

Lovells LLP

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This Guarantee No. PEBHTO725252 is dated 18<sup>th</sup> day of December 2007

**Between:**

- (1) **HSBC Bank Canada**, whose principal registered office is at 885 West Georgia Street, Vancouver, British Columbia, Canada, V6C 3E9 (the "**Bank**") acting through its Trade Services branch at 250 University Avenue, Toronto, Ontario, Canada, M5H 3E5;
- (2) **Interhealth Canada Limited**, having its registered office at Suite 600, 357 Bay Street, Toronto, Ontario, Canada M5H 2T7 (the "**Applicant**");
- (3) **Interhealth Canada Construction & Services (TCI) Limited**, a wholly owned subsidiary of the "Applicant", (Company Number 11320), having its registered office at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies (the "**Contractor**"); and
- (4) **Interhealth Canada Infrastructure (TCI) Limited** (Company Number 11772), having its registered office at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies (the "**Provider**").

**Whereas:**

- (A) By a contract (the "**Contract**") entered into between the Contractor and the Provider dated on or about the date of this Guarantee, the Contractor has agreed with the Provider to certain design and build, commissioning and other obligations upon and subject to the terms and conditions therein contained.
- (B) The Bank has agreed, at the request of the Applicant, to enter into this on-demand Guarantee in favour of the Provider in support of the Contractor's obligations under the Contract.

**This agreement witnesseth as follows:**

- 1 In this Guarantee:
  - "**business day**" means a day (other than Saturday or Sunday) when banks in Toronto are open for business; and
  - unless the context requires otherwise or unless specifically defined in this Guarantee, capitalised terms have the meaning given to them in the Contract.
- 2 The Bank hereby irrevocably and unconditionally undertakes to pay to the Provider within three (3) business days following that on which it receives a written demand from the Provider in accordance with clause 4 below an amount equal to the lesser of:
  - 2.1 the amount specified in such demand; and
  - 2.2 the Guarantee Amount effective at the date of any demand, which amount shall be as stated in Schedule 1, which forms an integral part of this Guarantee,

provided always that the maximum total aggregate liability under this Guarantee shall not exceed US\$25,000,000 (twenty-five million United States Dollars).
- 3 For the avoidance of doubt the Guarantee Amount will reduce from the Initial Guarantee Amount in accordance with the terms of Schedule 1.
- 4 The Bank's obligation to make payments under this Guarantee shall arise on receipt of a written demand substantially in the form set out in Schedule 2 made in accordance with the

THE SUM OF 25,000,000 US\$ ONLY

provisions of this Guarantee and made prior to the Guarantee Expiry Date (as defined in clause 7) without any further proof or conditions and without any right of deduction, set-off or counterclaim, and the Bank shall not be required to make any other investigation or enquiry.

- 5 The Provider may make one or more demands hereunder. Each demand shall be substantially in the form set out in Schedule 2, which forms an integral part of this Guarantee, and shall be delivered to the Bank on a business day and during normal banking hours of the Bank at its offices at 250 University Avenue, Toronto, Ontario, Canada, M5H 3E5 or such other office of the Bank in Toronto as the Bank may from time to time notify to the Provider.
- 6 The maximum aggregate liability of the Bank under this Guarantee shall not exceed the Initial Guarantee Amount **less** the aggregate of all previous payments made under this Guarantee at the relevant time of any demand hereunder.
- 7 This Guarantee is irrevocable. It will take effect on the date hereof and (unless previously cancelled by the written agreement between the Bank and the Provider (and any assignee which has been notified to the Bank)) will automatically expire without further notice or action on the **Guarantee Expiry Date** being the earlier of:
  - 7.1 subject to clause 9, the 31 December 2009; and
  - 7.2 the date on which all payments made under this Guarantee shall:
    - (a) equal the Initial Guarantee Amount stated in Schedule 1; or
    - (b) in relation to claims made following the First Guarantee Reduction Notice equal the lesser of US\$4,803,190 (four million eight hundred and three thousand one hundred and ninety United States Dollars) and the Initial Guarantee Amount less the aggregate of all payments made under the Guarantee.
- 8 Upon the Guarantee Expiry Date this Guarantee automatically becomes null and void, and the Bank is released from all liabilities hereunder provided that the expiry of the Guarantee under clause 7 above shall not affect or discharge the liability of the Bank to make payment of any demand made in accordance with the provisions of clauses 2 and 4 on or before the Guarantee Expiry Date.
- 9 In each case:
  - 9.1 where the First Guarantee Reduction Notice has not been served then, at least three (3) months prior to the Guarantee Expiry Date, the Applicant shall be entitled to renew this Guarantee, at the Bank's sole discretion. If this Guarantee is not renewed within two (2) months prior to the Guarantee Expiry Date in a form acceptable to the Provider, at any time following one (1) month prior to the Guarantee Expiry Date, the Provider shall be entitled to make demand under this Guarantee for all or any part of the Guaranteed Amount; and
  - 9.2 where the First Guarantee Reduction Notice has been served, the Bank agrees that this Guarantee shall be automatically deemed to be extended (without any further action to be taken by the Applicant and/or Provider) and following such extension, the Guarantee Expiry Date shall be one (1) year from the date of the First Guarantee Reduction Notice.
- 10 All payments to be made under this Guarantee shall be made to the account specified in the relevant demand.
- 11 Subject to clauses 11.1 and 11.2 the right, title and benefit in and to this Guarantee shall be capable of assignment or transfer, in whole but not in part, without the consent of the Bank or any other person, to any assignee, novatee or other transferee of the Contract (as confirmed in a Notice of Assignment in the form set out in Schedule 4 or the Notice of

