

**SCHEDULE 5**  
**DISPUTE RESOLUTION PROCEDURE**

## SCHEDULE 5

### Dispute Resolution Procedure

#### Part 1: Dispute Resolution

##### 1. Definitions

Unless otherwise defined in Schedule 1 (Definitions and Interpretation) the following expressions shall have the following meanings:

<b>Arbitral Tribunal</b>	the persons appointed to act as arbitrators of a dispute under this Agreement referred to arbitration in accordance with the ICC Rules
<b>ClinCo's IM&amp;T Project Manager</b>	shall be ClinCo's IM&T project manager appointed from time to time in accordance with paragraph 9 of Part 2 of Schedule 3 (Service Requirements)
<b>Escalation Panel</b>	has the meaning given in paragraph 2 of Part 2 of this Schedule 5
<b>Escalation Procedure</b>	the procedure set out in paragraphs 2 to 5 (inclusive) of Part 2 of this Schedule 5
<b>ICC Rules</b>	The Rules of Arbitration of the International Chamber of Commerce
<b>IM&amp;T Dispute</b>	any IM&T Failure where (a) it has not been possible to agree an IM&T Rectification Plan; (b) where the IM&T Rectification Plan milestones have not been met despite a second warning notice being served; or (c) where the Escalation Panel or Liaison Committee decides that the IM&T Failure is not capable of rectification
<b>IM&amp;T Failure</b>	any failure by ClinCo to provide the IM&T Services in accordance with this Agreement. For the avoidance of any doubt, any failure by InfraCo to carry out the IM&T Works will not constitute an IM&T Failure for the purpose of this Schedule 5

**IM&T Rectification Plan**

a plan for the rectification of an IM&T Failure which shall include:

- (a) ClinCo's recommendation for correcting or minimising the impact of any delay notified to the TCIG IM&T Project Manager under paragraph 6.4 of Part 2 of Schedule 3 (Service Requirements); and/or
- (b) details of the steps ClinCo intends to take and the timescales or Milestones within which ClinCo intends to take such steps

aimed at the elimination of the relevant IM&T Failure and the probability of it recurring, provided that if the IM&T Rectification Plan includes a Change, the provisions of Schedule 7 (Change Procedure) shall apply

**IM&T Services**

Shall be as defined in Schedule 3 Part 2 (IM&T Specification and Technical Guidance)

**IM&T Works**

Shall be as defined in Schedule 3 Part 2 (IM&T Specification and Technical Guidance)

**Liaison Committee**

has the meaning given in paragraph 6 of Part 2 of this Schedule 5

**Liaison Procedure**

the procedure set out in paragraphs 6 to 10.2 (inclusive) of Part 2 of this Schedule 5

**Referral Notice**

notification of the Dispute or IM&T Failure sent in accordance with Clauses 48.1 to 48.3 (inclusive) (Miscellaneous) of this Agreement

**Senior Management**

the Chief Executive (or equivalent) of the Relevant Provider and the Permanent

Secretary of Health of the TCI

**TCIG IM&T Project Manager**

shall be the TCIG's IM&T project manager appointed from time to time

**2. Dispute Resolution**

Save to the extent that this Agreement provides that any Dispute should not be referred to the Dispute Resolution Procedure, all Disputes shall be resolved pursuant to the terms of this Schedule 5.

**3. Continuing Obligation**

TCIG, InfraCo and ClinCo shall continue to comply with, observe and perform all their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution to the Escalation and Liaison Procedures or to arbitration in accordance with the terms of this Schedule 5.

**4. Escalation and Liaison Procedures**

4.1 If any Dispute arises between TCIG and InfraCo on the one hand, and/or TCIG and ClinCo on the other hand, unless the parties in such dispute, each acting in good faith, agree it is not appropriate or practicable to do so, or such dispute is an IM&T Dispute, such Dispute shall first be referred to the Escalation Procedure and then, as necessary, to the Liaison Procedure. The party referring the Dispute shall send to the other party, in accordance with Clauses 48.1 to 48.3 (inclusive) (Miscellaneous - Notice), a Referral Notice in relation to the Dispute.

4.2 If any IM&T Failure arises, unless the parties in dispute, each acting in good faith, agree it is not appropriate or practicable to do so, the procedures set out in paragraph 11 of Part 2 (Procedure in relation to IM&T Failures) shall apply. The party referring the IM&T Failure shall send to the other party, in accordance with Clauses 48.1 to 48.3 (inclusive) (Miscellaneous - Notice) a Referral Notice in relation to the IM&T Failure.

