me/us or any one or more of us, by ESQ. It shall, nevertheless be entirely within the discretion of ESQ as to whether to proceed against me/us in such Magistrate's Court or any other Court having competent jurisdiction.
14. I/we do hereby consent and admit that any interruption and/or delay of prescription of ESQ's claim against the DEBTOR shall *ipso facto et jure* operate as interruption and/or delay of prescription against me or us or any one of us.

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 200__

AS WITNESSES :

1. _____

A. _____
(SURETY)

2. _____

B. _____
(SURETY)