

DATED 11 January

2008

**INTERHEALTH CANADA LIMITED**

**JOHNSTON INTERNATIONAL LIMITED**

**PARENT COMPANY GUARANTEE**

relating to

A construction contract between Interhealth Canada Construction and Services (TCI) Limited and Johnston International Limited for the construction of hospital facilities on Grand Turk and Providenciales, Turks and Caicos Islands

**SUBJECT TO THE PAYMENT CONDITIONS  
(AS DEFINED HEREIN)**

We hereby certify this to be  
a true copy of the original

*Martin Lambie 11/2/2008*

Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London EC4R 9HA

DATED

11 January 2008

**PARTIES**

- 1 Beneficiary **JOHNSTON INTERNATIONAL LIMITED** (company no: 02999283) whose registered office is at Governor's Road, Leeward, Providenciales, Turks and Caicos Islands, British West Indies
- 2 Guarantor **INTERHEALTH CANADA LIMITED** a corporation under the laws of the Province of Ontario (having Ontario Corporation Number 1066939) whose registered office is at Suite 600, 357 Bay Street, Toronto, Ontario, Canada M5H 2T7

**RECITALS**

- A By the Contract, the Guarantor's subsidiary Interhealth Canada Construction & Services (TCI) Limited (the "**Employer**") has appointed the Beneficiary to carry out and complete the Works.
- B The Guarantor has agreed to guarantee the payment obligations of the Employer under the Contract in the manner set out in this deed.

**OPERATIVE PROVISIONS**

**1 Definitions and interpretation**

1.1 Unless the contrary intention appears, the following definitions apply:

- Agent* shall have the meaning set out in the Warranty;
- Compliance Certificate* means the certificate addressed to the Funders (and copied to the Beneficiary) to be signed by an authorised representative of the Guarantor, the Beneficiary and the Agent as set out in the Warranty;
- Contract* the contract dated <sup>11 January</sup> ~~11~~ 2007~~8~~ between the Beneficiary (1) and the Employer (2) (and any further agreement varying or supplementing it) whereby the Beneficiary has undertaken to carry out and complete the Works;
- D&B Contract* the design & build contract dated <sup>11 January</sup> ~~11~~ 2007~~8~~ between (1)

Interhealth Canada Construction and Services (TCI) Limited;  
and (2) Interhealth Canada Infrastructure Services (TCI)  
Limited

<i>Employer</i>	shall have the meaning given to it in Recital A;
<i>Funders</i>	means those persons who provide financing for the Works as referred to in the D&B Contract;
<i>Guarantee Limit</i>	shall have the meaning given to it in clause 2;
<i>Payment Conditions</i>	means the conditions for payment of demand or claim or the exercise of any rights under this Guarantee in respect of any claims as set out in clause 10;
<i>Priority Claims</i>	means any demand(s) or claim(s) made (whether in singly or in the aggregate) when aggregated with any previous claims or demands made by the Beneficiary under this Guarantee would be less than or equal to US\$2,000,000 (two million US dollars);
<i>Senior Finance Parties</i>	shall have the meaning given in the Warranty.
<i>Subordinated Claims</i>	means any demand(s) or claim(s) made (whether in singly or in the aggregate) when aggregated with any previous claims or demands made by the Beneficiary under this Guarantee would exceed US\$2,000,000 (two million US dollars);
<i>Warranty</i>	means the collateral warranty between the Beneficiary, the Funders and the Employer dated on or about the date of the Contract;
<i>Works</i>	the construction of new hospital facilities for the Turks and Caicos Islands Government on Grand Turk and Providenciales as more particularly 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.

## 2 **Guarantee**

2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary that whenever the Employer does not pay any amount when due under or in connection with the Contract (having regard to any applicable grace periods under the Contract), the Guarantor shall, subject always to the Payment Conditions, pay on demand that amount as if it were the Employer provided that the Guarantor's maximum aggregate liability to the Beneficiary under this deed shall be no greater than the aggregate of (i) US\$2,000,000 (in words two million US dollars only) for Priority Claims (as defined below) and (ii) US\$4,711,961 (in words four million seven hundred and eleven thousand nine hundred and sixty-one US dollars only) for Subordinated Claims, being a maximum amount of US\$6,711,961 (in words six million seven hundred and eleven thousand nine hundred and sixty-one US dollars only) (the "Guarantee Limit").

2.2 Subject to the Guarantee Limit and the Payment Conditions, the Guarantor agrees to indemnify the Contractor, in respect of all direct expenses, losses and liabilities (including legal fees and expenses) it incurs at any time as a result of the Employer's failure to fulfil any of the terms of the Contract.

## 3 **Guarantor's liability**

3.1 Subject always to the Payment Conditions, the obligations of the Guarantor under this deed shall be in addition to and shall be independent of any other security which the Beneficiary may at any time hold in respect of the Employer's obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security.

3.2 No alterations in the Contract, 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 Contractor, shall in any way release or reduce any liability of

the Guarantor hereunder. References to the Contract in this deed 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 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 Employer without affecting the Guarantor's liability hereunder.

3.3 Without prejudice to the Contractor's rights against the Employer 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.