**5. Arbitration**

5.1 Any Dispute which is not resolved through the Escalation Procedure and/or the Liaison Procedure shall be finally settled in accordance with the terms of the Arbitration Agreement attached at Appendix A to this Schedule 5. All parties to this Agreement shall enter into the Arbitration Agreement.

**6. Informing Senior Management**

6.1 Where there is referral to the Escalation Procedure and/or the Liaison Procedure or to arbitration in accordance with paragraph 5 (Arbitration) above, in each case the party making such a referral shall send to the Senior Management as soon as reasonably practicable copies of the following documents:

6.1.1 a Referral Notice (in the case of the Escalation Procedure and/or the Liaison Procedure) or copy of the Request for Arbitration under the ICC Rules;

6.1.2 any written agreement arising from a referral to the Escalation Procedure or Liaison Procedure, or any decision of the Arbitral Tribunal appointed to deal with a Dispute (as the case may be)

provided always that any non-compliance with the requirements of this paragraph 6.1 shall not invalidate or prejudice, in whole or in part, any aspect of the Dispute Resolution Procedure.

## **Part 2: Escalation Procedure and Liaison Procedure**

1. The purpose of the Escalation Procedure and Liaison Procedure is to promote early settlement of any Disputes and rectification of any IM&T Failures and to allow the formation of an ad hoc group which can discuss any matter relating to the Project with the intention of ensuring the successful and efficient operation of the Project, and avoiding Disputes and IM&T Failures being referred to arbitration where resolution is possible by other means.

### **Escalation Procedure**

2. If TCIG, InfraCo and/or ClinCo (as the case may be) are unable to reach agreement in relation to any Dispute (other than any IM&T Failure) which arises, any party to this Agreement may refer the Dispute to the Escalation Panel under this Agreement, which, in the case of Disputes between Infraco and TCIG, shall consist of InfraCo's Chief Executive and the TCIG Representative, and in the case of Disputes between ClinCo and TCIG shall consist of ClinCo's Chief Executive and the TCIG Representative or such other person as each of those individuals shall nominate to represent them, (in each case, the "**Escalation Panel**") by means of a Referral Notice.
3. The relevant Escalation Panel shall:
  - 3.1 meet as soon as reasonably practicable thereafter, and in any event within ten (10) Working Days of the date of service of the Referral Notice, with the intention of resolving such Dispute; and
  - 3.2 be entitled to adjourn its consideration of the Dispute for a period of up to five (5) Working Days, to call for any explanation from the business managers involved as to the nature and extent of the matter and to seek from them suggestions as to methods of resolving the same.
4. Any unanimous decision reached by the Escalation Panel will be final and binding on all the relevant parties once put in writing and signed by all parties represented at such Escalation Panel to this Agreement, unless referred to the Liaison Committee (by means of serving a further Referral Notice) within twenty (20) Working Days of the date of the decision.
5. Where no agreement is reached as to the Dispute at the convening or reconvening of the Escalation Panel, the Escalation Panel shall formally refer the Dispute to the Liaison Committee by Referral Notice. If no agreement is reached by the Escalation Panel within fifteen (15) Working Days of the date of service of the original Referral Notice to the Escalation Panel, any party to the Dispute may refer the matter to the Liaison Committee by means of a further Referral Notice.

## **Liaison Procedure**

1. TCIG and InfraCo on the one hand and TCIG and ClinCo on the other hand shall within ten (10) Working Days of the date of this Agreement appoint a committee (the "**Liaison Committee**") consisting of at least eight (8) members comprising:
  - 1.1 two (2) members to be appointed by InfraCo;
  - 1.2 two (2) members to be appointed by ClinCo; and
  - 1.3 four (4) members to be appointed by TCIG, one of whom shall be appointed Chairman;

and the quorum for meetings shall be four (4) to include at least one member appointed by each of InfraCo, ClinCo and TCIG respectively.
2. Decisions of the Liaison Committee shall be made by a unanimous vote of those members present and entitled to vote.
3. Subject to paragraph 6 of this Part 2 of Schedule 5 the Liaison Committee may by a majority vote co-opt additional members for such period and on such terms as it may determine, such additional members being persons properly qualified to participate in discussions relating to any of the matters which the Liaison Committee is to consider. Such additional members shall not be entitled to vote.
  - 3.1 Subject to paragraph 6 of this Part 2 of Schedule 5, the Liaison Committee may adjourn its consideration of any Disputes or consideration of any IM&T Failures referred to it for a period of one (1) month to commission an expert report on any issue or issues concerned with the subject of the Dispute or IM&T Failure. The conclusions reached in the expert's report are intended to assist the Liaison Committee in its deliberations and any conclusions drawn by the expert will not be considered final or binding.
4. The Liaison Committee shall meet at such frequency as it may determine, to review progress of the Project and resolution of any Disputes or consideration of any IM&T Failures referred to it, provided that where the Escalation Panel or any party to this Agreement has referred any Dispute to it or where any IM&T Failure has been referred to it, a meeting of the Liaison Committee shall take place within ten (10) Working Days of such referral to consider the Dispute or IM&T Failure. Members of the Liaison Committee shall, where appropriate, communicate with one another as often as necessary to ensure the successful and efficient operation of the Project and the resolution of any Disputes and IM&T Failures.

