



UNITED INSURANCE COMPANY LIMITED
P O BOX 1215, UNITED INSURANCE CENTRE
LOWER BROAD STREET, BRIDGETOWN, BARBADOS, WI.
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THIS GUARANTEE BOND is made as a deed **BETWEEN** the following parties whose names and registered office addresses are set out in the Schedule to this Bond (the "Schedule")

- (1) The "Contractor" as principal
- (2) The "Guarantor" as guarantor, and
- (3) The "Employer"

WHEREAS

- (A) By a contract (the "Contract") entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works ("the Works") upon and subject to the terms and conditions therein set out.
- (B) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 4.
- (C) The Crown (in right of its Government in the Turks and Caicos Islands) ("TCIG") and Interhealth Canada Infrastructure (TCI) Limited ("the Provider") have entered into an agreement on or about the date of the Contract for the provision of primary and secondary healthcare services for the Turks and Caicos Islands ("the Project Agreement").

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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[Handwritten initials]

NOW IN CONSIDERATION of US\$10 (receipt of which is hereby acknowledged by the Contractor and the Guarantor) **THIS DEED WITNESSES** as follows:-

- 1 The Guarantor guarantees to the Employer that in the event any of the circumstances listed in clauses 4.2(a)-(d) of the Contract arise, the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the losses and/or damages sustained by the Employer together with any other sums owed to the Employer arising from such circumstances and taking into account all sums due or to become due to the Contractor.
- 2 If the Contract is terminated by the Employer pursuant to clause 15.2 of the Contract the Employer may at any time give notice thereof to the Guarantor and from time to time thereafter may make an interim claim or claims to the Guarantor (providing to the Guarantor such details of the Employer's interim claim or claims as shall be in the Employer's possession at the relevant time and which it is reasonably able to provide) on account of the Guarantor's ultimate obligations and liabilities under this Guarantee Bond in respect of sums due or to become due from the Contractor to the Employer under the Contract.
- 3 In the event that any of the circumstances listed in clauses 4.2(a)-(d) of the Contract arise, or the Contract is terminated, and the Employer makes a claim to the Guarantor under this Guarantee Bond, the amount payable by the Guarantor shall be:-
 - 3.1.1 the amount claimed by the Employer; or
 - 3.1.2 (if the Guarantor shall notify the Employer in writing of its objection to the amount so claimed by the Employer within 10 working days of receipt of the Employer's claim) an amount determined by an adjudicator who shall be appointed and shall act in accordance with the Bond Dispute Resolution Procedure in Annex 1 to this Bond (the "Adjudicator").

Provided that the amount or amounts payable by the Guarantor under this clause shall be subject to clause 4 hereof. Such amount shall be paid by the Guarantor to the Employer within 10 working days of receipt of the Employer's claim or the determination made by the Adjudicator (as the case may be).



- 3.2 If the Guarantor fails to object to the amount claimed by the Employer in accordance with clause 3.1.2, then it shall be deemed to have agreed to the amount claimed under clause 3.1.1.
- 3.3 Sums payable under this Guarantee Bond shall be paid to the Employer in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever. If the Guarantor is compelled by law to make any deduction or withholding, the Guarantor will gross up the payment so that the net sum received by the Employer will be equal to the full amount which the Employer would have received had no such deduction or withholding been made.
- 3.4 The Guarantor shall be entitled in any proceedings under this Guarantee Bond to rely on any limitation in the Contract and to raise equivalent defences or claims which may be available to the Contractor under the Contract (but excluding set-offs or counterclaims).
- 3.5 The Guarantor shall owe no greater obligations to the Employer under this Guarantee Bond than it would owe had it been named as a joint contractor with the Contractor under the Contract.
- 3.6 Subject always to clause 4, on the final determination of the liability of the Contractor to the Employer under the Contract:-
- 3.6.1 if the amount of such liability shall exceed the amount or amounts previously paid by the Guarantor to the Employer under clause 3.1 hereof, the Employer shall be entitled to submit a further claim to the Guarantor in respect of the balance due from the Contractor, and the Guarantor shall within 10 days of receipt of the Employer's claim pay the amount of such further claim; or
- 3.6.2 if the amount of such liability shall be less than the amount or amounts previously paid by the Guarantor to the Employer under clause 3.1 hereof, the Employer shall repay the difference between the two amounts to the Guarantor.



