

DEED OF SURETYSHIP

By

in favour of

INTERMEDIARIES GUARANTEE FACILITY LIMITED

Surety in solidum for and co-principal debtor with

DEED OF SURETYSHIP

WHEREAS

1. Regulation 4 issued under Section 45 of the Short-Term Insurance Act, 1998 (“the Act”) provides for the safe-guarding of premiums received by independent intermediaries on behalf of registered insurers and relating to short-term insurance business carried on in the Republic; and
2. _____ (“The intermediary”) carries on business as an insurance broker on behalf of registered insurers and relating to short-term insurance business and is subject to the requirements of the Act; and
3. Intermediary Guarantee Facility Limited (“IGF”) has given a guarantee (“the Guarantee”) which may from time to time be extended, varied, renewed or replaced by any subsequent guarantee (such subsequent guarantee hereafter also referred to as (“the Guarantee”) as envisaged in terms of the Act and in the form prescribed in the regulations promulgated in terms of the Act, in terms whereof, *inter alia*:
 - 3.1. IGF guarantees that the intermediary shall comply with the provisions of Regulation 4.3(1) of the Act, and shall pay all premiums received by it, less commission due to the intermediary, on behalf of registered insurers to such insurers in terms of Regulation 4.3(1) of the Act.
 - 3.2. If the Intermediary shall fail to pay the insurers in terms of Regulation 4.3(1) of the Act, IGF shall pay on demand in terms of Regulation 4.2 of the Act, to, or to the order of the South African Insurance Association, an amount not exceeding R_____;
4. The Intermediary has indemnified IGF in respect of all and any claims, loss, demand, liability, costs and expenses of whatsoever nature which IGF may at any time sustain or incur by reason it or in consequence of it having given the Guarantee and the Broker has undertaken to pay IGF on demand any sum or sums of money which IGF may be called upon to pay under or in terms of the Guarantee.

NOW THEREFORE

1. The undersigned,

(Registration No. _____)

(Hereinafter referred to as “the Surety”)

does hereby bind and interpose itself unto and in favour of:

INTERMEDIARIES GUARANTEE FACILITY LIMITED

(Registration No. 1989/07489/06)

(Hereinafter referred to as “IGF”)

as surety in solidum for and co-principal debtor with the intermediary for the due and punctual payment of all sums and the due and proper performance of all legal obligations, which the intermediary may now, or in the future owe to IGF or to the IGF’s successors in title or assigns arising out of any amounts which IGF shall have paid in terms of or pursuant to the Guarantee.

2. In this Suretyship:
 - 2.1. words in any one gender include the other two and words signifying the singular shall include the plural and *vice versa*;
 - 2.2. a reference to the Surety and the Debtor shall include a reference to its legal representative and “*legal representative*” shall include a liquidator, judicial manager, trustee, executor, administrator and curator, whether provisional or final;
 - 2.3. any reference to IGF shall include IGF’s successors in title or assigns;
 - 2.4. “*Prime Rate*” means the publicly quoted basic rate of interest (percent, per annum, compounded monthly arrear and calculated on a 365 day year (irrespective of whether or not the year is a leap year) from time to time published by Standard Bank (or its successor-in-title) as being its prime overdraft rate as certified by any manager of such bank, whose appointment and designation need not be proved.
3. The Surety will, on demand, pay to IGF all monies and discharge all liabilities which now are or shall at any time be due to IGF by the intermediary together with all costs, commission and expenses which IGF may charge and all costs, charges and expenses (costs on taxation to be on an attorney and client basis) which IGF may incur in obtaining payment of the sums of money due to IGF from the intermediary arising out of the Guarantee together with interest thereon at the Prime Rate calculated from the due date of payment to the date of actual payment.
4. All admissions and acknowledgements of indebtedness and / or liability by the intermediary in respect of the Guarantee to IGF shall be binding on the Surety. IGF shall be free to enter into, cancel, vary, add to, modify, alter or amend any contract or arrangement with the Broker without reference to the Surety and without affecting the liability of the Surety hereunder.
5. This Suretyship shall not prejudice or affect or be prejudiced or affected by any other securities or guarantees which IGF may now or hereafter hold from or on account of the intermediary whether from the Surety or otherwise.