5. Following each meeting of the Liaison Committee, the Chairman shall produce a report which shall set out in detail the matters that have been discussed between the members and identify areas of agreement and disagreement.
- 5.1 Any decision reached by the Liaison Committee in relation to a Dispute shall be final and binding on the parties once put in writing and signed on behalf of each of the parties.
- 5.2 Subject to paragraph 8.1 of Part 2 of Schedule 5, where no agreement is reached as to the Dispute or the occurrence of an IM&T Failure within twelve (12) Working Days of the date of the Referral Notice referring the relevant Dispute or IM&T Failure to the Liaison Committee, any party to the Dispute shall refer the Dispute to Arbitration in accordance with paragraph 5 of Part 1 of this Schedule 5 above.

**Procedure in relation to IM&T Failures**

6. In the event of an IM&T Failure the following provisions shall apply:
  - 6.1 the IM&T Failure shall in the first instance be referred to ClinCo's IM&T Project Manager and the TCIG IM&T Project Manager who shall, acting in good faith, attempt to resolve the issue in a manner satisfactory to all parties. In the event that it is not agreed that any IM&T Failure has arisen, or it is not possible to resolve the IM&T Failure within ten (10) Working Days, the matter will be formally referred directly to the Liaison Committee (without any initial reference to the Escalation Panel) for consideration;
  - 6.2 in the event that it is determined by the Liaison Committee that there has been an IM&T Failure within fifteen (15) Working Days of the referral to the Liaison Committee under paragraph 6.1 above, the Liaison Committee shall request ClinCo to draw up an IM&T Rectification Plan which ClinCo shall send to the Liaison Committee for review within ten (10) Working Days of the Liaison Committee's request;
  - 6.3 the Liaison Committee may comment on the IM&T Rectification Plan submitted by ClinCo pursuant to paragraph 6.2 and such comments shall be incorporated in the IM&T Rectification Plan by ClinCo;
  - 6.4 in the event that ClinCo fails to produce an IM&T Rectification Plan in accordance with paragraph 6.2 within ten (10) Working Days of a request to do so or fails to take the Liaison Committee comments into account in either producing or implementing its IM&T Rectification Plan the IM&T Rectification Plan will be deemed to be not agreed and the IM&T Failure will be referred to arbitration in accordance with paragraph 5 of Part 1 of this Schedule 5 at which stage the IM&T Failure will be deemed to be an IM&T Dispute;



- 6.5 ClinCo shall comply with any IM&T Rectification Plan and the Liaison Committee shall be entitled to monitor implementation of an IM&T Rectification Plan to ensure that actions have been taken as agreed;
- 6.6 where an IM&T Rectification Plan is being considered or monitored by the Liaison Committee each IM&T Project Manager shall be co-opted as members of the Liaison Committee provided that the IM&T Project Managers shall not be entitled to vote;
- 6.7 If ClinCo fails to comply with any Milestone for rectification set out in an IM&T Rectification Plan, then the Liaison Committee will meet to review the situation within ten (10) Working Days of any request to meet made by any of its members. If, by majority vote, the Liaison Committee considers the IM&T Failure remains capable of rectification, it may issue a first warning notice to ClinCo to comply with the IM&T Rectification Plan;
- 6.8 if ClinCo fails to comply with the IM&T Rectification Plan and remedy the IM&T Failure within twenty (20) Working Days (or such longer period specified by the Liaison Committee) of the date of receipt of the first warning notice, then the Liaison Committee may issue a second warning notice;
- 6.9 if ClinCo fails to comply with the IM&T Rectification Plan and remedy the IM&T Failure within twenty (20) Working Days (or such longer period specified by the Liaison Committee) of the date of receipt of the second warning notice, then at such stage the IM&T Failure will be deemed to be an IM&T Dispute. Unless otherwise agreed between the parties, any party to the IM&T Dispute shall refer the matter to arbitration in accordance with paragraph 5 of Part 1 of this Schedule 5; and
- 6.10 if following a meeting of the Liaison Committee in accordance with paragraph 11.6 the Liaison Committee notifies TCIG and ClinCo that it does not reasonably consider the IM&T Failure is capable of rectification by ClinCo without referral to arbitration the IM&T Failure shall be deemed at such stage to be an IM&T Dispute. Unless otherwise agreed between the parties, any party to the IM&T Dispute shall refer the matter to arbitration in accordance with paragraph 5 of Part 1 of this Schedule 5.

