

DATED 11 January 2008

BLP

**INTERHEALTH CANADA LIMITED**  
as Guarantor

**INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED**  
as Beneficiary

**INTERHEALTH CANADA  
CONSTRUCTION & SERVICES (TCI) LIMITED**  
as Contractor

**FM CONTRACT CORPORATE GUARANTEE**

relating to arrangements for the provision of certain non-clinical facilities management services in connection with the Turks & Caicos Islands Hospitals Project

We hereby certify this to be  
a true copy of the original  
*Martin Lambie 11/2/2008*  
Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London EC4R 9HA

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**PARTIES**

- (1) **INTERHEALTH CANADA LIMITED**, a corporation under the laws of the Province of Ontario (having Ontario Corporation Number 1066939) whose registered office is at Suite 600, 357 Bay Street, Toronto, Ontario, Canada M5H 2T7 (in its capacity as Guarantor which expression shall include successors in title and any other guarantor who has become a party hereto pursuant to Clause 5.2 (the "Guarantor");
- (2) **INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED**, (Company Number 11772) a corporation under the laws of the Turks & Caicos Islands, whose registered address is at c/o Caribbean Management Services Limited, PO Box 127, Charter House, The Centre Complex, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies (the "**Beneficiary**" which expression shall include successors in title and any other guarantor who has become a party hereto pursuant to Clause 5.2); and
- (3) **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** (Company Number 11320), a corporation under the laws of the Turks & Caicos Islands, whose registered address is at c/o Caribbean Management Services Limited, PO Box 127, Charter House, The Centre Complex, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies (the "**Contractor**").

**BACKGROUND**

- (A) The Beneficiary has entered into the Project Agreement with The Turks & Caicos Islands Government (the "**TCIG**") pursuant to which the Beneficiary has (inter alia) agreed to provide certain works and services.
- (B) The Contractor has entered into the Guaranteed Contract (as defined below), pursuant to which the Contractor has (inter alia) agreed to provide certain non-clinical facilities management.
- (C) The Funder (as defined in the Guaranteed Contract) has advanced funds to the Beneficiary in relation to the Project in accordance with the terms of a Credit Agreement (as defined in the Guaranteed Contract).
- (D) As a condition of entry into the Guaranteed Contract and the advance of funds pursuant to the Credit Agreement, the Guarantor has agreed to guarantee the due performance of the Contractor's obligations under the Guaranteed Contract to the Beneficiary in accordance with this agreement (the "**Agreement**").

**Witnesseth** as follows:

In consideration of payment of US\$10 (ten US Dollars) to the Guarantor by the Beneficiary (receipt of which is hereby acknowledged) it is agreed as follows:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 Unless the contrary intention appears, the defined terms set out in the Recitals and the following definitions apply:

**FM Bond** means an on-demand bond issued as credit enhancement for the benefit of the

Beneficiary in accordance with clause 3.4B of the Guaranteed Contract;

**Guaranteed Contract**

means the contract set out in Schedule 1;

**Obligations**

shall have the meaning given in Clause 2.1 of this Agreement.

- 1.2 The clause headings in this Agreement are for the convenience of the parties only and do not affect its interpretation.
- 1.3 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.4 Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.5 Where the context so admits, references in this Agreement to a clause are to a clause of this Agreement.
- 1.6 References in this Agreement to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.
- 1.7 Capitalised terms in this Agreement shall, unless otherwise defined herein, have the same meaning as given to them in the Guaranteed Contract (as the case may be).

**2 GUARANTEE**

- 2.1 The Guarantor in accordance with and subject to the provisions of this Agreement:
- (a) irrevocably and unconditionally guarantees to the Beneficiary, both as Guarantor and as if the Guarantor were sole principal obligor, the due and punctual performance and observance by the Contractor of each and all the duties, obligations, covenants, warranties and undertakings of the Contractor under and pursuant to the Guaranteed Contract (the "**Obligations**") when such Obligations or any part of them shall become due and performable according to the provisions of the Guaranteed Contract;
  - (b) covenants with and undertakes to the Beneficiary to fully perform and observe, or procure the performance and observation of such Obligations, if the Contractor shall fail in any respect to perform and observe the Obligations in accordance with the provisions of the Guaranteed Contract; and
  - (c) (without prejudice to the generality of the foregoing) as a separate primary obligation, covenants with and undertakes to the Beneficiary upon demand made in accordance with this Agreement to pay and make good to the Beneficiary forthwith (and fully to indemnify the Beneficiary from and against) all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law occasioned to or

suffered by the Beneficiary arising out of or by reason of any default of the Contractor in respect of the Obligations.