3.4 The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:

3.4.1 the bankruptcy, insolvency, liquidation, reorganisation, dissolution, amalgamation, reconstruction or any analogous proceeding relating to the Employer or any change in the status, function, control or ownership of the Employer;

3.4.2 any time given or forbearance or other indulgence shown by the Beneficiary to the Employer;

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

3.4.4 the giving by the Employer of any security or the release, modification or exchange of any such security or the liability of any person;

3.4.5 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 Beneficiary or any other person;

3.4.6 any unenforceability illegality or invalidity of any obligation of the Beneficiary or any person under the Contract 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;

3.4.7 the provision by the Beneficiary and/or the Employer of any consent to an assignment or any transfer or novation or the making of any assignment, transfer or novation of the Contract or any part thereof; or

3.4.8 any present or future law or regulation purporting to reduce or prejudice any of the obligations or liabilities of the Beneficiary pursuant to the Contract or any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Guarantor.

**4 Variations to the Contract**

The Guarantor authorises the Employer to make any addition or variation to the Contract, the due and punctual performance of any payment obligations in connection with which shall likewise be guaranteed by the Guarantor in accordance with the terms of this deed. The liability of the Guarantor under this deed shall in no way be discharged or lessened by any such addition or variation and in no event shall the Guarantee Limit be exceeded.

**5 Rights of Contractor**

No delay or omission of the 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 Contractor herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**6 Payment**

The Guarantor shall be entitled in any proceedings under this deed to rely on any limitation in the Contract and to raise equivalent defences or claims which may be available to the Employer under the Contract (including set-offs or counterclaims). If the Guarantor is obliged by law to make any deduction or withholding from such payment, the amount due from the Guarantor, subject to the Payment Conditions,

in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Contractor receives a net amount equal to the amount the Contractor would have received had such deduction or withholding not been required to be made.

7 **Liquidation of Employer**

The Guarantor covenants with the Beneficiary that if the Employer shall go into liquidation and the liquidator shall disclaim the Contract or if the Employer's employment under the Contract shall be determined for any reason the liability of the Guarantor under this deed shall remain in full force and effect.

8 **Waiver**

The Guarantor waives any right to require the Beneficiary to pursue any remedy, which it may have against the Employer before proceeding against the Guarantor under this deed.

9 **Rights of Guarantor against Employer**

The Guarantor shall not by any means or on any ground seek to recover from the Employer (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the Beneficiary in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the Beneficiary to claim or have the benefit of any security which the Beneficiary holds for any money or liability owed by the Employer to the Beneficiary. If the Guarantor shall receive any monies from the Employer in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the Beneficiary for so long as the Guarantor shall remain liable or contingently liable under this deed.

10 **PAYMENT CONDITIONS**

10.1 Subject always to the provisions of clause 10.2 and the Warranty, the Beneficiary shall not take any steps to enforce any right or claim against the Guarantor in respect of any claim that the Beneficiary may have under this deed until the earlier of:

10.1.1 the date on which the Senior Finance Parties have been repaid in full;  
or

10.1.2 the date on which the Senior Finance Parties have given their written consent to such steps being taken.

10.2 The Beneficiary will be entitled to take steps to enforce its rights or claims against the Guarantor in respect of a Priority Claim provided that:

10.2.1 prior to taking such steps in respect of the relevant Priority Claim, the Beneficiary has prepared a Compliance Certificate which has been signed by the Beneficiary Guarantor and countersigned by the Agent pursuant to the Warranty; and

10.2.2 as at the date of payment by the Guarantor in respect of the relevant Priority Claim, there has been no material change in the circumstances of the progress of the Works or the net assets of the Guarantor since the relevant Compliance Certificate was countersigned by the Agent.

10.3 Where the Beneficiary intends to make a demand or claim for a Priority Claim, the Beneficiary shall notify the Guarantor in writing of such intention and provide a Compliance Certificate for signature by the Guarantor. The Guarantor shall promptly (and in any case within 7 days of receipt of such notice):

10.3.1 provide copies of its most recent group audited accounts and two most recent sets of management accounts to the Beneficiary; and

10.3.2 where the Guarantor considers that the criteria set out at paragraph 1 of the Compliance Certificate is satisfied, sign such Compliance Certificate and return the signed Compliance Certificate to the Beneficiary.

## 11 **Continuing guarantee**

The terms of this deed shall be a continuing guarantee and shall remain in full force and effect until the earlier of: (i) the payment by the Guarantor to the Beneficiary under this deed of amounts (in aggregate) equal to the Guarantee Limit; and (ii) the payment of the Final Payment Certificate issued under clause 14.13 of the Contract.

## 12 **Third party rights**

It is not intended that any third party should have the right to enforce any provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.



13 **Notices**

Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

14 **Authority to enter deed**

The Guarantor represents and warrants to the Contractor that it has full power, authority and right to enter into and carry out its obligations hereunder and that this deed constitutes the valid and legally binding obligations of it.

15 **Assignment**

Neither party shall be entitled to assign this deed.

16 **Governing law**

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

16.2 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.

17 **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 LIMITED and JOHNSTON INTERNATIONAL LIMITED** have executed this Deed

Executed and delivered as a Deed by  
**INTERHEALTH CANADA LIMITED**  
acting by:

)  
)  
)  
)



.....  
Authorised Signatory

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

)  
)  
)  
)



.....  
Director



.....  
Director/Secretary