

## UNDERTAKING

I, the undersigned

(*name of attorney*) \_\_\_\_\_

being duly authorised, as representative of

(*firm name*) \_\_\_\_\_, its  
successor in title and assigns, ("**Guarantor**")

in favour of GENESIS MEDICAL SCHEME or its successors and assigns ("**Genesis**") in  
connection with the obligations and indebtedness of

(*client*) \_\_\_\_\_  
("**Debtor**")

to Genesis, arising from the Debtor's obligation to repay all medical and hospital  
accounts paid by Genesis on behalf of the Debtor in terms of:

Policy/Case No: \_\_\_\_\_

("Guaranteed Obligations") for injuries sustained in an accident/incident which  
occurred on:

(*date*) \_\_\_\_\_  
("**Accident**")

1 hereby irrevocably and unconditionally –

1.1 undertakes and guarantees that, should the Guarantor on behalf of the Debtor  
successfully claim for damages against the Road Accident Fund and/or any  
third party for injuries sustained due to the Accident ("**Claim**"), it will  
immediately upon receipt of the funds in its trust account pay the Guaranteed  
Obligation to Genesis, subject to any applicable apportionment or damages;

1.2 undertakes and guarantees that the necessary consent and/or instruction has  
been obtained from the Debtor to authorise the immediate transfer of funds  
recovered pursuant to the Claim and held on behalf of the Debtor in the  
Guarantor's trust account to Genesis;

1.3 if the Debtor has terminated the Guarantor's mandate and/or has instructed a  
firm, other than the Guarantor, to institute the Claim on behalf of the Debtor,  
undertakes to notify Genesis immediately thereof;

1.4 undertakes not to instruct an alternative firm, and/or make use of any other  
firms trust account, for purposes of collecting and/or receiving any monies  
recovered pursuant to the Claim; and

1.5 agrees, as a separate and primary obligation, to indemnify Genesis from and  
against all and any loss or damage incurred or sustained by Genesis as a  
result of or pursuant to the Guarantor failing to comply with the terms of this  
clause 1, the amount of such loss or damage being the amount which Genesis  
would otherwise have been entitled to recover from the Guarantor, being the  
Guaranteed Obligations.

2 Notwithstanding anything to the contrary contained in this Guarantee, should the  
Guarantor be or become obliged to pay the Guaranteed Obligations, or part thereof,

to Genesis in terms of this Guarantee, the payment obligation of the Guarantor in terms of this Guarantee shall at all times be limited to the sum of, the maximum amount recovered pursuant to the Claim.

- 3 This Guarantee is a continuing covering guarantee and shall remain in full force and effect notwithstanding any temporary fluctuation in or partial extinction of the Guaranteed Obligations or any prior payment under this Guarantee, and shall terminate upon the happening of either one of the following events, whichever occurs first in time:
  - 3.1 on payment in full having been made to Genesis by either the Debtor and/or Guarantor; or
  - 3.2 by way of written consent provided by Genesis, which consent will be given in circumstances where Genesis has obtained a further written undertaking and guarantee as contemplated in clause 1.3.
- 4 All payments to be made hereunder by the Guarantor shall be made without set-off, any deduction, withholding or counterclaim, in Rand into the following account:

Bank:	<u>Nedbank</u>
Branch:	<u>Foreshore</u>
Branch Code:	<u>187505</u>
Account Number:	<u>1009682814</u>
Reference:	_____ (" <b>Membership number</b> ")
- 5 The Guarantor agrees to be liable for all costs on the attorney and client scale incurred by Genesis in enforcing its rights hereunder due to the Guarantor being in breach of this Guarantee, plus further interest on any amounts claimed hereunder (including capital plus interest) from the date on which Genesis demands payment of such amount from the Guarantor.
- 6 No variation or consensual cancellation hereof shall be of any force or effect unless reduced to writing and signed by Genesis.
- 7 No failure or delay by Genesis in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 8 This undertaking and indemnity shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 9 This undertaking and indemnity is freely assignable or transferable by Genesis.
- 10 The Guarantor may not assign any of its rights and it may not transfer any of its obligations hereunder or enter into any transaction that would result in any of those rights or obligations passing to another person.
- 11 A certificate signed by any manager of Genesis (whose appointment, authority or qualification need not be proved) after finalization of the Claim by the Guarantor shall, upon mere presentation, be *prima facie* proof of the indebtedness of the Guarantor to Genesis, which certificate shall be valid as a liquid document for the purposes of obtaining judgment.
- 12 Any notice, demand, or service of process on the Guarantor hereunder may be given or made by way of hand delivery, pre-paid registered post or e-mail to the

address of the Guarantor set out below, which address the Guarantor nominates as its *domicilium citandi et executandi*:

Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_  
Attention: \_\_\_\_\_

- 13 Either Party shall be entitled from time to time, by giving written notice to the other/s, to vary its physical Domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa or to vary its e-mail Domicilium to any other e-mail address.

Signed at \_\_\_\_\_ on \_\_\_\_\_

Guarantor

Witness 1

\_\_\_\_\_  
who warrants that he is duly  
authorised hereto

\_\_\_\_\_  
Name:

Witness 1

\_\_\_\_\_  
Name: