

**Private & Confidential**

DATED

11<sup>th</sup> January

2007/8

BLP

**INTERHEALTH CANADA LIMITED**

as Guarantor

**THE CROWN (IN RIGHT OF ITS GOVERNMENT  
IN THE TURKS AND CAICOS ISLANDS)**

as Beneficiary

**RINGFENCED SERVICES SUPPORT DEED  
CORPORATE GUARANTEE**

relating to arrangements for the provision of certain clinical and equipment services in connection with the Turks & Caicos Islands Hospitals Project

## Contents

<b>Clause</b>	<b>Name</b>	<b>Page</b>
1	Definitions and Interpretation .....	2
2	Guarantee .....	3
3	Demand .....	4
4	Preservation of Rights .....	5
5	Assignment.....	7
6	Partial Invalidity .....	7
7	Law .....	7
8	Jurisdiction .....	8
9	Defences .....	8
10	Notices .....	8
11	Representations and Warranties.....	8
12	The Guarantor .....	8

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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 (the **Guarantor**); and
- (2) **THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)** of Government Compound, Grand Turk, Turks & 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).

**BACKGROUND**

- (A) Interhealth Canada Clinical Services (TCI) Limited (the **Provider**) has entered into the Project Agreement with the Beneficiary and Interhealth Canada Infrastructure (TCI) Limited (**InfraCo**) pursuant to which the Provider has (inter alia) agreed to provide clinical and equipment services.
- (B) The Provider has entered into the ringfenced services support deed with the Beneficiary, Interhealth Canada (TCI) Limited (the **Contractor**) and the Guarantor pursuant to which the Guarantor has agreed to provide a parent company guarantee to the Beneficiary to support the Contractor's payment obligations in relation to the compensation amounts and certain third party liabilities set out in the ringfenced services support deed (the **Ringfenced Services Support Deed**), up to the Maximum Guaranteed Amount (as defined below).
- (C) The Guarantor has agreed to guarantee the due performance of the Contractor's obligations under the Ringfenced Services Support Deed 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:

<b>Guarantee Expiry Date</b>	means the Expiry Date (as defined in the Project Agreement).
<b>Guaranteed Contract</b>	means the contract set out in Schedule 1.
<b>Maximum Guaranteed Amount</b>	means the single amount of the "Maximum Ringfenced Compensation Sum", as defined in the Ringfenced Services Support Deed.
<b>Obligations</b>	shall have the meaning given in Clause 2.1

of this Agreement.

**Provider**

means Interhealth Canada Clinical Services (TCI) Limited (company number 11321), a company under the laws of the Turks & Caicos Islands, whose registered address is Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies.

- 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 the payment obligation pursuant to the Guaranteed Contract to pay the Ringfenced Compensation Sum and any amounts in respect of Third Party Liabilities (other than Excluded Third Party Liabilities), together with any interest payable on those sums pursuant to clause 5.1.2 of 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 Provider 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 Provider in respect of the Obligations.

**PROVIDED ALWAYS** that the Beneficiary shall not be entitled to make a demand under this Agreement:

- (i) for an amount in excess of the Maximum Guaranteed Amount;
- (ii) after the Guarantee Expiry Date;
- (iii) prior to termination of the ClinCo's Obligations for ClinCo Breach (as defined in the Ringfenced Services Support Deed); and/or
- (iv) for an amount in respect of Excluded Third Party Liabilities.

### 3 **DEMAND**

3.1 Subject to Clause 3.4, a demand made by the Beneficiary upon the Guarantor from time to time hereunder shall:

- (a) be in writing and certified by an authorised signatory of the Beneficiary;
- (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 relevant Guaranteed Contract.

