

NORTH BAY REGIONAL HEALTH CENTRE

Alternative Financing and Procurement Project

March 1, 2006

REQUEST FOR PROPOSALS VERSION 4.1

Amended and Restated on October 12, 2006

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- Appendix 1: Definitions and Interpretation
- Appendix 2: Evaluation and Submission Requirements
- Appendix 3: Price Bid Form
- Appendix 4: Request for Information Form
- Appendix 5: Preferred Proponent Agreement
- Appendix 6: Tax Compliance Form
- Appendix 7: Conflict of Interest Declaration
- Appendix 8: Proposal Form
- Appendix 9: Undertaking Concerning Lending Agreements and Major Maintenance Reserve Account

This Request for Proposals (“RFP”) document consists of two volumes as listed below. For a description of the contents in each volume, please see Section 1.5 of this RFP

LIST OF VOLUMES

Volume I: Request For Proposals Version 4.1

Volume II: RFP Version 4.1 of the Project Agreement

For Information Purposes Only

1 INTRODUCTION

1.1 General

This Request for Proposals (“RFP”) is issued by the Ontario Infrastructure Projects Corporation (“OIPC”, also known as “Infrastructure Ontario”), in conjunction with the North Bay General Hospital (“NBGH”) and the Northeast Mental Health Centre (“NEMHC”). OIPC, NBGH and NEMHC are collectively referred to as the “Sponsors” for the purposes of this RFP.

NBGH and NEMHC plan to develop a co-located healthcare facility (“Facility”) on a common site known as the North Bay Regional Health Centre (“NBRHC”). For purposes of this procurement process, NBGH and NEMHC will be represented by a Joint Executive Committee (the “JEC”) comprised of three board members from each hospital, healthcare professionals, planning consultants and community representatives. The JEC’s mandate is to plan and implement the design, construction, financing and maintenance of the Facility. The Project includes the limited design, construction, finance, and maintenance of the Facility (the “Project”).

While the Sponsors will manage the procurement process in respect of the Project, Project Co will, subject to all necessary approvals, enter into the Project Agreement with NBGH. Neither OIPC nor the Government of Ontario will be parties to the Project Agreement. NEMHC will also not be a party to the Project Agreement but will enter into a Development and Co-Ownership Agreement with NBGH as set out in Section 2.5.

The Project is a ReNew Ontario initiative and has been approved to proceed as an alternative financing and procurement project. Details relating to the Ministry of Public Infrastructure Renewal’s (“PIR”) Infrastructure Planning, Financing and Procurement Framework (the “IPFP Framework”) are included in Appendix B to the Request for Qualifications (“RFQ”). The IPFP Framework sets out five fundamental principles for the procurement of public infrastructure, including the Project:

- The public interest is paramount
- Value for the investment of public money must be demonstrated
- Appropriate public control and ownership must be maintained
- Accountability must be maintained
- Fair, transparent and efficient processes must be used

1.2 Project Objectives

The primary objective of this project is to provide a new healthcare facility which meets the requirements and objectives of the Sponsors, as expressed in the Existing Design, and incorporates private sector innovation and expertise, to achieve a competitively priced effective facility that demonstrates superior design for the delivery of healthcare programs and services,

construction and maintenance. Achieving this primary objective involves the following related objectives:

- **Policy Objectives** - meet the five principles set out in the IPFP Framework and the guiding principles set out in Section 2.2.
- **Timeliness** - reach financial close by **March** 2007, and it is desired that Substantial Completion be reached by **November** 2009.
- **Affordability** - be affordable to the Sponsors.
- **Effective Risk Allocation** - optimize risk allocation between the private sector and the public sector.
- **Lifecycle Maintenance** - provide for the long-term life cycle maintenance of the Facility during the concession period, consistent with the Sponsors' intention that the Facility achieve a useful life expectancy of 50 to 75 years. The Sponsors require that, in addition to managing Lifecycle Maintenance to achieve Facility performance in accordance with the Output Specifications, all major building systems have at least 5 years expected life as at the Expiry Date as set out in Schedule 24 (Expiry Transition Procedure) of the Project Agreement.

1.3 RFP Objectives

The primary objective of this RFP is to obtain RFP Submissions that will meet the requirements of the Project and meet the guiding principles set out in Section 2.2.

Based on the process outlined in this RFP, including section 3.1: (1) all RFP Submissions received by the RFP Closing Date in response to this RFP will be evaluated; (2) the Proponent with highest ranked RFP Submission will be identified as the Preferred Proponent; and (3) NBGH intends to execute the Project Agreement with the Preferred Proponent subject to required approvals.

