

EXECUTED COPY

DATED 11 January 2008 ~~2007~~ BLP

ROTARY (INTERNATIONAL) LIMITED

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

DEED OF WARRANTY in favour of TCIG

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

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DATED 11 January 2008

PARTIES

- 1 Sub-Contractor **ROTARY (INTERNATIONAL) LIMITED** (Company Number NI012244) of 5 Trench Road, Mallusk Industrial Estate, Newtown Abbey, Co. Antrim, Northern Ireland BT36 4XA

- 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

RECITALS

- A By the Contract, the Employer has employed the Contractor to carry out and complete the Works.

- B Pursuant to the provisions of the Contract, the Contractor with the consent of the Employer has employed the Sub-Contractor under the Sub-Contract to carry out and complete the Sub-Contract Works.

- C The Beneficiary and the Provider have entered into an 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 the facilities.

- D The Provider and the Employer have entered into a contract for the design and construction of the Works.

- E In consideration of the foregoing the Sub-Contractor has agreed to enter into this agreement in favour of the Beneficiary.

In consideration of US\$10 paid by the Beneficiary to the Sub-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:

Contract 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 undertaken to carry out and complete the Works;

- Contractor* Johnston International Limited (Company Number 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
- Employer* Interhealth Canada Construction & Services (TCI) Limited (Registered 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;
- Project Agreement* the project agreement entered into between The Crown (in right of its Government in the Turks and Caicos Islands) ("TCIG") and the Provider on or around the date of the Contract for the provision of primary and secondary healthcare services for TCIG.
- Property* 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, calculations, software and other work (and the designs contained in them) prepared or to be prepared by or on behalf of the Sub-Contractor in connection with the Works;
- Provider* Interhealth Canada Infrastructure (TCI) Limited 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;
- Sub-Contract* the sub-contract dated ^{11 January 2005} X A X between the Contractor (1) and the Sub-Contractor (2) (and any further agreement varying or supplementing it) whereby the Sub-Contractor has undertaken to carry out and complete the Sub-Contract Works;
- Sub-Contract Works* those parts of the Works to be carried out by the Sub-

Contractor as more particularly defined and described in the Sub-Contract; and

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 **Sub-Contractor's warranties**

2.1 The Sub-Contractor warrants and undertakes to the Beneficiary as follows:

2.1.1 it has exercised and will continue to exercise in the performance of its obligations under the sub-contracts, all the skill, care and diligence which may reasonably be expected of a qualified and competent mechanical and electrical engineer and contractor experienced in carrying out work of a similar size, scope, nature and complexity to the Sub-Contract Works;

2.1.2 that the *Sub-Contract Works* have been and will be carried out and completed in a good, sound, substantial and workmanlike manner using good quality and appropriate materials and in all respects in accordance with the Sub-Contract;

2.1.3 that he has observed and performed and will continue to observe and perform all the terms and obligations on his part to be observed and performed under the Sub-Contract;

2.1.4 that he has not specified or authorised for use and will not specify or authorise for use in the construction of the Works:

2.1.4.1 any of the materials identified as potentially hazardous in the BPF/BCO report Good Practice in the Selection of Construction Materials (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report; and

2.1.4.2 any other material which is generally known to be deleterious to health and safety or to the durability of buildings and/or structures and/or finishes and/or plant and machinery at the date of installation.

2.2 The Sub-Contractor acknowledges that the Beneficiary shall be deemed to have relied and to continue to rely upon the warranties and undertakings given by the Sub-Contractor under this clause 2, provided always that:

2.2.1 the Sub-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 Contractor under the Sub-Contract; and

2.2.2 no action or proceedings for any breach of this agreement shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of Taking Over.

3 **Use of Proprietary Material**

3.1 The copyright in the Proprietary Material shall remain vested in the Sub-Contractor, but the Sub-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 whatsoever 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.

3.2 The licence referred to in clause 3.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Sub-Contractor's employment under the Sub-Contract.

3.3 The Sub-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.

4 **Insurance**

4.1 The Sub-Contractor undertakes to the Beneficiary to maintain with a reputable insurance company, from the date hereof and for a period expiring no earlier than 12 years after Taking Over and notwithstanding the termination for any reason of the Sub-Contractor's employment under the Sub-Contract, professional indemnity insurance with a limit of indemnity of not less than GBP £10 million in respect of each and every claim/in the aggregate in any period of insurance, provided always that such insurance continues to be available in the European Union market upon reasonable terms and at commercially reasonable premium rates.

4.2 As and when he is reasonably required to do so by the Beneficiary, the Sub-Contractor shall produce for inspection by the Beneficiary documentary evidence that such insurance is being properly maintained.

- 4.3 The Sub-Contractor shall forthwith notify the Beneficiary if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Sub-Contractor is unable to continue to maintain such insurance.

5 **Assignment and Third Parties**

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 Subcontract Works or the completed Subcontract Works and to any other person with the consent of the Subcontractor, such consent not to be unreasonably withheld or delayed.

6 **Governing law and Jurisdiction**

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

- 6.2 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.

7 **Counterparts**

- 7.1 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.

EXECUTED COPY

IN WITNESS WHEREOF ROTARY (INTERNATIONAL) LIMITED has caused its common seal 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

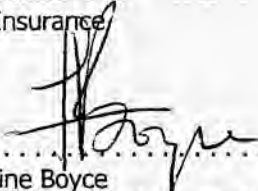
Executed as an agreement by **ROTARY (INTERNATIONAL) LIMITED** acting by:)
)


.....
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:)
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)


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


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Lillian Elaine Boyce
Minister of Health and Human Services