**3 DEMAND**

3.1 Each and every demand by the Beneficiary upon the Guarantor from time to time hereunder shall:

- (a) be in writing;
- (b) state the nature of the default under the Guaranteed Contract and, where relevant, the amount for which payment is demanded and the name of the bank and account number to which payment is to be made;
- (c) state the nature of the Obligations to which the claim relates; and
- (d) state the nature of any damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law occasioned to or suffered by the Beneficiary arising out of or by reason of any default in respect of the relevant obligations, being the Obligations (as the case may be) pursuant to the Guaranteed Contract.

3.2 This Agreement shall remain in full force and effect until the expiry of all limitation periods applicable to all or any claims under the Guaranteed Contract (provided that to the extent that any claim has been made under the Guaranteed Contract prior to the expiry of such period by way of claim or other legal process, but subject to any ultimate limitation period imposed by applicable law, this Agreement shall remain in full force and effect in relation to any such claim until the withdrawal or satisfaction of such claim or the dismissal of it by a final and binding non-appealable order of a court of competent jurisdiction) after which time the Guarantor's obligations hereunder shall cease and determine whether or not this Agreement has been returned to the Guarantor.

3.3 It shall not be necessary (prior to making demand under this Agreement) for the Beneficiary to make demand or to take proceedings against or take any action to enforce any rights against the Contractor or any other person and the Guarantor agrees that the Beneficiary in the enforcement of its rights hereunder may proceed against the Guarantor as if it were named as the Contractor in the Guaranteed Contract.

3.4 Any number of demands by the Beneficiary may be served from time to time on the Guarantor under and in accordance with this Agreement.

3.5 The Guarantor shall pay interest to the Beneficiary after as well as before judgment on all sums demanded under this Agreement, from the date of demand until the date of payment, at the Default Interest Rate (as defined in the Project Agreement).

3.6 Subject to Clause 3.7, the Guarantor shall have no greater liability under this Agreement than it would have had had it been named joint obligor with the Contractor pursuant to the Guaranteed Contract.

3.7 The Beneficiary acknowledges and agrees that the Guarantor shall not be liable under this Agreement in respect of any liability of the Contractor if and to the extent it has previously been satisfied by payment by the bond provider pursuant

to the FM Bond and such payments made by the bond provider to the Beneficiary pursuant to the FM Bond shall be taken into account when assessing the Guarantor's liability under this Agreement.

#### 4 **PRESERVATION OF RIGHTS**

- 4.1 This Agreement is and shall at all times be a continuing guarantee and, subject to Clause 3.2 and 3.6 above, shall remain in full force and effect until all the Obligations have been irrevocably satisfied or performed in full and is in addition to and shall be independent of any other security which the Beneficiary may at any time hold in respect of any of the Obligations.
- 4.2 The Guarantor shall not be exonerated from its liability under this Agreement nor shall such liability nor the rights, power and remedies conferred upon the Beneficiary be lessened, impaired, discharged or otherwise affected by:
- (a) the extent to which it may be or become illegal, invalid, void, voidable or unenforceable or ineffective in any respect for the Contractor to carry out any obligation under the Guaranteed Contract provided that it is expressly agreed that the Guarantor shall have no obligation to carry out such obligation where to do so would be illegal in any respect;
  - (b) any incapacity or lack of power, authority or legal personality of or dissolution of or change in the members or status of the Contractor or any other person;
  - (c) the bankruptcy, insolvency, liquidation, administration, reorganisation, dissolution, amalgamation, reconstruction or any analogous proceeding relating to the Contractor or any other person or any change in the status, constitution, name, function, control or ownership of the Contractor or any other person;
  - (d) any termination, amendment, variation, novation or supplement to or of the Guaranteed Contract (whether or not such termination, amendment, variation, novation or supplement shall increase the Obligations or the liability of the Guarantor under this Agreement) or by time being given to the Contractor by the Beneficiary or any other person, or by any waiver, disclaimer, concession, arrangement or other indulgence being granted or made or agreed to be granted or made by the Beneficiary or any other person to or with the Contractor in respect of the Obligations or by anything that the Beneficiary or the Contractor or any other person may do or omit or neglect to do (including but without limitation the assertion or failure or delay to assert any right or remedy of the Beneficiary or any other person or the pursuit of any rights or remedies by the Beneficiary or any other person or the giving by the Contractor of any security or the release, modification or failure, delay or forbearance in enforcing or exchange of any such security) which but for this provision might exonerate the Guarantor; or
  - (e) any other act, event or omission which but for this Clause might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Agreement or any of the rights, powers or remedies conferred upon the Beneficiary by this Agreement or by law.
- 4.3 The Guarantor shall not (so long as the Contractor has any actual or contingent obligations pursuant to the Guaranteed Contract) by reason of performance by the