1.4 Eligibility

Only those parties that were selected pursuant to the RFQ for the Project to proceed to the RFP stage are eligible to participate in the RFP. These parties are as follows:

- Hospital Infrastructure Partners
- Plenary Health
- SNC-Lavalin

Section 21.9 of this RFP addresses parties who are ineligible to participate.

1.5 RFP Structure

The RFP consists of two volumes as follows:

Volume I – Request For Proposals

Volume I provides background details on the Sponsors and the Project. It sets out the proposal process, the information required from Proponents for the evaluation of proposals, the form in which proposals should be submitted and the criteria which will be used by the Sponsors and their Advisors to evaluate proposals.

The Appendices to Volume I are an integral part of Volume I.

Volume II – Draft Project Agreement

Volume II sets out the Draft Project Agreement including schedules. The schedules include Schedule 15 (Output Specifications), Schedule 7 (Existing Design) and Schedule 20 (Payment Mechanism). The Draft Project Agreement as presented is considered a draft document. The RFP process includes a consultative process whereby Proponents will be given opportunities to provide feedback on the Draft Project Agreement.

A Revised Project Agreement may be issued, and the Final RFP Project Agreement will be issued as part of this RFP process.

The Project Agreement and any other portion of the RFP that is to form a Schedule to the Project Agreement, will survive the RFP. Conflicts between or among any of these documents will be resolved in accordance with Section 21.1 of this RFP.

1.6 Procurement Schedule

Stage of Project Implementation Process	Target Date
RFP Issued	March 1, 2006
Draft Project Agreement Issued	March 1, 2006
Technical Requirement Issued	March 1, 2006
Proponents' Meeting	
“Essential” Project Agreement/RFP Comments Due	March 22, 2006
“Essential” Project Agreement/RFP Meetings	Week of April 3, 2006
Proponents Meeting - Technical Clarifications	April 26, 2006
Innovation Submission List Due	May 8, 2006
Payment Mechanism/Hard FM Workshop	May 11, 2006
Design Risk Transfer Workshop	

Innovation Submission Meetings I		
Draft Project Agreement No. 2 Issued		
Human Resources Workshop		
Comments on Project Agreement No. 2 Due		June 12, 2006
Proponents Meeting – Project Agreement No. 2		
Draft Project Agreement No. 3 Issued		
Comments on Project Agreement No. 3 Due		July 17, 2006
Existing Facility Visit / Workshop		July 27-28, 2006
Proponents Meeting – Project Agreement No. 3		
RFP Version 4.0 of the Project Agreement		
RFP Question Period Ends		September 27, 2006
Final Addenda Issued		
RFP Submissions Due		October 19, 2006
Bidder Presentations		
Commercial Close		January, 2007
Financial Close		March, 2007

The Project will be implemented in accordance with the procurement schedule set out above. The dates listed in the table above are subject to change at the sole discretion of the Sponsors. Where applicable, Proponents will be given written notice of any change through the issuance of an addendum.

2 PROJECT OVERVIEW

2.1 Project Background

The Project is a joint redevelopment project between NBGH and NEMHC. Each of NBGH and NEMHC will have its own facility on a common 80-acre greenfield site to maximize the efficiencies of shared services. NBRHC will be a one-stop location offering a state-of-the-art acute care hospital and a modern, long-term mental health facility, all housed in one cooperative health care campus.

The Existing Design which satisfies the Clinical Functionality requirements of both NBGH and NEMHC, has been completed. Under the Existing Design, the NBGH building component of the Project will be a four-storey concrete structure including a penthouse level and the NEMHC building component of the Project will be a two-storey steel and wood structure with penthouses in the pitched roof structures.

The Facility will comprise up to 724,665 gross square feet. The NBGH component of the Facility will be approximately 574,292 square feet and accommodate 275 acute care beds and support services, while the NEMHC component of the Facility will be approximately 150,373 square feet and accommodate 113 specialized and forensic mental health beds and associated outpatient services.

NBGH provides acute care services to the residents of North Bay and surrounding communities. It serves a population of approximately 129,000 people from a catchment area that extends 500 kilometres (north to south) and covers 30,717 square kilometres.

NEMHC provides specialized mental health services to the residents of the entire northeast region of the Province. It serves a population of approximately 511,000 people from a catchment area that covers 300,000 square kilometres.