- 4 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the schedule (the "Bond Amount").
- 5 The Guarantor shall not be discharged or released by any alteration to the extent or nature of the Works or by any alteration of any of the terms conditions and provisions of the Contract or by any invalidity, illegality, unenforceability or irregularity of any terms conditions and provisions of the Contract to the extent that such invalidity, illegality, unenforceability or irregularity has arisen as a result of some act or omission on the part of the Contractor, or by any winding-up, liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them) of the Contractor, or by any allowance of time, waiver, forbearance or compromise by the Employer for all or any part of the Contractor's obligations under the Contract and no other bond, security or guarantee held by the Employer or any release or waiver of any such bond, security or guarantee under or in respect of the Contract or the Works or any other act or omission which (but for this provision) might have operated to release, reduce or affect the Guarantor's liability shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 6 The obligations of the Guarantor under this Guarantee Bond shall be continuing and shall remain in full force and effect until the Expiry Date or until all sums due under this Guarantee Bond shall have been paid in full, whichever shall first occur, at which point the obligations of the Guarantor under this Guarantee Bond will cease with no further liability on the part of the Guarantor except for any claim validly made under this Guarantee Bond that remains unpaid. No claim may be made by the Employer under this Guarantee Bond at any time after the Expiry Date (as defined in the Schedule).
- 7 The Guarantor will be released from its obligations under this Guarantee Bond on the date prior to the Expiry Date (if any) notified by the Employer to the Guarantor as the date upon which the obligations of the Guarantor under this Guarantee Bond are released.
- 8 When the Guarantor is no longer under any obligation under this Guarantee Bond, the Employer must return the original of this Guarantee Bond to the Guarantor.
- 9 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and

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remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

10 This deed or the benefit hereof may be assigned by the Employer an unlimited number of times and without the consent of the other Parties to:

- (a) the Provider;
- (b) the Funders (as defined in the Project Agreement);
- (c) any step-in entity or novatee of the Funders (as defined in the Contract) under any direct agreements with TCIG and with the Employer;
- (d) any entity replacing the Provider in relation to the whole or any part of the Works or the completed Works;

and to any other person with the consent of the Guarantor, such consent not to be unreasonably withheld or delayed.

11 Any claims or other notices to be served upon the Guarantor hereunder shall be in writing and shall be served:

11.1 personally by hand to the Guarantor at the address stated in this Guarantee Bond; or

11.2 by facsimile to the Guarantor's facsimile number which is 1-246-437-8513 (with a copy to be sent by first class pre-paid post);

or such other address or facsimile number in Barbados as the Guarantor may have previously notified in writing to the Employer. Any claims or other notices, if delivered personally, shall be deemed to have been served at the time of delivery or, if sent by facsimile, shall be deemed to have been served upon confirmation of transmission.

12 This Guarantee Bond shall be governed by the law of Turks and Caicos Islands. Any action, suit, proceeding or dispute in connection with this guarantee bond shall be finally settled under the ICC Arbitration Rules by a 3-member tribunal panel in accordance with the ICC Arbitration Rules. The place of the arbitration shall be deemed to be Paris, notwithstanding that hearings may be conducted in TCI or other locations in accordance with the ICC Arbitration Rules. The language of the arbitration shall be English.



Counterparts

This deed 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 deed for all purposes.