Guarantor of its obligations under this Agreement or by any other means or on any ground:

- (a) claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Contractor or its liquidator or claim any set-off or counterclaim against the Contractor; or
- (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Contract or otherwise; or
- (c) except for the account of the Beneficiary, prove in any proceedings against the Contractor in respect of any payment by the Guarantor hereunder or otherwise due from the Contractor on any account whatsoever or be entitled to claim or have the benefit of any set-off, counterclaim or proof against or dividend, composition or payment by the Contractor or of any security which the Beneficiary holds or may hold for any money or liabilities whatsoever due or incurred by the Contractor to the Beneficiary and in case the Guarantor receives any sums from the Contractor (whether in respect of any payment of the Guarantor under this Agreement or otherwise), the Guarantor shall hold such monies in trust for the Beneficiary and shall immediately transfer or pay such monies to the Beneficiary so long as any sums are payable (contingently or otherwise) under the Guaranteed Contract.

- 4.4 In the event the Guarantor receives any sums from the Contractor in respect of any payment under this Agreement, the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this Agreement in relation to the Contract.
- 4.5 For the benefit of the Beneficiary and the Contractor, the Guarantor waives any right or remedy that it has or may have to subrogation, indemnification or payment on any other basis by the Contractor and any other remedy against the Contractor (each a "Relevant Right") by reason of or in connection with the performance of the Guarantor's obligations under this Agreement or the Contractor's obligations in circumstances where the Contractor promotes, enters into, or implements a compromise or arrangement with creditors (including a voluntary arrangement (as defined in section 1(1) of the English law Insolvency Act 1985)) or any procedure in any other jurisdiction having the same or similar effect or consequence. Damages shall not be an adequate remedy for the Beneficiary or the Contractor in respect of a breach of this clause and the parties shall consent to any application brought by the Beneficiary or the Contractor for injunctive relief to prevent any such Relevant Right being enforced.
- 4.6 The Guarantor shall not hold any security from the Contractor without prior written consent of the Beneficiary. The Guarantor shall hold any security held by it in breach of this provision in trust for the Beneficiary.
- 4.7 If any disposition or payment is avoided, set aside or ordered to be refunded by the Beneficiary to the Contractor, the Beneficiary shall be entitled to enforce this Agreement against the Guarantor as if such release, discharge or settlement had not occurred and any such disposition or payment had not been made and any discharge or settlement between the Contractor and the Beneficiary shall be conditional on such entitlement.
- 4.8 All sums payable by the Guarantor under this Agreement shall be paid to the Beneficiary in full:

- (a) without any set-off or counterclaim whatsoever;
- (b) free and clear of all deductions or withholdings whatsoever save only as may be required by law; and
- (c) in the currency in which the Obligations were due, owing or incurred.

4.9 If any deduction or withholding is required by any law from any payment due from the Guarantor under this Agreement the sum payable by the Guarantor shall be increased so that, after making the minimum deduction or withholding so required, the Guarantor shall pay to the Beneficiary, and the Beneficiary shall receive and be entitled to retain on the due date for payment, a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be made.

4.10 The Contractor joins in this Agreement solely to take the benefit, right and/or entitlement and/or enforce the provisions of Clause 4.5 of this Agreement.

## 5 **ASSIGNMENT**

5.1 In the event that any of the Guaranteed Contract is assigned, novated or otherwise transferred, references in this Agreement to the **Guaranteed Contract** shall, where appropriate, refer to the Guaranteed Contract as assigned, novated or otherwise transferred.

5.2 The Beneficiary shall be entitled at any time to assign the benefit of this Agreement by way of security in accordance with the Funding Agreements, and to any party to whom benefit of the Guaranteed Contract is assigned, without the consent of the Guarantor being required. Notice of any such assignment shall be delivered to the Guarantor. The Guarantor consents to and acknowledges that it has received notice of the assignment by way of security under the Security Documents to the Security Trustee of all or any of Beneficiary's rights, title, benefit and interest under the Guaranteed Contract and this Agreement and the exercise by the Security Trustee of any rights or powers arising from such assignment.

