

**PERFORMANCE SECURITY FOR SUB-CONTRACT WORKS**

**THIS GUARANTEE** is made on the 11 day of ~~December 2007~~ *January 2008*

**BETWEEN**

- (1) **ROTARY LIMITED** (Company Number NI21392) whose registered office is at 5 Trench Road, Mallusk, Newtown Abbey, Co Antrim, Northern Ireland, BT36 4XA (the "Guarantor"); and
- (2) **JOHNSTON INTERNATIONAL LIMITED** (company No 2418) a company duly formed and subsisting under the Laws of Turks and Caicos Islands with registered office situate at Governor's Road, Leeward, Providenciales, Turks and Caicos Islands, British West Indies (the "Building Contractor").

**BACKGROUND**

- (A) 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 ("TCIG") and Interhealth Canada Infrastructure (TCI) Limited (Registered No 11069) of Richmond House, PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies ("the Provider") have entered into an agreement of even date with this Deed ("the Project Agreement") for the provision of primary and secondary healthcare services for the Turks and Caicos Islands including the design, construction, financing, equipping, staffing, maintenance and operation of the facilities for a period of 25 years ("the Project").
- (B) The Provider has entered into a contract ("the Design and Build Contract") with Interhealth Canada Construction and Services (TCI) Limited (Company Number 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 ("the Employer") for the design and construction of the Works as defined therein dated on or about the date of this Deed.
- (C) The Employer has entered into a contract ("the Building Contract") with Johnston International Limited (company No 2418) a company duly formed and subsisting under the Laws of Turks and Caicos Islands with registered office situate at Governor's Road, Leeward, Providenciales, Turks and Caicos Islands, British West Indies ("the Building Contractor") for the construction of the Works as defined therein dated on or about the date of this Deed.
- (D) The Building Contractor has entered into a subcontract ("the Subcontract") with Rotary (International) Limited (company no NI012244) whose registered office is at 5 Trench Road, Mallusk Industrial Estate, Newtonabbey, Co. Antrim BT36 4XA ("the Subcontractor") to carry out and complete the Subcontract Works as defined therein dated on or about the date of this Deed.

- (E) The Guarantor is the ultimate holding company of the Subcontractor.
- (F) In accordance with the terms of this Deed the Guarantor guarantees to the Building Contractor the Subcontractor's full and due performance under the Subcontract.

**IT IS AGREED** as follows:-

- 1 In consideration of the payment of USD\$10 by the Building Contractor to the Guarantor receipt of which the Guarantor acknowledges, the Guarantor hereby absolutely irrevocably and unconditionally guarantees to the Building Contractor the full due and punctual performance by the Subcontractor of all the obligations on the part of the Subcontractor under or pursuant to the Subcontract (the "Terms") and (as a separate stipulation and as primary obligor) agrees that if the Subcontractor shall in any respect commit any breach of or fail to fulfil any of the Terms, then the Guarantor will forthwith perform and fulfil (or cause to be performed and fulfilled) in place of the Subcontractor each and every Term in respect of which the Subcontractor has defaulted or which is unfulfilled by the Subcontractor as if the Guarantor instead of the Subcontractor were expressed to be the Subcontractor under the Subcontract. The Guarantor shall be liable to the Building Contractor for all direct losses, damages, expenses (including without limitation all expenses legal fees and taxes incurred by the Building Contractor justifiably seeking to enforce any of the above), liabilities, claims, costs or proceedings which the Building Contractor may suffer or incur by reason of the said failure or breach.
- 2 The Guarantor agrees to indemnify the Building Contractor, within 10 days of receipt of demand, in respect of all direct expenses, losses and liabilities it incurs at any time as a result of the Subcontractor's failure to fulfil any of the Terms in full and on time.
- 3 The Guarantor shall owe no greater obligations to the Building Contractor under this Deed than it would owe had it been named as a joint subcontractor with the Subcontractor under the Subcontract.
- 4 No alterations in the Subcontract, or in the Works, and no extension of time, forbearance or forgiveness, nor any act, matter or thing whatsoever except an express release by the Building Contractor, shall in any way release or reduce any liability of the Guarantor hereunder. References to the Subcontract in this guarantee shall include all amendments, variations and additions to it, whether made before or after the date hereof. Without prejudice to the generality of the foregoing the Building Contractor shall be at liberty at any time to give time for payment or grant any other indulgence and give up, deal with, vary, exchange or abstain from effecting or enforcing other security or guarantees or any of them as it thinks fit and to compound with, accept compositions from and make any other arrangements with the Subcontractor without affecting the Guarantor's liability hereunder.