6. The Surety acknowledges and agrees that IGF is entitled, without prejudice to or detracting from IGF's rights and in IGF's discretion and without reference to the Surety, to release, either in whole or in part, any securities or suretyships given to IGF by or on behalf of the intermediary, to grant extensions of time or other indulgences in respect of any payment or performance and to compromise or make any arrangements as IGF deems fit.
7. IGF shall be entitled without affecting its rights hereunder, to give time to, or compound or make any other arrangements with the intermediary or its legal representatives in insolvency or otherwise.
8. Should the intermediary be liquidated, wound up or placed under judicial management (whether provisionally or finally), enter any compromise, composition or scheme of arrangement with their respective creditors, or should the intermediary commit any act which, if committed by a natural person, would constitute an act of insolvency as determined in terms of Section 8 of the Insolvency Act, No. 24 of 1936 (as amended), then :
 - 8.1. IGF shall be entitled to prove a claim on the liquidation or otherwise as aforesaid to the full extent of such claim and neither the proof of such claim nor the expected receipt of any dividend or payment in respect thereof shall in any way affect IGF's right to recover the full amount of IGF's claim against the Surety;
 - 8.2. Any dividend or other payment actually received by IGF from the liquidation or otherwise as aforesaid may be applied by IGF on account of indebtedness of the Broker to IGF without the Surety being released from liability to IGF for the balance of such indebtedness;
 - 8.3. All costs of and incidental to the proof of IGF's claim on liquidation or otherwise and all costs and expenses in the maintenance, conservation or realising of any security which IGF may hold and all sums, including any contribution payable by IGF, in consequence of the proof of IGF's claim, shall be recoverable from the Surety by IGF.
9. For the avoidance of doubt it is hereby expressly declared that the Surety has no right to require IGF whether before or after taking proceedings or obtaining or enforcing judgement against the Surety:
 - 9.1. to proceed against the intermediary; or
 - 9.2. to proceed against any security held from the intermediary; or
 - 9.3. to proceed against any co-surety or any security held from the Surety or from any co-surety; or
 - 9.4. to pursue any other remedy available to IGF.

10. IGF is hereby authorised to apply any monies received by IGF from the intermediary or from the Surety against any indebtedness to IGF by the intermediary in IGF's discretion.
11. In the event of:
 - 11.1. any liquidation, judicial management or sequestration of the intermediary or any other surety for the intermediary; or
 - 11.2. any composition or compromise by the intermediary or any such other surety, whether in terms of company law, insolvency law, or under common law, the Surety binds itself not to file any claim against the intermediary or other surety until IGF's claims against the intermediary have been paid in full or unless IGF's written consent has been obtained.
12. IGF shall be entitled to cede, assign or delegate all, or any part of, its rights and/or obligations, as the case may be, under this Suretyship without the prior consent of the Surety. IGF will notify the Surety of the cession
13. IGF shall have the option and the sole and absolute discretion to treat monies received from the Surety as cash security to be held in an interest bearing account at a registered commercial bank appointed by IGF until the obligations of the intermediary have been discharged in full, provided that all such interest earned shall accrue to the relevant Surety.
14. This Suretyship is in addition to, and without prejudice to, any other suretyship or security now or hereafter held or released by IGF regarding the intermediary and shall remain in force as a continuing covering security in respect of the payment of all sums by, and the proper performance of all obligations of, the intermediary to IGF in respect of the Guarantee notwithstanding any intermediate settlement of account or any fluctuations in or temporary extinction or novation of the indebtedness of the intermediary to IGF.
15. The Surety's obligations and liability hereunder shall continue and remain of full force and effect as a continuing covering security until such time as the intermediary is entirely and finally released and discharged from all its legal obligations, to IGF in respect of the Guarantee and neither the Surety nor its executors, administrators or assigns will be entitled to withdraw herefrom until the intermediary has been finally released and discharged. It is the intention of the Surety that this Suretyship, including but not limited to the provisions of this clause 15, shall be binding on the Surety's executors, administrators, trustees and other legal representatives.
16. A certificate issued under the signature of any of IGF's directors and / or managers for the time being whose authority it shall not be necessary to prove, shall be sufficient and satisfactory evidence and shall constitute *prima facie* proof of the amount of the indebtedness of the intermediary and of the Surety hereunder to IGF at any time.