Security Assignment in the form set out in Schedule 5) but otherwise shall not be capable of assignment.

- 11.1 This Guarantee shall not be capable of subdivision or of partial assignment or transfer.
- 11.2 Notice of assignment or transfer shall be provided to the Bank substantially in the form set out in Schedule 4 (which forms an integral part of this Guarantee) or, in the case of an assignment by way of security, substantially in the form set out in Schedule 5 (which forms an integral part of this Guarantee), Part 1. Until such notice has been delivered to the Bank, the Bank shall not be required to recognise any such assignee as entitled to issue a demand under this Guarantee (or in the case of a notified assignment by way of security until an Enforcement Notice (as defined in Schedule 5, Part 1) has been delivered to the Bank).

12 Any notices or communications to be made by the Bank or the Provider to the other under or in connection with this Guarantee (other than demands made under clauses 2 to 5) shall be in writing and made to the other at the following addresses:

The Bank: HSBC Bank Canada, Trade Services, 8<sup>th</sup> Floor, 250 University Avenue, Toronto, Ontario, Canada, M5H 3E5 (copied in the case of any notices of assignment to HSBC Bank Canada, 70 York Street, Toronto, Ontario, Canada M5J 1S9)

for the attention of: Trade Services

The Applicant: Suite 600, 357 Bay Street, Toronto, Ontario, M5H 2T7

For the attention of: Company Secretary

Contractor: Richmond House PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies

for the attention of: Company Secretary

Provider: Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies

for the attention of: Company Secretary

- 13 All payments under this Guarantee shall be made free of any withholding or deduction.
- 14 Each of the Applicant and the Contractor confirms that it is a party to this Guarantee for the purposes of acknowledging its terms only and does not have any right to enforce any agreement, arrangement or understanding or other provisions in this Guarantee or to make any claims in respect hereof. Each of the Applicant and the Contractor further agree that the Bank and the Provider shall be entitled to deal with this Guarantee without reference to them, save that no amendment shall be permitted to be made to this Guarantee without the approval of the Applicant and the Provider.
- 15 This Guarantee is subject to International Standby Practices ISP98, ICC Publication No. 590. This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties agree that this Guarantee shall be subject to the non-exclusive jurisdiction of the courts of the Province of Ontario.

CONTRACT




16 This Guarantee sets forth in full the terms of the Bank's undertaking to the Provider. Such undertaking shall not in any way be modified, amended, or amplified by any document or instrument referred to herein or related hereto. Any amendment must be in writing and signed by the Bank and accepted by the Provider (and/or any applicable assignee or transferee) in order to be effective.

**Executed by HSBC Bank Canada**

By: A.W. Jeffery 6280  
Name: ALLAN W JEFFERY  
Title: Vice-President

By: L. Stone 20604  
Name: LINDSEY STONE  
Title: Assistant Vice-President

Executed by )  
**Interhealth Canada Limited** )  
acting by )

  
**Authorised Signatory**

Executed by )  
Christopher Barltrop on behalf )  
of **Interhealth Canada** )  
**Construction & Services** )  
**(TCI) Limited** )  
under Power of Attorney )  
dated DECEMBER 19, 2007 )

  
**Christopher Barltrop**

WITNESS C. B. TARSHIS

Executed by )  
Christopher Barltrop on behalf of )  
**Interhealth Canada Infrastructure** )  
**(TCI) Limited** )  
under Power of Attorney )  
dated DECEMBER 19, 2007 )