## Appendix 1

### Form of Arbitration Agreement

#### ARBITRATION AGREEMENT

**THIS AGREEMENT** is made on

2007

#### **BETWEEN**

- (1) **THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)** of Government Compound, Grand Turk, Turks & Caicos Islands, British West Indies ("**TCIG**")
- (2) **INTERHEALTH CANADA LIMITED** a corporation incorporated in the Province of Ontario (having Ontario Corporation Number 1066939) whose registered office is at Suite 600, 357 Bay Street, Toronto, Ontario, Canada M5H 2T7 (**the "Guarantor"**)
- (3) **INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** (Company number 11772) a company incorporated in the Turks and Caicos Islands and having its registered office at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies ("**InfraCo**")
- (4) **INTERHEALTH CANADA CLINICAL SERVICES (TCI) LIMITED** (Company number 11321) a company incorporated in the Turks and Caicos Islands and having its registered office at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies ("**ClinCo**")
- (5) **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** (Company number 11320) whose registered office is at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks & Caicos Islands, British West Indies ("**Construction & Services Co**")
- (6) **JOHNSTON INTERNATIONAL LIMITED** (Company number 2418) whose registered office is at Governor's Road, Leeward, Providenciales, Turks & Caicos Islands, British West Indies (**the "Building Contractor"**)
- (7) **ROTARY (INTERNATIONAL) LIMITED** (Company number NI012244) whose registered office is at 5 Trench Road, Mallusk Industrial Estate, Newtonabbey, Co.Antrim, BT36 4XA, in its capacity as a counterparty to the MEP Design & Construction Subcontract;
- (8) **CIVIL & STRUCTURAL ENGINEERING LIMITED** (Company number 7514) whose registered office is at the Saltmills Plaza, Grace Bay, Providenciales, Turks

and Caicos Islands, British West Indies in its capacity as a counterparty to a Design Appointment;

- (9) **DEVEREUX ARCHITECTS LIMITED** (Company number 4173349) whose registered office is at 200 Upper Richmond Road, London, SW15 2SH7, in its capacity as a counterparty to a Design Appointment;
- (10) **INTERHEALTH CANADA (TCI) LIMITED** (Company number 11069) of Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks & Caicos Islands (**the "Ringfenced Services Provider"**); and
- (11) **OXFORD VENTURES LIMITED** (Company number 172126) of Craigmur Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands

## **BACKGROUND**

- (A) TCIG has agreed with InfraCo and ClinCo that together they will provide all health services on the Islands with two hospitals (one on Grand Turk, one on Providenciales) that can provide a broader depth of services than currently exist. In addition, it is expected that whilst TCIG will retain overall responsibility for the management of the Treatment Abroad Programme ("**TAP**"), where necessary ClinCo will manage the referral of patients abroad under TAP. This procurement will include the provision of all primary and secondary health services for TCI including the design, construction, financing, equipping, staffing, maintenance and operation of the Facilities for a period of 25 years (the "**Project**").
- (B) TCIG, InfraCo and ClinCo have entered into an agreement dated on or about the date of this Agreement which sets out the terms and conditions upon which InfraCo and ClinCo shall carry out the Project ("**the Project Agreement**").
- (C) The services will be provided under the Project Agreement at two new Facilities to be constructed by InfraCo upon land owned by TCIG and leased to InfraCo at a peppercorn rent. The right of TCIG to allow ClinCo to enter the Sites in order to perform the ClinCo Obligations is reserved in the Lease.
- (D) The parties intend that all disputes arising from the Project Agreement shall be settled by arbitration in a single forum where appropriate in the interests of costs and to avoid multiple proceedings and/or litigation before the courts.

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS**

- 1.1 "**The Parties**": shall mean the signatories of this Arbitration Agreement;

- 1.2 All other definitions used in the Project Agreement shall have the same meaning in this Agreement, unless and to the extent that they are separately defined in this Agreement.

2. **SCOPE OF THIS AGREEMENT**

- 2.1 The Parties agree that where any two or more of them enter into a contract (other than a contract to which a third party is also a party), that contract will be subject to arbitration pursuant to this Agreement.

