

DATED 11 January

2008

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

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

**INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED**

**INTERHEALTH CANADA LIMITED**

**FM DEED OF COLLATERAL WARRANTY AND GUARANTEE**

relating to a project for

the design, construction, operation and maintenance of hospitals on

Grand Turk and Providenciales, Turks & Caicos Islands

DATED

11 January 2008

**PARTIES**

- |   |                        |                                                                                                                                                                                                                                                                                               |
|---|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Contractor             | <b>INTERHEALTH CANADA CONSTRUCTION &amp; SERVICES (TCI) LIMITED</b> (company no 11320) 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; |
| 2 | Beneficiary            | <b>THE CROWN (IN RIGHTS OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)</b> of Government Compound, Grand Turk, Turks & Caicos Islands, British West Indies;                                                                                                                               |
| 4 | Provider               | <b>INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED</b> (Registered No 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;           |
| 5 | Contractor's Guarantor | <b>INTERHEALTH CANADA LIMITED</b> (Ontario Corporation Number 1066939) whose registered office is at Suite 600, 357 Bay Street, Toronto, Ontario, Canada, M5H 2T7.                                                                                                                            |

**RECITALS**

- A The Beneficiary and the Provider have entered into a Project Agreement dated on or about the date of this agreement for the provision of primary and secondary healthcare services for the Turks and Caicos Islands, including the design and construction of these facilities.
- B The Provider and the Contractor have entered into a facilities management contract dated on or about the date of this agreement for the provision of non-clinical facilities management services of the facilities.
- C The Contractor's Guarantor has provided a guarantee of the obligations of the Contractor under the Contract.
- D As a condition of and in consideration of the foregoing, the Contractor has agreed to enter into this agreement for the benefit of the Beneficiary.

**OPERATIVE PROVISIONS**

1 **Definitions and interpretation**

*Beneficiary* includes any person to whom the benefit of this agreement and/or any rights arising under it have been validly assigned in accordance with clause 5;

*Contract* the facilities management contract dated on or about the date of this agreement between the Provider (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has agreed to carry out certain non-clinical

facilities management services;

*Funder* FirstCaribbean International Bank (Bahamas) Limited of Providenciales, Turks & Caicos Islands;

*Project Agreement* the project agreement between Interhealth Canada Clinical Services (TCI) Limited, the Beneficiary and the Provider dated on or around the date of the Contract for the provision of primary and secondary healthcare services in the Turks and Caicos Islands;

*Proprietary Material* all drawings, details, plans, specifications, schedules, reports, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in the course of or as a result of carrying out of the Services; and

*Senior Funders* means as set out in the Project Agreement.

- 1.1 The clause headings in this agreement are for the convenience of the parties only and do not affect its interpretation.
- 1.2 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.3 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.
- 1.4 Where the context so admits, references in this agreement to a clause are to a clause of this agreement.
- 1.5 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.
- 1.6 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.
- 1.7 Capitalised terms in this agreement shall, unless otherwise defined herein, have the same meaning as given to them in the Contract (as the case may be).

## **2 Contractor's warranties**

- 2.1 The Contractor warrants to the Beneficiary that it shall perform all its obligations under or arising out of the Contract in accordance with the terms of the Contract, provided always that:
  - 2.1.1 the Contractor shall owe no greater obligations to the Beneficiary under this agreement than it would owe had the Beneficiary been named as a joint Provider with the Provider under the Contract;
  - 2.1.2 the Contractor shall be entitled in any proceedings under this agreement to rely on any limitation in the Contract and to raise the equivalent rights in defence of

liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint Provider with the Provider under the Contract.

2.2 The Contractor extends to the Beneficiary the benefit of all warranties on the part of the Contractor contained in the Contract.

2.3 The Contractor acknowledges that, subject to clause 2.1.2 the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Contractor under this clause 2.

### **3 Subordination of Beneficiary's Rights**

3.1 The Beneficiary agrees that it shall not exercise or seek to make any demand or claim under the guarantee contained in this agreement or exercise any of its other rights under this agreement until the earlier of:

3.1.1 the date on which the Senior Funders have been repaid in full; or

3.1.2 the date on which the Funder has given its written consent to such exercise.

### **4 Use of Proprietary Material**

4.1 The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Services to be carried out by the Contractor.

4.2 The licence referred to in clause 4.1 carries the right to grant sub-licences on the same terms as provided for in this agreement and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor's employment under the Contract.

4.3 The Contractor shall not be liable to the Beneficiary for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared.

### **5 Assignment**

No party may assign the benefit of this agreement and/or any rights arising under it to any person without the consent of the other Parties.