  
**Christopher Barltrop**

WITNESS C. B. TARSHIS

119604

**Schedule 1**  
**Guarantee Particulars**

**The Provider**

The Guarantee Amount:

US\$25,000,000 (twenty five million United States Dollars) (the "**Initial Guarantee Amount**") which shall reduce as follows:

- (a) on the service of a notice substantially in the form set out in Schedule 3 (the "**First Guarantee Reduction Notice**"), to the lesser of:
  - (i) US\$4,803,190 (four million eight hundred and three thousand one hundred and ninety United States Dollars); and
  - (ii) the Initial Guarantee Amount less the aggregate of all payments made under this Guarantee prior to the service of the First Guarantee Reduction Notice;
- (b) on the service of a further notice substantially in the form set out in Schedule 3 (the "**Second Guarantee Reduction Notice**"), nil.

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Schedule 2

Form of Demand

To: [insert details of the Bank]

Date:

Dear Sirs

**Re: The Guarantee dated [ ] issued by HSBC Bank Canada in favour of the Provider (as defined therein) (the "Guarantee")**

[I][We] hereby demand the amount of US\$[ ] under the Guarantee,

Payment should be made to Account Number [ ], designated [ ] at [ ].

[I][We] certify that in our opinion the amounts are due and payable by the Contractor to the Provider or will become due and payable under or pursuant to the Contract.

Yours faithfully

for and on behalf of

*Provider/Assignee*

*[Verification of signature from third party bank, notary or similar]*

cc. *Applicant*

119606



Schedule 3

Form of Guarantee Reduction Notice

To: [insert details of the Bank]

Date:

Dear Sirs

Re: The Guarantee dated [ ] issued by HSBC Bank Canada in favour of the Provider (as defined therein) (the "Guarantee")

[I] [We] refer to the Guarantee.

This notice is a guarantee reduction notice as contemplated by clause 3 of the Guarantee. Defined terms shall have the same meaning in this notice, as set out in the Guarantee, unless otherwise stated.

*EITHER in the case of the First Guarantee Reduction Notice:*

[I][We] hereby confirm to the Bank that the Actual Completion Date has occurred, as defined in the Contract.

[I] [We] hereby consent to the reduction in the Guaranteed Amount from US\$25,000,000 (twenty-five million United States Dollars) to the lesser of US\$4,803,190 (four million eight hundred and three thousand one hundred and ninety United States Dollars) and the Initial Guarantee Amount less the aggregate of all payments made under the Guarantee.

*OR in the case of the Second Guarantee Reduction Notice:*

[I][We] hereby confirm to the Bank that it is the first (1<sup>st</sup>) anniversary since the Actual Completion Date has occurred, as defined in the Contract.

[I] [We] hereby consent to the reduction in the Guaranteed Amount to zero.

This notice is irrevocable once served.

Yours faithfully

for and on behalf of

*Security Trustee*

*[Verification of signature from third party bank, notary or similar]*

for and on behalf of

*Provider/Assignee*

*[Verification of signature from third party bank, notary or similar]*

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We acknowledge receipt of this notice

Countersigned by [Bank]

Date:

cc. *Applicant*

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Schedule 4

Form of Notice of Assignment

To: [insert details of the Bank]

Date:

Dear Sirs

**Re: The Guarantee dated [ ] issued by HSBC Bank Canada in favour of the Provider (as defined therein) (the "Guarantee")**

We hereby give you notice that we have assigned to [Assignee] all of our rights, title and interests in and to the Guarantee. We confirm [Assignee] is a permitted assignee under the Contract as referred to in clause 11 of the Guarantee.

Unless otherwise notified to the contrary by [Assignee], henceforth you should deal only with [Assignee] in respect of the Guarantee and only [Assignee] shall be entitled to issue a demand under the Guarantee and all payments under or arising in favour of the Provider under the Guarantee should be made to the Assignee.

[Assignee] has countersigned this notice in order to confirm the assignment and to confirm that only a director [and other corporate officer or specific names to be inserted] may sign a demand on behalf of [Assignee]. Notices to the Provider pursuant to clause 12 of the Guarantee should instead be made to [Assignee] at [address].

Kindly acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning the same to the Provider at [ ] marked for the attention of [ ] and copied to the [Assignee] at [ ] marked for the attention of [ ].