17. The Surety hereby waives presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discounted by the intermediary, hereby agreeing and admitting that the liability of the Surety hereunder in respect of any such instrument shall not in any way be affected by any failure to present or to give written notice of dishonour or to protest as aforesaid.
18. The Surety hereby indemnifies and holds IGF harmless against any damage, cost, loss or expense of whatsoever nature which IGF may sustain arising out of or in connection with the enforcement, breach, cancellation or invalidity for any reason of any agreement, contract arrangement or understanding between IGF and the intermediary. This Suretyship shall be enforceable against the Surety in accordance with the tenor thereof, whether as an indemnity or otherwise, notwithstanding that the Guarantee may in any way be invalid or unenforceable against the intermediary.
19. The Surety hereby renounces any benefits to which the Surety, as surety, may be entitled in law including, without limiting the generality of the foregoing, the benefits of excussion, division, cession of action, revision of accounts and no value received, the full force, meaning and effect of which the Surety acknowledge themselves to be fully acquainted.
20. Each provision in this Suretyship is severable from the others and if any provision is found to be defective or unenforceable for any reason by any competent court, the remaining provisions thereof shall remain of full force and effect.
21. The Surety hereby consents and submits to the jurisdiction of the Magistrate's Court having jurisdiction over the Surety for all purposes arising out of this Suretyship, provided that nothing herein contained shall prevent either party from proceeding in any division of the High Court of South Africa having jurisdiction in respect hereof.
22. No consensual cancellation, variation or modification of this Suretyship shall be binding on IGF (or its assign) unless reduced to writing and signed by or on behalf of the Surety and IGF (or its assign)
23. The Surety chooses its *domicilium citandi et executandi* for all notices and processes to be given or served in pursuance of this Suretyship at the address referred to hereunder:

The Surety shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address and shall be situated in the Republic of South Africa, and any such change shall be effective only upon receipt by IGF of notice in writing of such change. All notices or

communications intended for the Surety shall be made or given in writing at the *domicilium* of the Surety for the time being, hand-delivered, and shall be deemed to have been made or given on the date of such delivery; provided that it shall be competent to give notice by telefax and all notices telefaxed shall be deemed to have been received by the Surety on the day after the date on which the notice is telefaxed. Notwithstanding anything to the contrary contained herein, a written notice actually received by the Surety shall be an adequate written notice to it notwithstanding that it was not sent to or delivered at its chosen address or telefax number.

24. Unless otherwise directed by a court of law, the Surety shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by IGF (or its assign) in enforcing its rights in terms hereof including, without limitation, legal costs on the scale as between attorney and own client and collection commission irrespective whether any action has been instituted against the Surety or not.

25. Collateral security provided by Intermediaries will be held for a three-year period, except where:

- a. the Intermediary's auditors certify that there are no premiums outstanding to insurers,
- b. the Underwriting Committee recommends the release of the security,
- c. the financial position of the intermediary has improved to the point where a new guarantee has been issued without the need for collateral security.

26. This Suretyship is executed for and on behalf of the Surety by _____ in his capacity as a director of the Surety he being duly authorised hereto under and by virtue of a resolution passed by the board of directors of the Surety on the _____ day of _____ 20____.

SIGNED at _____ on this the _____ day of _____ 20_____

in the presence of the undersigned witnesses:

WITNESSES:

For and on behalf of

1. _____

2. _____

Name: _____

Capacity: _____
Who warrants his authority hereto