2.2 Guiding Principles

At the outset of project planning, the JEC approved a list of guiding principles to direct the functional programming and design planning for the Facility. According to these guiding principles, the Facility will:

- Be patient and family focused including:
 - Maintaining the privacy and dignity of individuals.
 - Supporting the cultural, linguistic and religious needs of the populations served by the health centre.
 - Providing a therapeutic environment.
 - Providing space to support family involvement in care delivery.

- Be state of the art which means it will:
 - Be designed to new standards.
 - Be able to provide the facilities to accommodate new technologies such as MRI, digital radiography, electronic patient charts and more.
 - Be built with patient and staff convenience in mind, with like services clustered together.
 - Have room for partnerships (library, educational centre, meeting rooms, food court, pharmacy, etc.).
 - Offer high recruitment and retention appeal for physicians, nurses, specialists and other professional staff.
 - Be a marketing advantage to draw new business, industry and families to North Bay and District.
 - Be flexible to support the aging population, growth in services, change in clinical practice technological advances. This will include having the potential to expand all areas, and the ability to adopt new services and clinical practices as they emerge.

Proponents are to take these guiding principles into account in the development of their RFP Submissions, including their Innovation Submissions.

2.3 Ontario Infrastructure Projects Corporation

Infrastructure Ontario is a crown corporation of the Government of Ontario that uses private-sector expertise to expand and renew public assets. Its mission is to deliver public infrastructure projects on time and on budget using best practices recognized worldwide. Infrastructure Ontario is responsible for providing project management oversight for the Project.

2.4 Ministry of Health and Long-Term Care

The Ministry of Health and Long-Term Care (“MOHLTC”) is responsible for the development, coordination, maintenance and funding of health services, including a balanced and integrated system of hospitals, nursing homes, laboratories, ambulances, other health facilities and providers to meet the health needs of the people of Ontario.

There are a number of statutes, which govern the operation and administration of hospitals in Ontario. Under the *Public Hospitals Act*, certain actions of hospitals can only be undertaken with the approval of the Minister of Health and Long-Term Care (“Minister”). For example, subsection 4(3) of the PHA states: "no additional building or facilities shall be added to a hospital until the plans therefore have been approved by the Minister." Under subsection 4(2), "no institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation and or use of the premises or place for that purpose".

By providing their RFP Submissions, Proponents acknowledge and understand that the NEMHC and NBGH are public hospitals under the Public Hospitals Act and are therefore subject to a highly regulated legal and operational environment.

2.5 NBGH as Signatory

Although the Facility will be procured for both NBGH and NEMHC, Project Co will enter into the Project Agreement with NBGH. NBGH and NEMHC will enter into a Development and Co-Ownership Agreement pursuant to which:

- NEMHC will authorize and direct NBGH to enter into the Project Agreement;
- NBGH will be authorized to sublicense to Project Co all of the license rights created by NEMHC in favour of NBGH thereunder;
- NEMHC will be permitted to nominate a representative to each of the Works Committee and the Facilities Management Committee;
- NEMHC will allow the NBGH Representative to represent its interests in all matters arising out of or in respect of the Project Agreement to be addressed by the NBGH Representative, and all communications to Project Co shall be made exclusively through NBGH;
- NEMHC will enter into an agreement with Project Co by which NEMHC covenants to perform its existing obligations under the Development and Co-ownership Agreement
- With respect to the Facility, NBGH shall act on the instructions of the JEC and shall give notices and directions to Project Co under the Project Agreement from time to time as requested by the JEC; and
- NBGH's payment and performance obligations under the Project Agreement will be supported by both Hospitals, each as to their several share of such obligations.

3 RFP PROCESS

3.1 Process Overview

Set out below are the stages for the procurement and implementation of the Project (the “Project Implementation Process”):

- **Stage 1 – RFQ Stage:** This stage commenced when the RFQ was issued and included the evaluation and scoring of RFQ Submissions, during which three (3) RFQ Proponents were invited to respond to this RFP. The RFQ stage ended when the RFQ Proponents who were invited to participate in the RFP stage received notification from the Sponsors.
- **Stage 2 – RFP Submission Stage:** This stage commenced when this RFP was issued and includes the provision of RFP Submissions against the Final RFP Project Agreement. Stage 2 ends with the scoring and ranking of the three Proponents by the Evaluation Committee as set out in Section 20.
- **Stage 3 – Selection of Preferred Proponent:** The Sponsors will at their sole discretion choose one of the following two options for Stage 3:
 - a) Select the highest scoring Proponent as the Preferred Proponent and notify the second highest scoring Proponent that it is the reserve Proponent (“Reserve Proponent”); **OR**
 - b) Enter into separate and distinct negotiations, using Commercially Confidential Meetings (“Negotiations Process”) with the highest scoring Proponent or the two highest scoring Proponents (“Negotiations Proponent(s)”). During the Negotiations Process, the Sponsors may propose adjustments to the terms and conditions (shared with the Negotiations Proponent(s)) and/or the Negotiations Proponent(s) may propose options in order to meet the Sponsors objectives or requirements (not shared with the other Negotiations Proponent).