### **6 Guarantee**

6.1 Subject always to the provisions of Clause 3, the Contractor's Guarantor irrevocably and unconditionally guarantees to the Beneficiary, following termination of the Project Agreement:

6.1.1 the full due and punctual performance by the Contractor of all of the obligations on the part of the Contractor under or pursuant to the Contract ("the Terms");

6.1.2 (as a separate stipulation and as primary obligor) that if the Contractor shall in any respect commit any breach of or fail to fulfil any of the terms, then the Contractor's Guarantor will forthwith perform and fulfil (or cause to be performed and fulfilled) in place of the Contractor each and every term in respect of which the Contractor has defaulted or which is unfulfilled by the Contractor as if the Contractor's Guarantor instead of the Contractor were expressed to be the Contractor under the Contract; and

6.1.3 the Contractor shall be liable to the Beneficiary for all direct losses, damages, expenses (including without limitation all expenses legal fees and taxes incurred by the Beneficiary justifiably seeking to enforce any of the above), liabilities, claims, cost or proceedings which the Beneficiary may suffer or incur by reason of the said failure or breach

provided that the Contractor's Guarantor shall owe no greater obligations to the Beneficiary under this agreement than it would owe had it been named as a joint contractor with the Contractor under the Contract.

6.2 The liability of the Contractor's Guarantor under this agreement shall in no way be discharged, lessened or affected by:

6.2.1 the insolvency or liquidation, reorganisation, change in the status, function, control or ownership of the Contractor or the taking of any action by any person holding rights in relation to the assets of the Contractor by way of security;

6.2.2 any time given or forbearance or other indulgence shown by the Provider to the Contractor;

6.2.3 the assertion or failure to assert or delay in asserting any rights or remedies of the Provider or the pursuit of any right or remedy of the Provider;

6.2.4 the giving by the Contractor of any security or the release, modification or exchange of any such security or the liability of any person; or

6.2.5 any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Contractor's Guarantor.

6.3 The Contractor's Guarantor shall not by any means or on any ground seek to recover from the Contractor (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise prove in respect of any payment made by the Contractor's Guarantor under this agreement except for the benefit of the Beneficiary nor be entitled to claim or have the benefit of any money or liability owed by the Contractor to the Beneficiary except for the benefit of the Beneficiary. If the Contractor's Guarantor shall receive any monies from the Contractor in respect of any payment made by the Contractor's Guarantor under this agreement, the Contractor's Guarantor shall hold such monies in trust for the Beneficiary for so long as the Contractor's Guarantor shall remain liable or contingently liable under this agreement.

6.4 The Beneficiary acknowledges and agrees that the Contractor's Guarantor shall not be liable under this agreement in respect of any liability of the Contractor if and to the extent that it has been previously satisfied by payment of any demand made by the Provider and/or Funder and such payment made by the Contractor's Guarantor shall be taken into account when assessing the Contractor's Guarantor's liability under this agreement and/or the Contractor's liability (including without limitation any unspent caps on liability under the Contract).

## 7 **Limitation of actions**

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

7.1.1 the expiry of twelve (12) years from the Expiry Date or the Termination Date (whichever is earlier); or

7.1.2 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.

7.2 For the purposes of clause 7.1 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.

7.3 For the purposes of clause 7.1 a party's "knowledge" includes knowledge which such party might reasonably have been expected to acquire:

7.3.1 from the facts observable or ascertainable by it; or

7.3.2 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 7 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.

## 8 Severability

If any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this agreement.

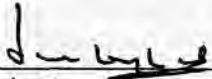
## 9 Governing law and Jurisdiction

This agreement shall be governed in accordance with the laws of the Province of Ontario and the Federal Law of Canada applicable thereto.

**IN WITNESS WHEREOF INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** has caused its common seal to be hereunto affixed and this agreement has been duly executed by **INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** on the date first above written.


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

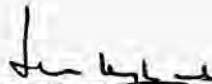
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\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary

**IN WITNESS WHEREOF INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** has caused its common seal to be hereunto affixed and this agreement has been duly executed by **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** on the date first above written.


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

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\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary

**IN WITNESS WHEREOF INTERHEALTH CANADA LIMITED** acting by its duly authorised representatives has executed this agreement on the date first above written.

Executed by **INTERHEALTH CANADA LIMITED** )  
)  
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\_\_\_\_\_  
Authorised Signatory

**IN WITNESS WHEREOF THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)** acting by its duly authorised representatives has executed this agreement on the date 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: )  
)  
)  
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Floyd Basil Hall  
**Deputy Premier and Minister of Finance and National Insurance**

A handwritten signature in black ink, appearing to read 'L. Boyce', is positioned above a horizontal line.

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Lillian Elaine Boyce  
**Minister of Health and Human Services**