

SCHEDULE 13

CONSTRUCTION REQUIREMENTS

Part 6 (a)

**Form of Collateral Warranty from
Construction & Services Co (under the Design & Build Subcontract)**

DATED

200

INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED
THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)
INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED

DEED OF COLLATERAL WARRANTY

relating to a project for
the construction of hospitals on
Grand Turk and Providenciales, Turks & Caicos Islands

DATED

PARTIES

- 1 Contractor **INTERHEALTH CANADA CONSTRUCTION & SERVICES LIMITED** (company no 11320) whose registered office is at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies
- 2 Beneficiary **THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)** of Government Compound, Grand Turk, Turks & Caicos Islands, British West Indies
- 3 Employer **INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** (company no 11772) whose registered office is at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies

RECITALS

- A The Beneficiary and the Employer have entered into a Project Agreement dated [] 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 Employer and the Contractor have entered into a contract dated [] for the design and construction of the facilities.
- C By the Contract, the Employer has employed the Contractor to design, carry out and complete the Works.
- D By a subcontract the Contractor and the Subcontractor have entered into a Subcontract dated [] for the construction of the facilities under which the Contractor carries out the duties of Engineer as defined therein.
- E 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

- 1.1 Unless the contrary intention appears, the following definitions apply:

<i>Beneficiary</i>	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 7;
<i>Contract</i>	the contract dated [] between the Employer (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has agreed to design, carry out and complete the Works;
<i>Funder</i>	FirstCaribbean International Bank (Bahamas) Limited of Providenciales, Turks & Caicos Islands;
<i>Engineer</i>	means as defined in the Subcontract;
<i>Property</i>	the property being the Site of the Works in Providenciales and Grand Turk as more specifically defined and described in the Contract;
<i>Proprietary Material</i>	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 the Works;
<i>Employer</i>	Interhealth Canada (TCI) Limited (Registered No 11069) of Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks & Caicos Islands, British West Indies;
<i>Subcontract</i>	the contract dated [] between the Contractor (1) and the Subcontractor (2) (and any further agreement varying or supplementing it) for the Works;
<i>Subcontractor</i>	Johnston International Limited a company duly formed and subsisting under the Laws of the Turks & Caicos Islands with registered office situate at Leeward Marina, Leeward, Providenciales, Turks & Caicos Islands

Taking Over taking over of the Works as certified or otherwise evidenced pursuant to the Contract;

Works the works carried out or to be carried out by the Contractor at the Property as more particularly defined and described in the Contract.

2 **Contractor's warranties**

2.1 The Contractor warrants to the Beneficiary that it has observed and performed and will continue to observe and 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 employer with the Employer 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 employer with the Employer under the Contract; and

2.1.3 the Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Works unless and until the Beneficiary has given notice to the Contractor under clause 4.1 or clause 4.3.

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 will carry out the duties of the Engineer in accordance with the Subcontract and exercise reasonable skill and care in the performance of such duties.

2.4 The Contractor acknowledges that 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 **Obligations prior to determination of the Contractor's employment**

3.1 The Contractor shall not exercise nor seek to exercise any right to determine its employment under the Contract for any reason, including any breach on the part of the Employer, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.

3.2 Any period stipulated in the Contract for the exercise by the Contractor of a right of determination shall be extended, as necessary, to take account of the period of notice required under clause 3.1.

3.3 Compliance by the Contractor with clause 3.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination, nor otherwise prevent the Contractor from exercising its rights after the expiration of notice, unless the right of determination shall have ceased under the provisions of clause 4.

4 **"Step-in" right**

4.1 The right of the Contractor to determine its employment under the Contract shall cease if, within the period of 21 days referred to in clause 3.1, the Beneficiary shall give notice to the Contractor:

4.1.1 requiring it to continue its obligations under the Contract;

4.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Employer under the Contract; and

4.1.3 undertaking to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract and to pay to the Contractor within 7 days any sums which have become due and payable to it under the Contract but which remain unpaid;

provided that:

