

SCHEDULE 21

Refinancing

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REFINANCING

1. InfraCo shall obtain the TCIG's prior written consent to any Qualifying Refinancing and both TCIG and InfraCo shall at all times act in good faith with respect to any Refinancing.
2. The TCIG shall be entitled to receive a 30% share of any Refinancing Gain arising from a Qualifying Refinancing.
3. The TCIG shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater than 30% share of the Refinancing Gain.
4. InfraCo shall promptly provide the TCIG with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The TCIG shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with the Refinancing whether that Refinancing is a Qualifying Refinancing or not).
5. The TCIG shall have the right to elect to receive its share of any Refinancing Gain as:
 - (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
 - (b) a reduction in the Unitary Payments over the remaining term of this Agreement; or
 - (c) a combination of any of the above.
6. The TCIG and InfraCo will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the TCIG's share of the Refinancing Gain (taking into account how the TCIG has elected to receive its share of the Refinancing Gain under paragraph 5 above). If TCIG and InfraCo fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the TCIG's share (or any apportionment thereof) the dispute shall be determined in accordance with Schedule 5 (Dispute Resolution Procedure) of the Project Agreement.
7. The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper

professional costs incurred by the TCIG will be paid to the TCIG by InfraCo within 28 days of any Qualifying Refinancing.

"Availability Period"

has the meaning given to that term in the Senior Funding Agreements;

"Contingent Funding Liabilities"

has the meaning given to that term in Schedule 9;

"Distribution"

means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - (iii) payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);
 - (iv) save as contemplated pursuant to the Project Agreement or pursuant to a Change, payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
 - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or
- (b) the early release of any Contingent Funding Liabilities the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

"EEA"

means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"Equity IRR"

means the projected blended rate of return to the Relevant Persons over the full term of this Agreement, having regard to Distributions made and projected to be made.

"Exempt Refinancing"

means:

- (a) any Refinancing that was fully taken into account in the calculation of the Monthly Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at Financial Close;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to sub-contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
 - (vi) restrictions imposed by the Senior Funders on the dates on which amounts can be advanced to InfraCo under the Senior Funding Agreements and which are given as a result of any failure by InfraCo to ensure that the Works are performed in accordance with the agreed construction programme and which are notified in writing by InfraCo or the Senior Funders to the TCIG prior to being given;
 - (vii) changes to milestones for drawdown during the Availability Period set out in the Senior Funding Agreements and which are given as a result of any failure by InfraCo to ensure that construction work is performed in accordance with the agreed construction programme

and which is notified in writing by InfraCo or the Senior Funders to the TCIG prior to being given;

- (viii) failure by InfraCo to obtain any consent by statutory bodies required by the Senior Funding Agreements; or
- (ix) voting by the Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the TCIG as part of any Qualifying Variation under this Agreement;
- (e) any sale of shares in InfraCo or HoldCo by the shareholders or securitisation of the existing rights and/or interests attaching to shares in InfraCo or any sale of the Subordinated Debt by the Subordinated Funders or securitisation of the existing rights and/or interests attached to the Subordinated Debt;
- (f) any sale or transfer of the Subordinated Funders existing rights and/or interests under the Subordinated Funding Agreements or securitisation of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements;
- (g) any change, review, alteration or variation in Unitary Payments;
- (h) any permitted release or transfer by InfraCo or its Service Providers from the Project Accounts of any credit balances standing to the credit of any of the Project Accounts where the said release or transfer is permitted by the terms of the Senior Funding Agreements;
- (i) any Refinancing of the Subordinated Debt;
- (j) any Qualifying Bank Transaction.

"HoldCo"

means Interhealth Canada Infrastructure Holdings (TCI) Limited.

"Net Present Value"

means the aggregate of the discounted values of each of the relevant projected Distributions, calculated as of the estimated dates of the Refinancing, in each case as discounted using the Threshold Equity IRR.

"Pre-Refinancing Equity IRR"

means the nominal post-tax Equity IRR calculated immediately prior to the Refinancing.

"Project Accounts"

means the accounts referred to in and required to be established under the Senior Funding Agreements.

"Qualifying Bank Transaction"

means:

- (a) the syndication by a Senior Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Funding Agreements;
- (b) the grant by a Senior Funder of any rights of participation, or the disposition by a Senior Funder of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Funding Agreements in favour of (i) any other Senior Funder (ii) any institution which is recognised or permitted under the law of any state to carry on business relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other state (iii) a local authority or public authority (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time) (vi) an EEA or Swiss Insurance Undertaking (vii) a Regulated Collective Investment Scheme (viii) any Qualifying Institution or (ix) any other institution in respect of which the prior written consent of the TCIG has been given;
- (c) the grant by a Senior Funder of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of InfraCo or HoldCo, whether by way of security or otherwise, in favour of (i) any other Senior Funder (ii) any institution specified in paragraphs (b)(ii) to (vii) above (iii) any Qualifying Institution or (iv) any other institution in respect of which the prior written consent of the TCIG has been given.

"Qualifying Institution"

means any bank, financial institution, finance company, fund, unit trust, investment trust, collective investment, insurance company, pension fund or any body corporate or other legal entity (whether or not incorporated) having similar characteristics to the above.

"Qualifying Refinancing"

means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

"Refinancing"

means:

- (a) any amendment, variation, novation, supplement or replacement of any Senior Funding Agreement (other than any Subordinated Funding Documents);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Senior Funding Agreement (other than any Subordinated Funding Documents);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Funding Agreements (other than any Subordinated Funding Documents) or the creation or granting of any other form of benefit or interest in either the Senior Funding Agreements (other than any Subordinated Funding Documents) or the contracts, revenues or assets of InfraCo whether by way of security or otherwise; or
- (d) any other arrangement put in place by InfraCo or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting InfraCo's ability to carry out any of (a)-(c) above (other than Subordinated Funding Documents).

"Refinancing Gain"

means an amount equal to the greater of zero and $(A - B) - C$, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;

- B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and
- C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR.

"Relevant Person"

means a Shareholder and any of its Associated Companies and any Subordinated Funder.

"Shareholder"

means any person from time to time holding share capital in InfraCo or Hold Co.

"Subordinated Debt"

means the Junior Debt (as defined in Schedule 9) and the Mezzanine Debt (as defined in Schedule 9)

"Subordinated Funder"

means a person providing finance under a Subordinated Funding Agreement,

"Subordinated Funding Agreements"

means for the purposes of this Schedule 21 (Refinancing) only (a) the Junior Finance Documents (as defined in Schedule 9) and (b) the Mezzanine Finance Documents (as defined in Schedule 9) in each case as at the date of this Agreement.

"Threshold Equity IRR"

means ~~14%~~
14.04%

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