3.2 This Agreement shall remain in full force and effect until the Guarantee Expiry Date (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 Only one (1) demand may be served by the Beneficiary 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 The Beneficiary acknowledges that the maximum liability of the Contractor and the Guarantor (in aggregate) under the Guaranteed Contract and this Agreement (save in respect of Third Party Liabilities other than Excluded Third Party Liabilities) shall not exceed the Maximum Guaranteed Amount.
- 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 Ringfenced Services Bond and such payments made by the bond provider to the Beneficiary pursuant to the Ringfenced Services 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 Clauses 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 any other person to carry out the same obligation and 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.
- 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.

## 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 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 which consent shall not be unreasonably withheld but provided that the Beneficiary shall be entitled to withhold consent where (a) the covenant strength of the proposed assignee is materially worse than that of the Guarantor or (b) the jurisdiction in which the proposed assignee is based prejudices to a material extent the Beneficiary's rights to enforce this Agreement.

## 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 the laws of the Province of Ontario and the federal laws of Canada applicable therein.



8 **JURISDICTION**

The courts of the Province of Ontario, Canada shall have 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 and for such purposes the parties to this Agreement irrevocably submit to the exclusive jurisdiction of such courts.

9 **DEFENCES**

In any action by the Beneficiary for a breach of this Agreement, the Guarantor shall have available to it all defences, counterclaims and set-off as may have been available to the Contractor under the terms of the Guaranteed Contract.

10 **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** - The Crown (in right of its Government in the Turks and Caicos Islands), c/o Attorney General's Chambers, South Base, Grand Turk, Turks & Caicos Islands, for the attention of: the Attorney General (Fax Number +1 649 946 2588),

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.

11 **REPRESENTATIONS AND WARRANTIES**

As at the date of this Agreement, 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.

12 **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.

**13 LIMITATION OF ACTIONS**

13.1 No party to this Agreement shall be entitled to commence any dispute, claim or proceedings against any other party in respect of this Agreement or the Project following the later to occur of either of the below events:

- (a) the expiry of twelve (12) years from the Guarantee Expiry Date or the Termination Date (whichever is earlier); or
- (b) the expiry of six (6) years from the date on which the party first had both the knowledge required for bringing any dispute, claim or proceedings and a right to bring such an action.

13.2 For the purposes of Clause 13.1(b) the expression "knowledge required for bringing any dispute, claim or proceedings" means knowledge of (a) the material facts about the dispute, claim or proceedings and (b) that the dispute, claim or proceedings was attributable in whole or in part to the act or omission which is alleged to constitute the relevant cause of action.

13.3 For the purposes of Clause 13.1 a party's "knowledge" includes knowledge which such party might reasonably have been expected to acquire:

- (a) from the facts observable or ascertainable by it; or
- (b) from facts ascertainable by it with the help of appropriate expert advice which it is reasonable for it to seek;

provided that a party shall not be taken by virtue of this Clause 13 to have knowledge of a fact ascertainable only with the help of expert advice, as long as it has taken all reasonable steps to obtain (and where appropriate, to act on) that advice.

**In Witness whereof this Agreement has been executed by the Guarantor and the Beneficiary on the day and year first above written.**

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

The Ringfenced Services Support Deed entered on or about the date of this Agreement amongst (i) Interhealth Canada Clinical Services (TCI) Limited (ii) The Crown (in right of its Government in the Turks and Caicos Islands) (iii) Interhealth Canada (TCI) Limited (iv) Interhealth Canada Limited;

**IN WITNESS WHEREOF INTERHEALTH CANADA LIMITED** acting by its duly authorised representatives has executed this Agreement the day and year first above written.

Executed by **Interhealth Canada Limited**  
acting by:



Authorised Signatory

**IN WITNESS WHEREOF THE CROWN (IN RIGHT OF ITS GOVERNMENT OF THE TURKS AND CAICOS ISLANDS)** acting by its duly authorised representatives has executed this Agreement 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) by its duly authorised representatives:



Floyd Basil Hall

**Deputy Premier and Minister of Finance and National Insurance**



Lillian Elaine Boyce

**Minister of Health and Human Services**