

DATED 11 January 2008

JOHNSTON INTERNATIONAL LIMITED

INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED

INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED

DEED OF COLLATERAL WARRANTY

relating to a project for

the construction of hospitals on

Grand Turk and Providenciales, Turks and Caicos Islands

DATED 11 January 2008

PARTIES

- 1 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 situate at Governor's Road, Leeward, Providenciales, Turks and Caicos Islands, British West Indies
- 2 Beneficiary **INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** (company 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
- 4 Employer **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

RECITALS

- A The Beneficiary and The Crown (in right of its Government in the Turks and Caicos Islands) ("TCIG") have entered into a Project Agreement dated 11 January 2008 for the provision of primary and secondary healthcare services for the Turks and Caicos Islands, including the design and construction of these facilities ("the Project Agreement").
- B The Beneficiary and the Employer have entered into a contract dated 11 January 2008 for the design and construction of the facilities.
- C By the Contract, the Employer has employed the Contractor to carry out and complete the Works.
- D As a condition of and in consideration of the foregoing, the Contractor has agreed to enter into this deed for the benefit of the Beneficiary.

In consideration of US\$10 paid by the Beneficiary to the Contractor, receipt of which is

hereby acknowledged, it is agreed as follows:

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 deed and/or any rights arising under it have been validly assigned in accordance with clause 7;
<i>Contract</i>	the contract dated 11 January 2008 between the Employer (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has agreed to carry out and complete the Works;
<i>Funder</i>	FirstCaribbean International Bank (Bahamas) Limited of Providenciales, Turks and Caicos Islands (as both agent and security trustee for the Senior Finance Parties (as defined in the credit agreement under which the Senior Finance Parties have agreed to make certain term loan facilities available to the Beneficiary in relation inter alia to procuring construction of the Works));
<i>Funders Direct Agreement</i>	the agreement dated on or about the date of this deed between the TCIG, the Funder, the Beneficiary and Interhealth Canada Clinical Services (TCI) Limited which deals with the rights of each party under their respective warranties from the Contractor;
<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;

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

TCIG Warranty a deed made or to be made between The Crown (in right of its Government in the Turks and Caicos Islands) ("TCIG"), the Contractor and the Employer under which TCIG has a similar right (with the appropriate changes) to the right granted to the Beneficiary by Clause 4.1; and

Works the construction of new hospital facilities for The Crown (in right of its Government in the Turks and Caicos Islands) on Grand Turk and Providenciales as more particularly defined and described in the Contract.

1.2 The clause headings in this deed 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 deed to a clause are to a clause of this deed.

1.6 References in this deed 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 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.

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 liability to the Beneficiary under this deed 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 deed 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 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 **Obligations prior to determination of the Contractor's employment**

3.1 The Contractor shall not exercise nor seek to exercise any right to terminate the Contract for any reason, including any breach on the part of the Employer, without giving to the Beneficiary not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination.

3.2 Any period stipulated in the Contract for the exercise by the Contractor of a right of termination 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 termination, nor otherwise prevent the Contractor from exercising its rights after the expiration of notice, unless the right of termination shall have ceased under the provisions of clause 4.

3.4 If the Contractor's grounds for the proposed termination under clause 3.1 above arises pursuant to Sub-Clause 16.2(g) of the Contract, the Contractor shall be

entitled to suspend the Works under the Contract from the date of the notice under clause 3.1 until such time as the Beneficiary gives notice to the Contractor pursuant to clause 4.1 below. The Employer agrees that such suspension shall not constitute a breach of the Contract by the Contractor.

4 "Step-in" right

4.1 The right of the Contractor to terminate the Contract shall cease if, within the period of 28 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 jointly and severally with the Employer 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 properly due and payable to it under the Contract but which remain unpaid and which have been notified to the Beneficiary in the notice served under clause 3.1 or in accordance with clause 10; and
- 4.1.4 if the Contractor has suspended the Works pursuant to clause 3.4, granting an extension of time to the Time for Completion under the Contract equal to the period of delay caused by the suspension.

provided that subject always to the Funders Direct Agreement:

- 4.1.5 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.
- 4.1.6 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;
- 4.1.7 the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 unless the Funder shall previously have notified

the Beneficiary that it will not exercise its equivalent right under the Funder Warranty;

4.1.8 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

4.1.9 any notice given by the Beneficiary which is in breach of clause 4.1.7 or clause 4.1.8 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 termination 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 termination 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 in respect of any future right of termination on the part of the Contractor 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 termination (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

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

- (a) the Funders (as defined in the Project Agreement);
- (b) any step-in entity or novatee of the Funders (as defined in the Project Agreement) under any direct agreements with TCIG and with the Employer; and
- (c) any entity replacing the Beneficiary 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 Contractor, such consent not to be unreasonably withheld or delayed.

- 6.2 Neither the Employer nor the Contractor may assign or transfer or otherwise dispose of any of their rights or obligations under this deed without the prior written consent of the Beneficiary.

7 Limitation

No action or proceedings for any breach of this deed shall be commenced against

the Contractor after the expiry of 12 years following Taking Over.

8 Severability

If any term, condition or provision contained in this deed 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 deed.

9 Governing law and Jurisdiction

9.1 This deed shall be governed in accordance with the laws of The Turks and Caicos Islands.

9.2 Any action, suit, proceeding or dispute in connection with this deed 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.

10 Due Amounts

10.1 When sums are due and payable to the Contractor under the Contract and remain unpaid for a period of 7 days after they are due ("Due Amount") the Contractor shall send a notice ("Due Amount Notice") to the Beneficiary detailing the total of the Due Amount and when it became payable. The Contractor shall update the information in the Due Amount Notice on a weekly basis until the Due Amount is fully paid.

10.2 For the avoidance of doubt, nothing in clause 10.1 shall impose an obligation on the Beneficiary to pay any Due Amount.

11 Warranties

The parties agree that the TCIG Warranty shall have no effect on this deed or the interpretation hereof or in any way whatsoever or howsoever arising affect the rights and remedies of the Beneficiary hereunder.

12 **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.

IN WITNESS WHEREOF INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED, INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED and JOHNSTON INTERNATIONAL LIMITED have caused their respective common seals to be hereunto affixed and this Deed has been duly executed by **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED, INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED and JOHNSTON INTERNATIONAL LIMITED** on the date first above written.

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

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.....
Director

.....
Director/Secretary

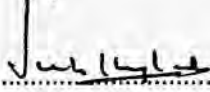
Executed as a deed and delivered by the said
JOHNSTON INTERNATIONAL LIMITED
by affixing its common seal in the presence
of:

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.....
Director

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Director/Secretary

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


.....
Director


.....
Director/Secretary