

DATED 11 January 2008 BLP

**INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED**

**FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED**  
**(as Beneficiary and Agent)**

**INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED**

**FM DEED OF COLLATERAL WARRANTY**

relating to a project for

the design, construction, operation and maintenance of hospitals on

Grand Turk and Providenciales, Turks & Caicos Islands

DATED

11 January 2008

**PARTIES**

- |   |             |  |
|---|-------------|--|
| 1 | Contractor  | <b>INTERHEALTH CANADA CONSTRUCTION &amp; SERVICES (TCI) LIMITED</b> (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 |
| 2 | Beneficiary | <b>FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED</b> of Providenciales, Turks & Caicos Islands, British West Indies as security trustee for the Senior Finance Parties under the Credit Agreement  |
| 3 | Agent       | <b>FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED</b> of Providenciales, Turks & Caicos Islands, British West Indies as agent for the Senior Finance Parties under the Credit Agreement   |
| 4 | Provider    | <b>INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED</b> (Registered No 11772) a company incorporated in the Turks and Caicos Islands and having its registered office at PO Box 127, Leeward Highway, Providenciales, Turks and Caicos Islands, British West Indies;                          |

**RECITALS**

- A The Senior Finance Parties have entered into an agreement ("Credit Agreement") to make certain term loan facilities available to the Provider.
- B The Provider and the Contractor have entered into a Contract dated 2007 for the provision of non-clinical facilities management services.
- C As a condition of and in consideration of the foregoing the Contractor has agreed to enter into this deed for the benefit of the Beneficiary.

In consideration of US\$10 paid by each of the Beneficiary and the Agent to the 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:

*Agent* includes any person to whom the benefit of this deed and/or any rights arising under it have been validly assigned in accordance with clause 4;

*Beneficiary* includes any person to whom the benefit of this deed and/or any rights arising under it have been validly assigned in accordance with clause 4;



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*Contract* the FM 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 provide certain non-clinical facilities management services;

*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 of the Services;

*Senior Finance Parties* has the meaning given in the Credit Agreement.

- 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.
- 1.7 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 deed 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 deed 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.
- 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 Use of Proprietary Material**

3.1 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 provision of the Services to be carried out by its Contractor.

3.2 The licence referred to in clause 3.1 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.

3.3 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.

### **4 Assignment**

4.1 The Beneficiary may at any time assign the benefit of this deed and/or any rights arising under it by way of absolute legal assignment to any funder (as defined in the Project Agreement), without the consent of the Contractor being required.

4.2 Neither the Employer or the Contractor may assign or transfer or otherwise dispose of any of their rights or obligations under this deed without the prior written consent of the Beneficiary.

### **5 Limitation**

No action or proceedings for any breach of this deed shall be commenced against the Contractor after the expiry of 6 years following the later Effective Date.

### **6 Severability**

If any term, condition or provision contained in this deed 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 deed.

### **7 Governing law and Jurisdiction**

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

7.2 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.

### **8 Warranties**

The parties agree that the TCIG warranty shall have no effect on this deed or the interpretation hereof or in any way whatsoever or howsoever affect the rights and remedies of the Beneficiary hereunder.

**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 this Deed has been duly executed by **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED, INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** and **FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED** on the date of this document.

Executed as a deed and delivered by the said )  
**INTERHEALTH CANADA** )  
**INFRASTRUCTURE (TCI) LIMITED** by )  
affixing its Common Seal in the presence of: )

Director

Director

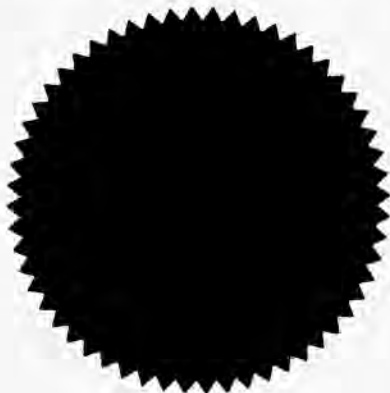
Signed sealed and delivered as a deed by )  
Mark Young, as attorney of )  
**FIRSTCARIBBEAN INTERNATIONAL** )  
**BANK (BAHAMAS) LIMITED** (as Agent) )  
under a Power of Attorney dated 12<sup>th</sup> day of )  
December 2007 in the presence of:

.....  
Mark Young

.....  
Witness

.....  
ATLANTIC HOUSE, LONDON, EC1A 2FG  
Address

.....  
TRAINEE SOLICITOR  
Occupation



Executed as a deed and delivered by the said )  
**INTERHEALTH CANADA** )  
**CONSTRUCTION & SERVICES (TCI)** )  
**LIMITED** by affixing its Common Seal in the )  
presence of: )

Director



Director

