

DATED 11 January

2008

**DEVEREUX ARCHITECTS LIMITED**

**INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED**

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

**DEED OF COLLATERAL WARRANTY**  
(Architect)

in respect of the  
Development of Hospital Facilities,  
Turks and Caicos Islands

**DATED**

11 January 2008

**PARTIES**

- 1            Consultant            **DEVEREUX ARCHITECTS LIMITED** (company number 4163349) whose registered office is at 200 Upper Richmond Road, London SW15 2SH
- 2            Beneficiary            **INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** (company no 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
- 3            Employer            **INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** (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

**RECITALS**

- A            By the Appointment, the Employer has employed the Consultant to perform the Services.
- B            The Beneficiary has entered into an agreement with the Employer to procure the design and construction of the Development ("the Design and Build Contract").
- C            As a condition of and in consideration of the Beneficiary's agreement under the Design and Build Contract the Consultant has agreed to enter into this deed for the benefit of the Beneficiary.

**IN CONSIDERATION** of US\$10 paid by the Beneficiary to the Consultant, 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:

<i>Appointment</i>	the contract dated [ ] between the Employer (1) and the Consultant (2) (and any further agreement varying or supplementing it) under which the Consultant has agreed to perform the Services;
<i>Beneficiary</i>	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 7;
<i>Development</i>	the development of the Property as more particularly described in the Appointment;
<i>Property</i>	the property being the site of the Development in Providenciales and Grand Turk as more specifically defined and described in the Appointment;
<i>Proprietary Material</i>	all drawings, details, plans, specifications, schedules, reports, valuations, certificates, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services;
<i>Services</i>	the services performed or to be performed by the Consultant in respect of the Development as more particularly described in the Appointment;
<i>Taking Over</i>	taking over of construction of the Development as defined in the Appointment;
<i>TCIG Warranty</i>	means a deed made or to be made between The Crown (in right of its Government in the Turks and Caicos Islands) ("TCIG"), the Consultant and the Employer under which TCIG has a similar right (with appropriate changes) to the right granted to the Beneficiary by clause 4.1; and
<i>Working Day</i>	a day other than a Saturday, Sunday or a bank holiday in the Turks and Caicos Islands.

## 2 **Consultant's warranties**

- 2.1 The Consultant 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 Appointment in accordance with the terms of the Appointment, provided always that:
- 2.1.1 the Consultant shall owe no greater liability to the Beneficiary under this deed than it would owe had the Beneficiary been jointly appointed with the Employer under the Appointment; and
- 2.1.2 the Consultant shall be entitled in any proceedings under this deed to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims or post-contract settlement by the Employer) as if the Beneficiary had been named as a joint employer with the Employer under the Appointment;
- 2.2 The Consultant extends to the Beneficiary the benefit of all warranties on the part of the Consultant contained in the Appointment.
- 2.3 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Consultant under this clause 2.

## 3 **Obligations prior to determination of the Consultant's engagement**

- 3.1 The Consultant shall not exercise nor seek to exercise any right to determine its engagement under the Appointment for any reason, including any breach on the part of the Employer, without giving to the Beneficiary not less than 90 Working Days' notice of its intention to do so and specifying the grounds for the proposed determination.
- 3.2 Any period stipulated in the Appointment for the exercise by the Consultant 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 Consultant 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 Consultant from exercising its rights after the expiration of the 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 Consultant to determine its engagement under the Appointment shall cease if, within the period of 90 Working Days referred to in clause 3.1, 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 Consultant:

4.1.1 requiring it to continue its obligations under the Appointment;

4.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Employer under the Appointment; and

4.1.3 undertaking jointly and severally with the Employer to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and to pay to the Consultant within 7 days any sums which have become properly due and payable to it under the Appointment 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 Appointment shall continue as if the right of determination on the part of the Consultant had not arisen and as if the Appointment had been entered into between the Consultant and the Beneficiary to the exclusion of the Employer.