4.1.4 in this proviso and in clause 4.7 *Funder Warranty* means a deed made or to be made between the Contractor, the Funder and the Employer in respect of the Works under which the Funder has a right equivalent (with the appropriate changes) in all material respects to the right granted by clause 4.1 to the Beneficiary, save that the period for the exercise of that right by the Funder shall expire 14 days after service of the Contractor's simultaneous notices on the Beneficiary and the Funder of its intention to determine its employment under the Contract;

4.1.5 any notice served by the Contractor on the Beneficiary pursuant to clause 3.1 shall be invalid unless a similar notice has been simultaneously served upon the Funder;

4.1.6 the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 within the period of 14 days referred to in clause 4.1.4 unless the

Funder shall previously have notified the Beneficiary that it will not exercise its equivalent right under the Funder Warranty;

4.1.7 the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 in response to a notice under clause 3.1 if the Funder has already exercised its equivalent right under the Funder Warranty in response to the Contractor's simultaneous notice to the Funder; and

4.1.8 any notice given by the Beneficiary which is in breach of clause 4.1.6 or clause 4.1.7 shall be invalid.

4.2 Upon service of notice by the Beneficiary in compliance with the requirements of clause 4.1, the Contract shall continue as if the right of determination on the part of the Contractor had not arisen and as if the Contract had been entered into between the Contractor and the Beneficiary to the exclusion of the Employer.

4.3 Notwithstanding that as between the Employer and the Contractor the Contractor's right of determination of its employment under the Contract may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Contractor and the Employer to that effect and the Beneficiary complies with the requirements on its part under clauses 4.1.1-4.1.3, provided that the Beneficiary may only give notice under this clause 4.3 if it shall first have given the Funder and the Contractor notice of its intention to do so and the Funder has consented expressly to the exercise of such right by the Beneficiary.

4.4 Any notice given by the Beneficiary which is in breach of clause 4.3 shall be invalid.

4.5 The Contractor shall be bound to assume that, as between the Employer, the Funder and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.

4.6 The Contractor, acting in accordance with the provisions of this clause 4, shall not incur any liability to the Employer.

4.7 If the Funder exercises its equivalent right under clause 4.1 or clause 4.3 of the Funder Warranty, the provisions of clauses 3 and 4 shall have effect as if all references to the Funder and the Funder Warranty had been deleted and as if all references to the Employer were references to the Funder.

5 Use of Proprietary Material

5.1 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 Works and/or the Property, including (without limitation) the execution and completion of the Works and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.

5.2 The licence referred to in clause 5.1 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.

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

6 **Assignment**

The Beneficiary may at any time assign the benefit of this agreement and/or any rights arising under it by way of absolute legal assignment to any person (subject to a maximum of two such assignments) without the consent of the Contractor being required. Notice of assignment shall be given to the Contractor by the Beneficiary.

7 **Limitation**

No action or proceedings for any breach of this agreement shall be commenced against the Contractor after the expiry of 12 years following Taking Over.

8 **Governing law and Jurisdiction**

8.1 This agreement shall be governed in accordance with the laws of The Turks & Caicos Islands.

8.2 The courts of The Turks & Caicos Islands shall have jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this agreement and the parties irrevocably submit to the jurisdiction of those courts.

9 **Counterparts**

This agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this agreement for all purposes.

IN WITNESS WHEREOF INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED and INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED have caused their respective common seals to be hereunto affixed and **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

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

Director

Director/Secretary

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

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

Name:
Title: Director

Name:
Title: Director/Secretary

SCHEDULE 13
CONSTRUCTION REQUIREMENTS

Part 6 (b)

**Form of Collateral Warranty from
Construction & Services Co (under the FM Subcontract)**

DATED

2007

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

PARTIES

- | | | |
|---|------------------------|---|
| 1 | Contractor | INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED (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 | THE CROWN (IN RIGHTS OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS) of Government Compound, Grand Turk, Turks & Caicos Islands, British West Indies; |
| 4 | Provider | INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED (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 | INTERHEALTH CANADA LIMITED (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**

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 clause 7.1 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:)

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:)
)
)
)

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**)
)
)

Authorised Signatory

Authorised Signatory

IN WITNESS WHEREOF THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS & 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:)
)
)
)

Floyd Basil Hall
**Deputy Premier and Minister of Finance
and National Insurance**

Lillian Elaine Boyce
Minister of Health and Human Services