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THE SCHEDULE

- The Contractor: **JOHNSTON INTERNATIONAL LIMITED** (Company No 2418) a company duly formed and subsisting under the Laws of the Turks and Caicos Islands with registered office at Governor's Road, Leeward, Providenciales, Turks and Caicos Islands, British West Indies.
- The Guarantor: **UNITED INSURANCE COMPANY LIMITED** whose registered office is at The Auto Dome, Warrens, St. Michael BB11000, Barbados , West Indies.
- The Employer: **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** (Registered No 11320) whose registered office is at Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies, which term shall include all permitted assignees under this Bond.
- The Contract: The Contract dated the 11th day of ^{January 2008} made between the Employer and the Contractor for the construction of hospital facilities on Grand Turk and Providenciales, Turks and Caicos Islands for the sum of USD \$67,119,617.27 ("Contract Sum").
- The Bond Amount: the Sum of USD \$6,711,961 (being an amount equivalent to 10% of the Contract Sum).
- The Expiry Date: the date falling 7 days after the issue of the Taking-Over Certificate.

IN WITNESS WHEREOF UNITED INSURANCE COMPANY LIMITED, JOHNSTON INTERNATIONAL LIMITED and INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED have caused their common seals to be hereunto affixed and this Deed has been duly executed by **UNITED INSURANCE COMPANY LIMITED, JOHNSTON INTERNATIONAL LIMITED and INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** and delivered as a deed this 11th day of *January* 2008

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Executed as a deed and delivered by the said)
JOHNSTON INTERNATIONAL LIMITED)
by affixing its common seal in the presence)
of:)

Director

Director/Secretary

Executed as a deed and delivered by the said)
UNITED INSURANCE COMPANY)
LIMITED by affixing its common seal in the)
presence of: *ANGELUS HUKOLE*)
EXECUTIVE SECRETARY)

Angelle

Director

Director/Secretary

H.A. Toppin

D.A. BLACKMON



Natalie M. Brace
SECRETARY

Executed as a deed and delivered by the said)
INTERHEALTH CANADA)
CONSTRUCTION & SERVICES (TCI))
LIMITED by affixing its common seal in the)
presence of:)

Director

Director/Secretary

ANNEX 1

BOND ADJUDICATION PROCEDURE

1 Referral to Bond Adjudication

1.1 Either party (the "**Referring Party**") may refer a Bond Dispute to Bond Adjudication by serving notice (a "**Bond Adjudication Notice**") on the other party (the "**Non-Referring Party**"). The Bond Adjudication Notice shall include in relation to the Bond Dispute:

1.1.1 a concise summary of the nature and background of the Bond dispute and the issues arising;

1.1.2 statement of the relief claimed;

1.1.3 a reference to any documents in which the subject matter of the Bond dispute was raised;

1.1.4 a statement of any matters which the parties have already agreed in relation to the Bond Dispute or the procedure for determination of the Bond dispute; and

1.1.5 copies of all documents which have an important and direct bearing on the issues and on which the Referring Party intends to rely (or a list of such documents to the extent that they are already in the possession of the Non-Referring Party).

1.2 The provisions of paragraph 3 of the this Annex 1 shall apply to the appointment of the Bond Adjudicator to determine the Bond Date. It is the intention of the parties that the Bond Adjudicator be appointed and the Bond Date be referred to him within 7 days of the service of the Bond Adjudication Notice.

1.3 On the appointment of the Bond Adjudicator, the Referring Party shall forthwith deliver a copy of the Bond Adjudication Notice to the Bond Adjudicator, thereby referring the Bond dispute to him.

1.4 The scope of the Bond Adjudication shall be the matters identified in the Bond Adjudication Notice, together with:

- 1.4.1 any further matters which the Beneficiary and the Guarantor agree should be within the scope of the Bond Adjudication; and
- 1.4.2 any further matters which the Bond Adjudicator determines must be included in order that the Bond Adjudication may be effective and/or meaningful.

