

DATED 11 January

2008

**DEVEREUX ARCHITECTS LIMITED**

**THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)**

**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      **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
  
- 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 selected Interhealth Canada Infrastructure (TCI) Limited ("the Provider") as its preferred bidder in relation to its hospitals scheme to provide new hospitals at sites located on Providenciales and Grand Turk.
  
- C      The Provider and the Employer have entered into a contract dated on or about the date of this agreement for the design and construction of the hospital facilities.
  
- D      As a condition of and in consideration of the foregoing, the Consultant has agreed to enter into this agreement 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 <del>11 January 2008</del> <i>11 January 2008</i> 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 agreement and/or any rights 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>Fund</i>	FirstCaribbean International Bank (Bahamas) Limited of Providenciales, Turks and Caicos Islands;
<i>Funders Direct Agreement</i>	the agreement dated on or about the date of this agreement between the Beneficiary, the Fund, the Provider and Interhealth Canada Clinical Services (TCI) Limited which deals with the rights of each party under their respective warranties from the Consultant;
<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, valuations, certificates, 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 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; and

*Taking Over* taking over of construction of the Development as defined in the Appointment.

## 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 obligations to the Beneficiary under this agreement than it would owe had the Beneficiary been named as joint employer with the Employer under the Appointment; and

2.1.2 the Consultant shall be entitled in any proceedings under this agreement to rely on any limitation in the Appointment 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 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 21 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 21 days referred to in clause 3.1, 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 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 due and payable to it under the Appointment but which remain unpaid;

provided that subject always to the Funders Direct Agreement:

4.1.4 in this proviso and in clause 4.7 *Fund Warranty* means a deed made or to be made between the Consultant, the Fund and the Employer in respect of the Development under which the Fund has a right equivalent (with the appropriate changes) in all material respects to the right granted by clause 4.1 to the Beneficiary, save that the period for the exercise of that right by the Fund shall expire 90 days after service of the Consultant's simultaneous notices on the Beneficiary and the Fund of its intention to determine its engagement under the Appointment;

4.1.5 any notice served by the Consultant on the Beneficiary pursuant to clause 3.1 shall be invalid unless a similar notice has been simultaneously served upon the Fund;

4.1.6 the Beneficiary shall have no power to give notice to the Consultant under clause 4.1 within the period of 90 days referred to in clause 4.1.4 unless the Fund shall previously have notified the Beneficiary that it will not exercise its equivalent right under the Fund Warranty;



- 4.1.7 the Beneficiary shall have no power to give notice to the Consultant under clause 4.1 in response to a notice under clause 3.1 if the Fund has already exercised its equivalent right under the Fund Warranty in response to the Consultant's simultaneous notice to the Fund; and
- 4.1.8 any notice given by the Beneficiary which is in breach of clause 4.1.6 or clause 4.1.7 shall be invalid.
- 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, provided that the Beneficiary may only give notice under this clause 4.3 if it shall first have given the Fund and the Consultant notice of its intention to do so and the Fund has consented expressly to the exercise of such right by the Beneficiary.
- 4.4 Any notice given by the Beneficiary which is in breach of clause 4.3 shall be invalid.
- 4.5 The Consultant shall be bound to assume that, as between the Employer, the Fund and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.
- 4.6 The Consultant, acting in accordance with the provisions of this clause 4, shall not incur any liability to the Employer.
- 4.7 If the Fund exercises its equivalent right under clause 4.1 or clause 4.3 of the Fund Warranty, the provisions of clauses 3 and 4 shall have effect as if all references to the Fund and the Fund Warranty had been deleted and as if all references to the Employer were references to the Fund.

## 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 by the Consultant.

## 6 **Insurance**

6.1 Without limiting its other obligations under this agreement or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover each and every professional liability which it may incur under this agreement, 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 services substantially similar to the Services.

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

The Beneficiary may at any time assign the benefit of this agreement and/or any rights arising under it by way of absolute legal assignment to any person (subject to a maximum of two such assignments) on notice to the Consultant, without the

consent of the Consultant being required.

**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 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 agreement shall be commenced against the Consultant after the expiry of 12 years following Taking Over.

**10 Governing law and Jurisdiction**

10.1 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, proceeding or dispute in connection with this agreement and the parties irrevocably submit to the jurisdiction of those courts.

**11 Counterparts**

This agreement 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 agreement for all purposes.

**IN WITNESS WHEREOF INTERHEALTH CANADA CONSTRUCTION & SERVICES (TCI) LIMITED** has caused its common seal to be hereunto affixed and **THE CROWN (IN RIGHT OF ITS GOVERNMENT IN THE TURKS AND CAICOS ISLANDS)** and **DEVEREUX ARCHITECTS LIMITED** acting by their duly authorised representatives have executed this agreement on the date of this document.



Executed by **DEVEREUX ARCHITECTS** )  
**LIMITED** )  
acting by: )

Director 

Director/~~Secretary~~ 

Executed for and on behalf of **THE CROWN** )  
**(IN RIGHT OF ITS GOVERNMENT IN THE** )  
**TURKS AND CAICOS ISLANDS)** by its duly )  
authorised representatives: )

  
Floyd Basil Hall  
Deputy Premier and Minister of Finance and  
National Insurance

  
Lillian Elaine Boyce  
Minister of Health and Human Services

The Common Seal of **INTERHEALTH** )  
**CANADA CONSTRUCTION & SERVICES** )  
**(TCI) LIMITED** was duly affixed to this )  
agreement in the presence of: )  
}

Director 

Director/~~Secretary~~ 