- 5 Without prejudice to the Building Contractor's rights against the Subcontractor as principal obligor, the Guarantor shall be deemed principal obligor in respect of its obligations under this guarantee and not merely as surety and accordingly the Guarantor shall not be discharged and nor shall its ability hereunder be affected by any act or thing or means whatsoever by which its said liability would have been affected had it not been a principal obligor.
- 6 This guarantee shall remain in full force and effect until the issue of the Performance Certificate pursuant to the Building Contract notwithstanding:
  - 6.1 the insolvency or liquidation of the Subcontractor, the Guarantor or any other person, or the taking of any action by any person holding rights in relation to the assets of the Subcontractor by way of security, including but not limited to the appointment of any receiver, administrative receiver, manager or nominee of any of the foregoing (or of their respective successors and assigns) or the exercise of any of the Building Contractor's rights and discretions by such persons;
  - 6.2 any disclaimer of the Subcontract by a liquidator of the Subcontractor; and/or any feature of the Subcontract, or the performance of the Subcontract, making it ineffective or unenforceable;
  - 6.3 any time being given to the Subcontractor by the Building Contractor or by a concession or arrangement granted or made to or with the Subcontractor or by anything that the Building Contractor or the Subcontractor may do or omit or neglect to do (including, but without limitation, the assertion or failure or delay to assess any right or remedy of the Building Contractor or the pursuit of any rights and remedies by the Building Contractor or the giving by the Subcontractor of any security or the release, modification or exchange of any such security or the liability of any persons);
  - 6.4 any present or future law or regulation purporting to reduce or prejudice any of the obligations or liabilities of the Subcontractor pursuant to the Subcontract and which but for this provision might exonerate or release the Guarantor;
  - 6.5 any incapacity or lack of power authority or legal personality of or dissolution or change in the members of status, function, control or ownership of the Subcontractor or any other person;
  - 6.6 any unenforceability illegality or invalidity of any obligation of the Subcontractor or any person under the Subcontract or under any other document or security to the extent that the Guarantor's liability under this guarantee shall remain in full force and its obligations be construed accordingly as if there were no unenforceability, illegality or invalidity;

- 6.7 the provision by the Subcontractor and/or the Building Contractor of any consent to an assignment or any transfer or novation or the making of any assignment, transfer or novation of the Subcontract or any part thereof;
  - 6.8 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal instead of a guarantor or by anything done or omitted by any person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish any of the Guarantor's liability under this guarantee.
- 7 Until the issue of the Performance Certificate under Clause 11.9 (and as defined in Clause 1.1.3.8) of the Building Contract, the Guarantor shall not by virtue of any performance or payment made by it or otherwise:
  - 7.1 be subrogated to any rights, security or moneys held or received or receivable by the Building Contractor ; or
  - 7.2 be entitled to exercise any right of contribution from any co-surety in respect of such performance and liabilities under any other guarantee, security or agreement; or
  - 7.3 seek to enforce against the Subcontractor repayment by subrogation or otherwise or to exercise any rights or legal remedies of any kind which may accrue howsoever to the Guarantor in respect of such amount; or
  - 7.4 exercise any right of set-off or counterclaim against the Contractor or any such co-surety; or
  - 7.5 claim payment of any other monies from the time being due to the Guarantor by the Subcontractor other than in the ordinary course of business; or
  - 7.6 receive, claim or have the benefit of any payment, distribution, security or indemnity from the Subcontractor or any such co-surety; or
  - 7.7 unless so directed by the Building Contractor (when the Guarantor will prove, and turn over any realisations to the Building Contractor , in accordance with such directions) claim as a creditor of the Subcontractor or any such co-surety in competition with the Building Contractor .
- 8 No delay or omission of the Building Contractor in exercising any right, power or privilege hereunder shall impair such right, power or privilege or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Building Contractor herein provided are cumulative and not exclusive of any rights or remedies provided by law.