3. **REFERENCE OF DISPUTES**

- 3.1 The Parties agree that all disputes, claims or differences arising out of or in connection with the Project shall, subject to the provisions of Schedule 5 (Dispute Resolution Procedure) of the Project Agreement (where applicable), be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("**the ICC Rules**") by a three-member tribunal appointed by the International Court of Arbitration of the International Chamber of Commerce ("**the ICC Court**"). The Parties agree that in any proceeding commenced under this Agreement, all Arbitrators shall be appointed directly by the ICC Court without recourse to National Committees as if the provisions of Articles 10(2) of the ICC Rules were applicable and as if all parties were unable to agree a method for constitution of the tribunal.

- 3.2 The Parties agree that any tribunal seised of a dispute hereunder shall have the power to join any party under this Agreement or to consolidate any separate proceedings commenced under this Agreement where the tribunal considers that such joinder or consolidation is warranted taking into consideration cost effectiveness and the avoidance of multiple proceedings relating to common or related legal and factual issues. In the event that more than one tribunal is appointed, an application for joinder or consolidation is to be made to the tribunal earliest seised of the relevant disputes and that tribunal will decide issues of consolidation and joinder. The parties who may be joined are limited to each and any of the following:

- 3.2.1 TCIG;
- 3.2.2 Guarantor;
- 3.2.3 InfraCo;
- 3.2.4 ClinCo;
- 3.2.5 Construction & Services Co;
- 3.2.6 Building Contractor;

- 3.2.7 any member of the Design Team; and
- 3.2.8 Ringfenced Services Provider.
- 3.3 Where a party wishes to request that an Arbitral Tribunal consolidate two or more proceedings, or to make a request for joinder of another party, a copy of the application shall be sent to all parties concerned in each of the proceedings and the Arbitral Tribunal, if any.
- 3.4 Upon joinder or consolidation, the Arbitral Tribunal shall ensure that all parties receive copies of correspondence, submissions and materials already filed in the arbitration, provided always that the Arbitral Tribunal will have discretion to order limited communication of relevant materials in circumstances where parties have been joined or proceedings consolidated only in respect of discrete and separable issues. In exercising its discretion, the Arbitral Tribunal will be asked to take into account the provisions as to confidentiality contained in clause 43 of the Project Agreement. Any party may, at any time, apply for more complete communication.
4. **PLACE**
- 4.1 The place of arbitration shall be Paris. The place of any meetings, hearings and deliberations shall be determined in accordance with Article 14 of the ICC Rules.
5. **LANGUAGE**
- 5.1 The language of arbitration shall be English.
6. **GOVERNING LAW**
- 6.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be construed and governed in accordance with the laws of the TCI.
7. **COUNTERPARTS**
- 7.1 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** this Agreement was executed the day and year first above written

Executed for and on behalf of the **CROWN**  
**(IN RIGHT OF ITS GOVERNMENT IN**  
**THE TURKS AND CAICOS ISLANDS)**  
acting by its duly authorised  
representatives:

Hon. Floyd Basil Hall  
Deputy Premier and Minister of  
Finance and National Insurance

Hon. Lillian Elaine Boyce  
Minister of Health and Human  
Services

Executed by  
**INTERHEALTH CANADA LIMITED**  
acting by:

Authorised Signatory

Authorised Signatory

The common seal of  
**INTERHEALTH CANADA**  
**INFRASTRUCTURE (TCI) LIMITED**  
was duly affixed to this Agreement in the  
presence of:

Director

Director/Secretary

The common seal of  
**INTERHEALTH CANADA CLINICAL**  
**SERVICES (TCI) LIMITED**  
was duly affixed to this Agreement in the  
presence of:

Director

Director/Secretary

The common seal of **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** was duly affixed to this Agreement in the presence of:

Director

Director/Secretary

The common seal of **INTERHEALTH CANADA (TCI) LIMITED** was duly affixed to this Agreement in the presence of:

Director

Director/Secretary

Executed by **DEVEREUX ARCHITECTS LIMITED** acting by:

Director

Director/Secretary

The Common seal of **JOHNSTON INTERNATIONAL LIMITED** was duly affixed to this Agreement in the presence of:

Director

Director/ Secretary

The Common Seal of **CIVIL & STRUCTURAL ENGINEERING LIMITED** was duly affixed to this Agreement in the presence of:

Director

Director/Secretary

The Common Seal of **OXFORD VENTURES LIMITED** was duly affixed to this Agreement in the presence of:

Director

Director/Secretary

Executed by **ROTARY (INTERNATIONAL) LIMITED** acting by:

Director

Director/Secretary