2 **Timetable and Procedure**

- 2.1 Within 7 days of his appointment, the Bond Adjudicator shall fix a date for hearing the representations of the parties or for the supply of written submissions if no hearing is to be held.
- 2.2 Where a hearing is to be held, either party may submit written representations to the Bond Adjudicator, with a copy to the other party, no later than 3 days prior to the date fixed for the hearing. Any hearing shall not last more than one day and if any party shall so desire, that party may be represented at the hearing. The parties shall endeavour in good faith to limit the volume of any written submissions and accompanying documents.
- 2.3 At the Bond Adjudicator's discretion (and subject to receiving any necessary third party consent, which consent the parties shall use their reasonable endeavours to help to obtain) the Bond Adjudicator may make any inspection or test either with or without the parties.
- 2.4 Within 28 days of his appointment the Bond Adjudicator shall deliver to the parties his decision on the Dispute. The Bond Adjudicator shall also give written reasons for his decision.
- 2.5 In his decision the Bond Adjudicator may:
 - 2.5.1 order one party to pay to the other a sum of money;
 - 2.5.2 decide on what date or dates such sum should be paid;
 - 2.5.3 in compliance with any term of this Adjudication Bond or as empowered by the governing law (but not further or otherwise), decide the circumstances in which, and the rates at which, and the periods for which simple or compound rates of interest shall be paid including



interest between the date of the decision and its performance; and

- 2.5.4 make a declaration, including a declaration as to the meaning of any part of any document, including this Adjudication Bond.
- 2.6 No party shall be entitled to issue Court proceedings in relation to the Bond Dispute and the decision of the Bond Adjudicator in relation to the Bond Dispute will be binding and enforceable on the parties (save for manifest error).
- 2.7 The time periods set out in paragraphs 2.1, 2.2 and 2.4 above may be extended by the agreement of the parties after the Bond dispute has been referred to Bond Adjudication.
- 2.8 The Bond Adjudicator shall be entitled to extend the time period set out in paragraph 2.4 above by up to 14 days with the consent of the party by whom the Bond Dispute was referred.
- 2.9 The Bond Adjudicator shall act as an expert and not as an arbitrator. Apart from the rules set out in this Annex 1 and his duty to act fairly and impartially the Bond Adjudicator shall not be bound by any other rules or procedures and shall conduct the Bond Adjudication as he thinks fit. He shall take the initiative in ascertaining the facts and the law necessary to determine the Bond Dispute provided always that he shall (unless constraints of time render this impracticable) give the parties a reasonable opportunity to comment upon any matters not included in the evidence or submissions of the parties which he considers relevant to his decision. The Bond Adjudication shall continue notwithstanding any failure by either party to take part.
- 2.10 The Bond Adjudicator will make all decisions in accordance with the express and implied terms of the agreements relevant to the Bond dispute and the governing law. Where it is not possible for the Bond Adjudicator to make a decision by reference to the express and implied terms of the agreements relevant to the Dispute and the governing law in the time available to him, the Bond Adjudicator shall use his best endeavours to reach such decision as seems to him fair and reasonable in so far as he has been able (using his best endeavours in the time available) to ascertain the facts and the law relevant to the Bond Dispute.
- 2.11 For the purposes of reaching his decision, the Bond Adjudicator shall have power to open up, review and revise any opinion, decision, certificate, account, requirement or



notice given pursuant to this Adjudication Bond and/or any of the documents entered into between the parties pursuant to it (except pursuant to any agreements between the parties settling a Bond Dispute) unless expressed in this Adjudication Bond to be final and binding and to determine all matters in dispute as he sees fit. The Bond Adjudicator shall also have power to assess and award damages.