4.3 Notwithstanding that as between the Employer and the Consultant the Consultant's right of determination of its engagement under the Appointment may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Consultant and the Employer to that effect and the Beneficiary complies with the requirements on its part under clause 4.1.

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

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

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 Consultant, but the Beneficiary shall be liable jointly and severally with the

Employer to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Nominee.

## **5 Use of Proprietary Material**

5.1 The copyright in the Proprietary Material shall remain vested in the Consultant, but the Consultant 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 Development and/or the Property, including (without limitation) the execution and completion of the Development 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 expiry or determination (for any reason) of the Consultant's engagement under the Appointment.

5.3 The Consultant 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 Insurance**

6.1 Without limiting its other obligations under this deed or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover each and every professional liability which it may incur under this deed, with a limit of indemnity of not less than £10,000,000 in respect of each and every claim, provided that such insurance continues to be available in the European Union/Caribbean market on reasonable terms and at commercially reasonable premium rates to Consultants performing substantially similar services to the Services.

6.2 The insurance referred to in clause 6.1 shall be maintained with reputable insurers from the date of this deed and for a period expiring not less than 12 years after Taking Over and notwithstanding the determination (for any reason) of the Consultant's employment under the Appointment.

6.3 As and when reasonably required to do so by the Beneficiary, the Consultant shall produce documentary evidence that the insurance required by this clause 6 is being properly maintained.

6.4 The Consultant shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this clause 6 on reasonable terms and at

commercially reasonable premium rates or at all or if there is any material reduction in the scope or level of cover offered by such insurance.

## **7 Assignment**

7.1 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:

(a) to any further person providing finance or re-finance in connection with the Works on notice to the Consultant, without the consent of the Consultant being required; and

(b) to any other person (subject to a maximum of two such assignments).

7.2 Neither the Employer nor the Consultant may assign or transfer or otherwise dispose of their rights or obligations under this Agreement without the prior written consent of the Beneficiary.

## **8 Net contribution**

8.1 The Consultant's liability for any loss or losses arising under or by reason of any breach of this Agreement shall be limited to that proportion of the Beneficiary's losses as it would be just and equitable for the Consultant to pay having regard to the extent of the Consultant's responsibility for the same and on the assumption that each of Johnston International, Rotary International (in its capacity as MEP designer and contractor) and CSE Engineering Limited and contractors have provided undertakings to the Beneficiary in respect of the carrying out of their obligations in connection with the Development and shall be deemed to have paid such proportion as it would be just and equitable for them to pay having regard to the extent of their responsibility.

## **9 Limitation**

No action or proceedings for any breach of this deed shall be commenced against the Consultant after the expiry of 12 years following Taking Over.

## **10 Due Amounts**

10.1 When sums are due and payable to the Consultant under the Appointment and remain unpaid for a period of 7 days after they are due ("Due Amount") the Consultant shall send a notice (a "Due Amount Notice") to the Beneficiary detailing

the total of the Due Amount and when it became payable. The Consultant 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 to pay any Due Amount.

**11 Governing law and disputes**

This Agreement shall be governed in accordance with the laws of the Turks and Caicos Islands and the courts of the Turks and Caicos Islands shall have jurisdiction to hear and settle any action, suit, proceedings or dispute in connection with this Agreement and the parties irrevocably submit to the jurisdiction of those courts.

**12 Warranties**

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

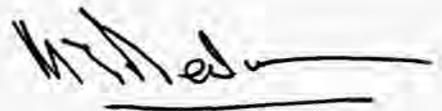
**13 Counterparts**

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 CONSTRUCTION & SERVICES (TCI) LIMITED and INTERHEALTH CANADA INFRASTRUCTURE (TCI) LIMITED** have caused their respective seals to be hereunto affixed and **DEVEREUX ARCHITECTS LIMITED** acting by its duly authorised representatives has executed this deed on the date first above written.

Executed and delivered as a deed by )  
**DEVEREUX ARCHITECTS LIMITED** )  
acting by:

Director



Director/Secretary





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/Secretary



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/Secretary

