

DATED 11 January 2008

JOHNSTON INTERNATIONAL LIMITED

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

INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED

OXFORD VENTURES 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 **THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)** of Government Compound, Grand Turk, 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
- 5 Contractor's Guarantor **OXFORD VENTURES LIMITED** (company number 01691157) whose registered office is at Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands.

RECITALS

- A The Beneficiary and the Provider 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.
- B The Provider 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 The Contractor's Guarantor has provided a guarantee of the obligations of the Contractor under the Contract.

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.

In consideration of US\$10 paid by the Beneficiary to the Contractor and the Contractor's Guarantor, receipt of which is hereby acknowledged, it is agreed as follows:

OPERATIVE PROVISIONS

1 Definitions and interpretation

<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 ^{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;
<i>Funder Warranty</i>	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;
<i>Funders Direct Agreement</i>	the agreement dated on or about the date of this agreement between the Beneficiary, the Funder, the Provider and Interhealth Canada Clinical Services (TCI) Limited;
<i>Project Agreement</i>	the project agreement entered into between the Beneficiary, the Provider and Interhealth Canada Clinical Services (TCI) Limited on or around the date of the Contract for the provision of primary and secondary healthcare services in the Turks and Caicos Islands;
<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;

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 the Works;

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;

Senior Funders means as set out in the Project Agreement;

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

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.

- 1.1 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.

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 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 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 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.

3.4 If the Contractor's grounds for the proposed determination 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 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;

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; 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.

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, the Provider and the Contractor notice of its intention to do so and the Funder and the Provider have 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 **Subordination of Beneficiary's Rights**

5.1 Subject always to the Funders Direct Agreement the Beneficiary agrees that it shall not exercise or seek to exercise any of its step-in rights or other rights under this agreement until the earlier of:

- 5.1.1 the date on which the Senior Funders have been repaid in full; or
- 5.1.2 the date on which the Funder has given its written consent to such exercise; or
- 5.1.3 the time when in respect of this agreement either:
- the Funder has failed to exercise any corresponding right under the Funder Warranty and the time for exercising such right has ended in accordance with the terms of the Funders Direct Agreement; or
 - the Funder has confirmed in writing to the Beneficiary that it does not intend to exercise any of its rights under

the Funder Warranty or that it has no further claim thereunder; or

- the Funder has stepped in to, or otherwise, directly or indirectly, taken control over the rights of the Contractor under, the Funder Warranty (in accordance with its rights under such agreement) and then stepped out from, or otherwise relinquished control of such rights under or in connection with such agreement.

6 Use of Proprietary Material

6.1 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.

6.2 The licence referred to in clause 6.1 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.

6.3 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.

7 Assignment

This agreement or the benefit hereof may be assigned by the Beneficiary without consent to any Successor (as defined in the Project Agreement) in relation to 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.

8 Guarantee

8.1 The Contractor's Guarantor irrevocably and unconditionally guarantees to the Beneficiary:

- 8.1.1 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");

8.1.2 (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

8.1.3 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.

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

8.2.1 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;

8.2.2 any time given or forbearance or other indulgence shown by the Employer to the Contractor;

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

8.2.4 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

8.2.5 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.

8.3 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 competition with the Beneficiary in respect of any payment made by the Contractor's Guarantor under this agreement nor be entitled in competition with the Beneficiary to claim or have the benefit of any money or liability owed by the Contractor to 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.

9 **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.

10 **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.

11 **Governing law and Jurisdiction**

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

11.2 Any action, suit, proceeding or dispute in connection with this agreement 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.

12 **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, JOHNSTON INTERNATIONAL LIMITED and OXFORD VENTURES 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 **JOHNSTON INTERNATIONAL 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

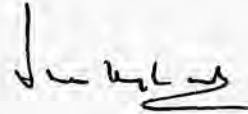


The Common Seal of **INTERHEALTH**)
CANADA CONSTRUCTION & SERVICES)
(TCI) LIMITED was duly affixed to this)
agreement in the presence of:)
)

Director



Director/~~Secretary~~



The Common Seal of **OXFORD VENTURES**)
LIMITED was duly affixed to this agreement)
in the presence of:)
)

Director



Authorised Signatory