Following this Negotiations Process, the Sponsors will inform each of the Negotiations Proponent(s) of those adjustments to the terms and conditions which are acceptable to the Sponsors. The Negotiations Proponent(s) may be asked to submit revised RFP Submissions (“Revised Proposals”) which will be irrevocable and binding on the submitting Proponent for 120 days from the date of its submission. Revised Proposals will be evaluated in order to determine which Revised Proposal offers the best value to the Sponsors. The Preferred Proponent will be the Proponent that offers the best value. The other Negotiations Proponent will be designated as the Reserve Proponent.

The Sponsors reserve the right to award on the basis of the original RFP Submission.

The Fairness Commissioner will oversee the Negotiations Process.

Once a Preferred Proponent has been selected through option “a” or “b” above, the Preferred Proponent will be required to execute the Preferred Proponent Agreement in accordance with Appendix 5 of the RFP.

- **Stage 4 - Preferred Proponent Commitment Stage:** Within two (2) business days of notification that it is the Preferred Proponent (“Notification Period”), the Preferred Proponent will be required to enter into the Preferred Proponent Agreement and provide the Preferred Proponent Commitment in the form of an irrevocable letter of credit in the amount of five million dollars (\$5,000,000) in the case of non-underwritten financing, or one million dollars (\$1,000,000) in the case of underwritten financing in accordance with the conditions as set out in the Preferred Proponent Agreement and the Project Agreement.

If for any reason, the Preferred Proponent fails to execute the Preferred Proponent Agreement and provide the Preferred Proponent Commitment within the Notification Period, the Sponsors reserve the right to designate the Reserve Proponent as the Preferred Proponent.

- **Stage 5 – Commercial Close Stage:** The Preferred Proponent must execute the Project Agreement in accordance with the conditions as set out in the Preferred Proponent Agreement. Once the Preferred Proponent has executed the Project Agreement, it will become Project Co, subject only to completing Financial Close.
- **Stage 6 – Financial Close Stage:** This stage includes finalization by Project Co of all documentation required for the provision of financing for the Project and overlaps with the beginning of the Construction Stage. Financial Close is required to occur within sixty (60) days of Commercial Close.
- **Stage 7 – Construction Stage:** This stage commences on execution of the Project Agreement and ends on the Substantial Completion Date. Access to and control of the Site will be granted on execution of the Project Agreement.
- **Stage 8 – Transition Stage:** This stage commences twelve (12) months prior to the scheduled date for Substantial Completion, or as otherwise agreed upon, and is anticipated to continue to six (6) months following Substantial Completion. It is over this timeframe that NBGH and NEMHC will complete Operational Commissioning and move their equipment and operations to the Facility.

As part of the transition, Project Co may be asked to provide the Early Services on a cost-plus basis at the Existing Facilities. Please see Appendix 2 with details relating to the Early Services and a Separate Price. Project Co will also be required to enter into an Early Works Agreement, as described in Section 4.11, that will be negotiated with the Preferred Proponent in accordance with the Preferred Proponent Agreement.

- **Stage 9 – Facilities Management Stage:** This stage commences when the new Facility has reached Substantial Completion and extends until the Expiry Date.

3.2 Approval Process

Award of the Project Agreement is subject to the Sponsors obtaining all necessary governmental authorizations and approvals.

The Sponsors intend to secure these approvals prior to notification of the Preferred Proponent, except for such approvals expressly identified in the Final RFP Project Agreement.

For Information Purposes Only

4 PROJECT SCOPE

4.1 General

The Sponsors are seeking a private sector counterparty to deliver the Project through a long-term modified design, build, finance and maintain arrangement (“Modified DBFM”). The Project does not include the provision of clinical services for NBRHC. Clinical services at the Facility will be provided only through NBGH and NEMHC. Certain facilities management services will also be provided by NBGH and NEMHC. These are identified in Section 4.16.

