

DATED

11th January

2008

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 11th January 2008

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 11th 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 Employer and the Contractor have entered into a contract dated 11th January 2008 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 11th January 2008 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:

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 7;

Contract the contract dated ^{11th January 2008} / L / 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;

Funder FirstCaribbean International Bank (Bahamas) Limited of Providenciales, Turks & Caicos Islands;

Engineer means as defined in the Subcontract;

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, 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;

Employer Interhealth Canada (TCI) Limited (Registered No 11069) of Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks & Caicos Islands, British West Indies;

Subcontract the contract dated ^{11th January 2008} / L / 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
<i>Taking Over</i>	taking over of the Works as certified or otherwise evidenced pursuant to the Contract;
<i>Works</i>	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:
)
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)
)
)
)

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

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)

