

EXECUTION COPY

DATED 11 January 2008

~~2007~~

**ROTARY (INTERNATIONAL) LIMITED**

**JOHNSTON INTERNATIONAL LIMITED**

**FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED**

**DEED OF WARRANTY in favour of FUNDERS**

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

**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 **FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED** of Providenciales, Turks and Caicos Islands, British West Indies, as security trustee for the Senior Finance Parties under the Credit Agreement;
- 3 Agent **FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED** of Providenciales, Turks and Caicos Islands, British West Indies as agent for the Senior Finance Parties under the Credit Agreement
- 4 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

**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 Senior Finance Parties have entered into an agreement ("Credit Agreement") to make certain term loan facilities to the Provider in relation inter alia to procuring of construction of the Works.
- D In consideration of the foregoing the Sub-Contractor has agreed to enter into this deed in favour of the Beneficiary.

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

*Advance Payment Bond* means the bond to be provided by the Sub-Contractor in respect of the Rotary Advance Payment pursuant to clause 5.2 of the Direct Agreement;

*Agent* includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause 7.1;

*Contract* the contract dated <sup>11 January 2008</sup> [ 1 ] 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's Collateral Warranty* the collateral warranty between the Contractor, the Beneficiary, the Agent and the Employer dated on or about the date of this Deed;

*Direct Agreement* the direct agreement dated on or about the date of this deed amongst the Contractor, the Employer and the Sub-Contractor (inter alia) in respect of the Rotary Advance Payment and the repayment of the Rotary Advance Payment;

*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.

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<i>Property</i>	the property being the site of the Works in Providenciales and Grand Turk as more specifically defined and described in the Contract;
<i>Proprietary Material</i>	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;
<i>Provider</i>	Interhealth Canada Infrastructure (TCI) Limited (Company Number 11772) 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;
<i>Rotary Advance Payment</i>	has the meaning given in the Sub-Contract;
<i>Senior Finance Parties</i>	has the meaning given in the Credit Agreement.
<i>Sub-Contract</i>	the sub-contract dated <sup>11 January 2005</sup> <del>X A Y</del> 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;
<i>Sub-Contract Works</i>	those parts of the Works to be carried out by the Sub-Contractor as more particularly defined and described in the Sub-Contract;
<i>Taking Over</i>	taking over of the Works as certified or otherwise evidenced pursuant to the Contract;
<i>TCIG Warranty</i>	a deed made or to be made between The Crown (in right of its Government in the Turks and Caicos Islands) ("TCIG"), the Contractor and the Employer under which TCIG has a similar right (with the appropriate changes) to the right granted to the Beneficiary by Clause 4.1;

<i>Working Day</i>	a day other than a Saturday, Sunday or a bank holiday in the Turks and Caicos Islands; and
<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 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 liability to the Beneficiary under this deed than it would owe had the Beneficiary been named as a joint employer with the Contractor under the Sub-Contract (save in connection with clause 6, the Rotary Advance Payment and the Advance Payment Bond); and

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

3 **Obligations prior to termination of the Subcontract**

3.1 Subject to clause 3.3, the Sub-Contractor shall not exercise nor seek to exercise any right to terminate the Sub-Contract for any reason, including any breach on the part of the Contractor, without giving to the Beneficiary (with a copy to the Agent) not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination.

3.2 Any period stipulated in the Sub-Contract for the exercise by the Sub-Contractor of a right of termination shall be extended, as necessary, to take account of the period of notice required under clause 3.1 and 3.3.

3.3 The period referred to in clause 3.1 may, at the discretion of the Beneficiary, be extended to 90 Working Days (or such longer period so that the period under clause 3.1 does not expire before the equivalent period granted to the Beneficiary by the Contractor in the Contractor's Collateral Warranty) by notice, and in these circumstances the Sub-Contractor may suspend performance of its obligations under the Sub-Contract for the remainder of the period referred to in clause 3.1 as extended by this clause 3.3 (where appropriate).

3.4 Compliance by the Sub-Contractor with clause 3.1 and clause 3.3 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination, nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice, unless the right of termination shall have ceased under the provisions of clause 4.

3.5 The period of time referred to in clause 3.1 shall be extended so that it shall not expire before the time period referred to in clause 3.1 (as the case may be extended in accordance with clause 3.3) both of the Contractor-Funder Warranty.

**4 "Step-in" right**

4.1 The right of the Subcontractor to terminate the Sub-Contract shall cease if, within the period referred to in clause 3.1 or as may be extended in accordance with clause 3.3, the Beneficiary (which expression shall for the purposes of this clause 4 include any receiver, administrative receiver or other appointee (in each case a "Nominee") appointed by the Beneficiary) shall give notice to the Sub-Contractor:

4.1.1 requiring it to continue its obligations under the Sub-Contract;

4.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Contractor under the Sub-Contract;

4.1.3 undertaking (jointly and severally with the Employer) to the Sub-Contractor to discharge all payments which may subsequently become properly due to the Sub-Contractor under the terms of the Appointment and to pay to the Sub-Contractor within 7 days any sums which have become due and payable to it under the Sub-Contract but which remain unpaid and which have been notified to the Beneficiary in the notice served under clause 3.1 or in accordance with clause 10.

4.2 Upon compliance by the Beneficiary with the requirements of clause 4.1, the Sub-Contract shall continue as if the right of termination on the part of the Sub-Contractor had not arisen and as if the Sub-Contract had been entered into between the Sub-Contractor and the Beneficiary to the exclusion of the Contractor.