5.3 The Guarantor shall not be entitled at any time to transfer its right, title, interest or obligations in or under this Guarantee to any person without the Beneficiary's consent (in its absolute discretion).

5.4 Notice of assignment by way of security shall be provided to the Guarantor in the form set out in Schedule 2.

## 6 **PARTIAL INVALIDITY**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

## 7 **LAW**

This Agreement shall be governed by and construed in accordance with laws of the Province of Ontario and the federal laws of Canada applicable therein.



8        **JURISDICTION**

The courts of the Province of Ontario shall have non-exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement.

9        **NOTICES**

Any notice to be given under this Agreement shall be deemed to be duly given to:

- (a)        **Guarantor** - Interhealth Canada Limited, having its registered office at Suite 600, 357 Bay Street, Toronto, Ontario, Canada M5H 2T7, for the attention of:    Company Secretary (Fax Number 416-362-7633); and
- (b)        **Beneficiary** - c/o Caribbean Management Services Limited, PO Box 127, Charter House, The Centre Complex, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies for the attention of: Company Secretary (Fax Number +1 649 946 4734),

and in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.

10       **REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby warrants, represents and undertakes to the Beneficiary that:

- (a)        it is duly incorporated under the laws of the Province of Ontario, Canada, possesses the capacity to sue and be sued in its own name and has the power to carry on its business and to own its property and other assets;
- (b)        it has power to execute, deliver and perform its obligations under this Agreement and all necessary corporate, shareholder and other action and consents have been taken or, as the case may be, received to authorise the execution, delivery and performance of this Agreement; and
- (c)        its obligations under this Agreement constitute its legal, valid and binding obligations and are in full force and effect.

11       **THE GUARANTOR**

The liability hereunder of the Guarantor shall not be avoided, invalidated or impaired by reason of the invalidity, unenforceability or impairment of any other guarantee given by the Guarantor.

**Schedule 1**  
**Guaranteed Contract**

Facilities Management Sub-Contract for the provision of certain facilities management managed services in relation to the Turks & Caicos Islands Hospitals Project (Non-Clinical Services Only) entered into on or about the date of this Agreement between (i) Interhealth Canada Infrastructure (TCI) Limited and (ii) Interhealth Canada Construction & Services (TCI) Limited.

## Schedule 2

### Part 1

#### Form of Notice of Security Assignment

To: [insert details of the Guarantor]

Date:

Dear Sirs

**Re: The Guarantee dated [ ] issued by Interhealth Canada Limited (the "ICL") in favour of the Beneficiary (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 Beneficiary 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 Beneficiary 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 Beneficiary's interest under the Guarantee; and
  - (i) all payments under or arising in favour of the Beneficiary 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 Beneficiary 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

Notwithstanding the assignment referred to above or the making of any payment by you to the Security Trustee pursuant to it, the Beneficiary shall remain liable under the Guaranteed Contract (as defined in the Guarantee) to perform all the obligations assumed by it under the Guaranteed Contract and neither the Security Trustee nor any receiver, 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 Guaranteed 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 Beneficiary 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 9 of the Guarantee should instead be made to the Security Trustee at the above address.

Yours faithfully

For and on behalf of

[Beneficiary]

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.

.....

for and on behalf of [the Guarantor]

**Schedule 2**

**Part 2  
Form of Enforcement Notice**

To: [insert details of the Guarantor]

Date:

Dear Sirs

**Re: The Guarantee dated [ ] issued by Interhealth Canada Limited in favour of the Beneficiary (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 Beneficiary'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]*

We acknowledge receipt of this Notice of Assignment

.....

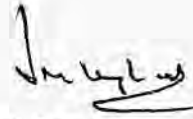
for and on behalf of Interhealth Canada Limited

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

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

Executed by  
**Interhealth Canada Limited**

)  
)  
)  
)  
)




Authorised Signatory

The Common Seal of  
**Interhealth Canada Infrastructure  
(TCI) Limited**  
was duly affixed to this Agreement and the  
same was delivered in the presence of:

)  
)  
)  
)  
)

Director

Director



The Common Seal of  
**Interhealth Canada Construction  
& Services (TCI) Limited**  
was duly affixed to this Agreement and the  
same was delivered in the presence of:

)  
)  
)  
)  
)

Director

Director