Yours faithfully

for and on behalf of

[Provider/Assigning Beneficiary/Security Trustee]

[Verification of signature from third party bank, notary or similar]

We acknowledge receipt of this notice

Countersigned by [Bank]

Date:

For and on behalf of [Assignee]

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**Schedule 5**

**Part 1: Form of Notice of Security Assignment**

To: [insert details of the Bank]

Date:

Dear Sirs

**Re: The Guarantee dated [ ] issued by HSBC Bank Canada (the "Bank") in favour of the Provider (as defined therein) (the "Guarantee")**

We hereby give you notice that we have assigned to FirstCaribbean International Bank (Bahamas) Limited in its capacity as security trustee/agent for and on behalf of certain banks and financial institutions (the "**Security Trustee**") all of our rights, title and interests in and to the Guarantee to the Security Trustee by way of security.

We confirm that:

- (a) the Provider shall not be entitled to and shall not vary or waive (or agree to vary or waive) any provision of the Guarantee or exercise any right to rescind or terminate the Guarantee without the prior written consent of the Security Trustee but otherwise until receipt by you of a written notice from the Security Trustee (an "**Enforcement Notice**") you may continue to treat the Provider as entitled to exercise and enforce all of its other rights, discretions and remedies under or in respect of the Guarantee;
- (b) after receipt of such Enforcement Notice, you should deal only with the Security Trustee in respect of the Provider's interest under the Guarantee; and
  - (i) all payments under or arising in favour of the Provider from the Guarantee should be made to the Security Trustee or to its order; and
  - (ii) all remedies provided for in the Guarantee or available at law or in equity in favour of the Provider are only exercisable by (or with the prior approval of) the Security Trustee; and
  - (iii) only the Security Trustee shall be entitled to issue a demand under the Guarantee; and
- (c) neither a First Guarantee Reduction Notice nor a Second Guarantee Reduction Notice served pursuant to the Guarantee shall be valid unless such notice has been countersigned by the Security Trustee.

Any [one] or [any two of] the following persons [together] (and such additional persons as the Security Trustee may subsequently notify to the Bank) may sign an Enforcement Notice and issue a demand under the Guarantee on behalf of the Security Trustee:

[list office holders entitled to sign and/or specified people (including names and titles and specimen signature)]

Notwithstanding the assignment referred to above or the making of any payment by you to the Security Trustee pursuant to it, the Provider shall remain liable under the Contract to perform all the obligations assumed by it under the Contract and neither the Security Trustee nor any receiver,

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administrator, administrative receiver, trustee in bankruptcy, judicial custodian, compulsory or interim manager, delegate or sub-delegate or other similar insolvency official appointed by it shall at any time be under an obligation or liability under or in respect of the Contract.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning the same to the Security Trustee at FirstCaribbean International Bank (Bahamas) Limited, Providenciales Branch, PO Box 236, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies attention Head of Corporate Banking and Country Manager and copied to FirstCaribbean International Bank (Bahamas) Limited of Corporate Banking Centre, PO Box 503, Rendezvous, Christchurch, Barbados marked for the attention of Mark Young, Director, Corporate Finance and copied to the Provider at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies marked for the attention of the Company Secretary. Notices to the Provider pursuant to clause 12 of the Guarantee should instead be made to the Security Trustee at the above address.

Yours faithfully

For and on behalf of

[Provider]

*[Verification of signature from third party bank, notary or similar]*

We acknowledge receipt of the Notice of Security Assignment in the foregoing terms and we agree to comply with its terms and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, interest and benefits referred to in such notice save for any such notice in favour of the Security Trustee.

We confirm that we will not accept any Guarantee Reduction Notice served pursuant to the Guarantee unless such notice has been countersigned by the Security Trustee.

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for and on behalf of [the Bank]

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Schedule 5

Part 2: Form of Enforcement Notice

[ON LETTERHEAD OF SECURITY TRUSTEE]

To: [insert details of the Bank]

Date:

Dear Sirs

Re: The Guarantee dated [ ] issued by HSBC Bank Canada in favour of the Provider ( as defined therein) (the "Guarantee")

We refer to the notice of assignment dated [ ] (the "Security Notice") and hereby give you notice that the security constituted by the assignment notified in the Security Notice has become enforceable.

Accordingly, in accordance with the Security Notice, this notice constitutes an Enforcement Notice and unless otherwise notified to the contrary by us, henceforth you should deal only with us in respect of the Provider's interest under the Guarantee and as stated in the Security Notice.

Kindly acknowledge receipt of this Enforcement Notice by counter-signing and returning the attached copy of this notice to [ ].

Yours faithfully

for and on behalf of

[Security Trustee]

[Verification of signature from third party bank, notary or similar]

We acknowledge receipt of this Notice of Assignment

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for and on behalf of HSBC Bank Canada

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

Title: \_\_\_\_\_

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