4.3 Notwithstanding that as between the Contractor and the Subcontractor the Sub-Contractor's right of termination of the Sub-Contract may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Sub-Contractor and the Contractor to that effect and the Beneficiary complies with the requirements on its part under clause 4.1.

4.4 The Sub-Contractor shall be bound to assume that, as between the Contractor and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.

4.5 The Sub-Contractor, acting in accordance with the provisions of this clause 4, shall not incur any liability to the Contractor.

4.6 If the Beneficiary appoints a Nominee to exercise its rights under this clause 4, the Nominee shall act on behalf of the Employer and shall have no personal liability to the Contractor, but the Beneficiary shall be liable jointly and severally with the Employer to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Nominee.

## 5 **Use of Proprietary Material**

5.1 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.

5.2 The licence referred to in clause 5.1 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.

5.3 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.

## 6 **Advance Payment Bond**

6.1 The Sub-Contractor shall not, without the prior consent of the Beneficiary amend, vary, waive modify or novate or concur in any amendment, variation, waiver, modification or novation of the Advance Payment Bond or the terms of clauses 16.8A and 16.8B of the Sub-Contract or the terms of clause 5 of the Direct Agreement or cause to amend, vary, waive, modify or novate any term of the Sub-Contract and/or the Direct Agreement which would affect the operation of clauses 16.8A and 16.8B of the Sub-Contract and/or clause 5 of the Direct Agreement and/or the Advance Payment Bond (as the case may be).

## 7 **Insurance**

7.1 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.

7.2 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.

7.3 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.

## 8 **Assignment and Third Parties**

8.1 This deed or the benefit hereof may be assigned by the Beneficiary and/or the Agent an unlimited number of times without the consent of the Subcontractor or the Contractor to:

8.1.1 the Provider;

8.1.2 the Funders (as defined in the Project Agreement);

8.1.3 any step-in entity or novatee of the Funders (as defined in the Project Agreement) under any direct agreements with TCIG and with the Employer;

8.1.4 any entity replacing the Provider in relation to the whole or any part of the Works or the completed Works;

and to any other person with the consent of the Sub-Contractor, such consent not to be unreasonably withheld or delayed.

8.2 Neither the Contractor or the Sub-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.

## 9 **Governing law and Jurisdiction**

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

9.2 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.

10 **Due Amounts**

10.1 When sums are due and payable to the Sub-Contractor under the Sub-Contract and remain unpaid for a period of 7 days after they are due ("Due Amount") the Sub-Contractor shall send a notice (a "Due Amount Notice") to the Beneficiary (copied to the Agent) detailing the total of the Due Amount and when it became payable. The Sub-Contractor shall update the information in the Due Amount Notice on a weekly basis until the Due Amount is fully paid.

10.2 Nothing in clause 10.1 shall impose an obligation on the Beneficiary or the Agent to pay any Due Amount.

11 **Warranties**

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

12 **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 **JOHNSTON INTERNATIONAL LIMITED** has caused its common seal to be hereunto affixed and this Deed has been duly executed by **ROTARY (INTERNATIONAL) LIMITED, FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED** and **JOHNSTON INTERNATIONAL LIMITED** on the date of this document.

Executed as a deed and delivered by the said )  
**ROTARY (INTERNATIONAL) LIMITED** )  
acting by:

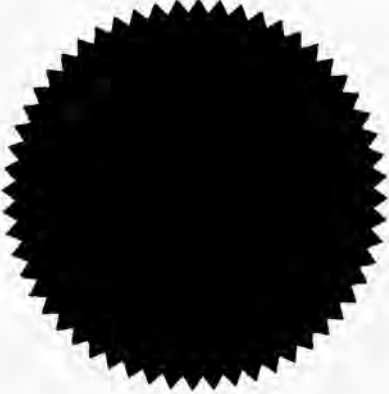
*Mark Mitchell* (MARK MITCHELL)  
.....  
Director

*M.S. Hopkinson* (M.S. HOPKINSON)  
.....  
Director/Secretary  
)  
)

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**As Beneficiary**

Signed sealed and delivered as a Deed by Mark Young as attorney of **FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED** under a Power of Attorney dated 12 December 2007



*Mark Young*

.....  
Attorney's Signature

In the presence of:

*N Wardle*

.....  
Witness Signature

*NATALLE WARDLE*

.....  
Witness Name

BERWIN LEIGHTON PAISNER LLP  
ADELAIDE HOUSE  
LONDON BRIDGE  
LONDON EC4R 9HA

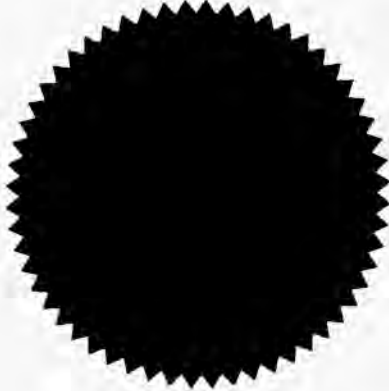
.....  
Witness Address

*SOLICITOR*

.....  
Occupation

**As Agent**

Signed sealed and delivered as a Deed by Mark Young as attorney of **FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED** under a Power of Attorney dated 12 December 2007



)  
)  
*Mark Young*

.....  
Attorney's Signature

In the presence of:

*N Wardle*

.....  
Witness Signature

*NATALLE WARDLE*

.....  
Witness Name

BERWIN LEIGHTON PAISNER LLP  
ADELAIDE HOUSE  
LONDON BRIDGE  
LONDON EC4R 9HA

.....  
Witness Address


*SOLICITOR*

.....  
Occupation

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

.....  .....  
Director

.....  .....  
Director/Secretary