2.12 The Bond Adjudicator may if he thinks fit:

- 2.12.1 require any party to produce a bundle of key documents, whether helpful or otherwise to that party's case, and to draw such inference as may seem proper from any imbalance in such bundle that may become apparent;
- 2.12.2 require the delivery to him and/or the other party of copies of any document other than documents that would be privileged from production to a court;
- 2.12.3 limit the length of any written or oral submission;
- 2.12.4 require the attendance before him for questioning of the Beneficiary or the Guarantor or any employee or agent of the Beneficiary or the Guarantor;
- 2.12.5 make use of his own specialist knowledge;
- 2.12.6 obtain advice from specialist consultants provided that either the parties so requests or consents and further provided that the parties, acting reasonably, reach agreement as to the level of fees to be incurred by the Bond Adjudicator in obtaining such advice;
- 2.12.7 review and revise any of his own previous directions; and
- 2.12.8 deliver more than one decision at different times as to different aspects of the Bond dispute (within the timetable for issuing his decision on the Bond dispute as a whole), provided that the Bond Adjudicator shall specify in any such decision the part or parts of the Bond dispute which are the subject matter of such decision.

2.13 The Bond Adjudicator shall exercise all powers to be conferred on him by this Annex 1



with a view of fairness and impartiality, giving both the Beneficiary and the Guarantor a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents.

- 2.14 The Bond Adjudicator may not:
- 2.14.1 require any advance payment of or lien for his fees; or
 - 2.14.2 act or continue to act in the face of a conflict of interest.
- 2.15 Each party shall bear its own costs in connection with the Bond Adjudication. The costs of the Bond Adjudicator shall be borne as the Bond Adjudicator shall specify, or, in default, equally by both parties.
- 2.16 In every case in which a written communication, including without prejudice to the generality of the foregoing, any notice, letter, fax, e-mail or document is sent to the Bond Adjudicator by one party, a copy thereof and any documents referred to in or accompanying that written communication shall be sent simultaneously to the other party.
- 2.17 The Bond Adjudicator shall not be liable to either party for anything done or omitted in the discharge or purported discharge of his functions as Bond Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Bond Adjudicator is similarly protected from liability.
- 2.18 The Bond Adjudication and all matters arising in the course thereof are and will be kept confidential by the Beneficiary and the Guarantor except insofar as necessary to implement or enforce any decision of the Bond Adjudicator or as may be required for the purpose of any subsequent proceedings.
- 2.19 Every decision of the Bond Adjudicator shall be implemented without delay. The Beneficiary and the Guarantor shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement, regardless of whether such decision is, or is to be, the subject of any challenge or review.
- 2.20 The Bond Adjudicator (or prospective Bond Adjudicator) shall not decline jurisdiction by reason of the occurrence of any insolvency event in relation to nor take into account any such insolvency event (nor any such consequences) if ruling on his own jurisdiction.

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3 **Selection of the Bond Adjudicator**

3.1 Where the parties have agreed upon the identity of a Bond Adjudicator who confirms his readiness and willingness to act within 7 days of service of the Bond Adjudication Notice, then that person shall be the Bond Adjudicator.

3.2 Where the parties have not so agreed upon a Bond Adjudicator within 2 days of service of the Adjudication Notice or where such person has not so confirmed his willingness to act within 2 days of receiving a request to act, then the parties shall use their reasonable endeavours to agree to jointly request the most appropriate of the following bodies to select a person to act as Bond Adjudicator:

3.2.1 the President for the time being of the Royal Institute of Chartered Surveyors of England and Wales in relation to facilities management disputes; or

3.2.2 the President for the time being of the Chartered Institute of Arbitrators of England and Wales if the body listed in paragraphs 3.2.1 above is not an appropriate body to select a person to act as Bond Adjudicator.

The body nominated by the parties shall communicate the selection of an individual to act as Bond Adjudicator to the Referring Party within 5 days of receiving a request to do so.

3.3 If the parties cannot agree which nominating body should nominate a Bond Adjudicator or the nature of the dispute is unclear for the purposes of nominating or the body nominated by the parties fails to respond within the time period set out in paragraph 3.2, the Bond Adjudicator nominating body shall be the Royal Institution of Chartered Surveyors or where such body fails to respond within the time period set out in paragraph 3.2, any other "adjudicator nominating body" as that term is defined in the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998 No. 649).