- 9 A waiver given or consent granted by the Building Contractor under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 10 If at any time any one or more of the provisions of this guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
- 11 As a separate and alternative stipulation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this guarantee but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).
- 12 Any payment made by the Guarantor under this Guarantee shall be made without set-off, withholding deduction or counterclaim. If the Guarantor is obliged by law to make any deduction or withholding from such payment, the amount due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Building Contractor receives a net amount equal to the amount the Building Contractor would have received had such deduction or withholding not been required to be made.
- 13 Notwithstanding any composition, release or arrangements effected by the Building Contractor with the Subcontractor the Guarantor's liability under this guarantee shall be discharged only by payment and discharge by the Guarantor to the Building Contractor in full of all sums, obligations and liabilities which may from time to time be respectively due or owing or incurred from or by the Subcontractor.
- 14 This guarantee may be enforced without first taking any steps or proceedings against the Subcontractor. This guarantee is in addition to and not in substitution for any present and future guarantee, lien or other security held by the Building Contractor. The Building Contractor's rights hereunder are in addition to and not exclusive of those provided by law.
- 15 The Guarantor represents and warrants to the Building Contractor that it has full power, authority and right to enter into and carry out its obligations hereunder and that this guarantee constitutes the valid and legally binding obligations of it.
- 16 The Guarantor shall indemnify the Building Contractor within 10 days of receipt of demand in respect of all expenses, losses and liabilities it incurs in connection with the enforcement of this guarantee.

- 17 Any notice, demand or other communication to be served under this guarantee may be served upon the Guarantor only by delivery by hand or by facsimile transmission to the Guarantor at its address or facsimile number shown below:

Address: Company Secretary  
Rotary Limited  
5 Trench Road  
Mallusk  
Newtown Abbey  
Co Antrim  
Northern Ireland BT36 4XA

Fax: 028 90 831201

or at such other address or number as the Guarantor may from time to time notify in writing to the Building Contractor .

- 18 Any notice, demand or other communication to be served under this guarantee may be served upon the Building Contractor only by delivery by hand or by facsimile transmission to the Building Contractor at its address or facsimile number shown below:

Address: Attention: Company Secretary  
Johnston International Limited  
Leeward Marina  
Leeward, Providenciales  
Turks and Caicos Islands  
British West Indies

Fax: +1 649 946 4483

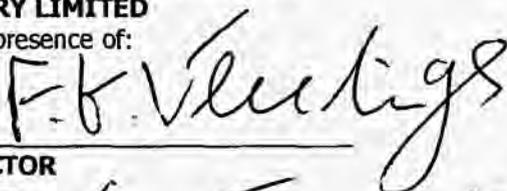
or at such other address or number as the Building Contractor may from time to time notify in writing to the Guarantor.

- 19 A notice or demand served by facsimile transmission shall be deemed to have been served at the time of transmission unless served after 4.00 p.m. in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following business day. For the purposes of this clause "business day" means a day other than a Saturday, Sunday or bank holiday in the Turks and Caicos Islands.
- 20 In proving service of any notice it will be sufficient to prove, in the case facsimile transmission, that facsimile was duly transmitted on a business day to a current facsimile number of the addressee at the address referred to above.

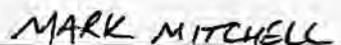
- 21 The Building Contractor shall be entitled to assign or transfer all or any of the Building Contractor's rights under this guarantee with the Guarantor's consent, such consent not to be unreasonably withheld or delayed.
- 22 This guarantee may be executed in a number of counterparts and by the parties on separate counterparts each of which so executed and delivered will be an original, but all the counterparts will together constitute one and the same agreement.
- 23 The Guarantor hereby irrevocably appoints Smith and Smith, Hibiscus Square, Pond Street, Grand Turk, Turks and Caicos Islands, British West Indies, as its agent to accept service of process.
- 24 The proper law of this guarantee shall be the law of the Turks and Caicos Islands, and all disputes which may arise under, out of, or in connection with, or in relation to, this guarantee 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 the TCI or other location in accordance with the ICC Arbitration in Rules. The language of the arbitration shall be English. Any determination order or award issued by such courts or tribunal shall be enforceable against the Guarantor in any country where the Guarantor has assets and property including but not limited to the Guarantor's place of incorporation.

**IN WITNESS** whereof the Guarantor has caused this guarantee to be executed as a Deed the day and year first before written in accordance with the law governing the constitution of the Guarantor.

**EXECUTED** for and on behalf of  
**ROTARY LIMITED**  
in the presence of:

  
\_\_\_\_\_  
**DIRECTOR**  
  
\_\_\_\_\_  
**NAME**

  
\_\_\_\_\_  
**DIRECTOR/SECRETARY**

  
\_\_\_\_\_  
**NAME**