Project Co will provide the limited design, construction, finance, and maintenance for the complete Facility, in accordance with and meeting the requirements of the Project Agreement, including the Technical Requirements.

In such a manner as will enable NBGH and NEMHC to achieve and satisfy all Clinical Functionality, on time, on budget, and to specified levels of quality, and in accordance with all provisions of the Final RFP Project Agreement and the Technical Requirements, Project Co will among other things:

- Provide limited design and complete development, construction and financing of the Facility, all in such a manner that the Facility will be fit for its intended purposes.
- From and after Substantial Completion, provide, maintain, repair and, as appropriate, refresh the Facility and its component parts pursuant to the terms of the Project Agreement.
- Without limiting the generality of the above, provide, maintain and repair a fibre optic backbone, including all cabling and power points. For the information management, technology and telephone systems please refer to the Cash Allowances section in the Technical Requirements.
- Provide the Project Co Services described in the Technical Requirements.

Project Co may also be required to provide Early Services on a cost plus basis at the Existing Facilities over the transition period. Please see Appendix 2 with details relating to Early Services and a Separate Price.

4.2 Minimum Requirements Specified

The Technical Requirements establish the minimum criteria, standards and requirements which must be met and satisfied by Project Co. In performing its obligations under the Project Agreement, Project Co shall comply with and as a minimum meet those criteria, standards and requirements as necessary to ensure that:

- Project Co meets and satisfies the intent of the Technical Requirements.
- NBGH and NEMHC can, without interruption, operate and provide clinical services and clinical and non-clinical support services.

4.3 Leadership in Energy and Environmental Design

It is essential that Project Co achieve LEED Certification in accordance with the requirements set out in the Project Agreement.

4.4 Parking

Project Co will provide the financing, limited design, development, and construction of all necessary parking areas for the Facility, all of which shall satisfy the Technical Requirements. NBGH and NEMHC will manage, maintain, repair/refresh, collect and retain revenue from parking.

4.5 Existing Utilities and Services

Project Co is responsible for identifying, refreshing, relocating and repairing all existing utilities and infrastructure (including: roads, sidewalks, services, structures, landscaping, retaining walls, fencing, overhead wires and underground ducts; conduits for, among other things, power and telephone; underground gas, water, sewer and drainage works; and any traffic signals if required) related to or required for the modified design, development, construction or maintenance of the Facility, including the financing of costs related to the foregoing.

Subject to the Site Plan Control Agreement, and except where Project Co has entered into written agreements with the City or applicable utility company, all such existing utilities and infrastructure at or adjacent to the Site are to remain and Project Co shall protect and preserve them until completion of the Facility. Full access shall be provided to the City, the utility companies, NBGH, NEMHC and others during construction to permit monitoring of the existing utilities and infrastructure and any changes or enhancements thereto. Where any utilities and infrastructure present at or adjacent to the Site are within excavations or are modified or extended by Project Co, they shall remain functional during and after construction unless the City or the utility company, as applicable, otherwise agrees. Proposed modifications, removals and/or extensions shall be submitted to the owner and provider of such utilities for review and approval and Project Co shall obtain all necessary permits and pay all applicable fees prior to commencing any work on them or work which may affect them.

4.6 Temporary Utilities and Services

All temporary utilities and infrastructure required by Project Co to complete the Facility or perform the Project Agreement are the responsibility of Project Co and shall be provided and included in the RFP Submission. This includes, but is not limited to, any temporary services, utilities and infrastructure described or implied in the Project Agreement, including the Technical Requirements, or the RFP Submission. Project Co shall be responsible for obtaining

all necessary approvals and permits in this regard. Project Co shall also be responsible for the removal of temporary utilities and infrastructure prior to the Substantial Completion Date.

4.7 Permanent Utilities and Services

Details relating to the Permanent Utilities and Services are set out in the Project Agreement.

4.8 Decanting and Transition

Project Co will be responsible for managing or providing selected elements of the transition of operations from existing NBGH and NEMHC facilities to the new Facility as defined in the Technical Requirements. It is anticipated that Project Co's transition involvement and responsibilities in this regard will commence twelve (12) months or as otherwise agreed upon prior to Substantial Completion. In particular, Project Co will:

- Actively engage NBRHC in coordinating detailed transition planning between NBRHC and Project Co, and facilitate coordination of transition with NBRHC throughout the transition process.
- Train NBGH and NEMHC employees that will become employees of Project Co for the work they will be required to perform at the Facility, prior to transition of operations.
- Transition NBGH and NEMHC employees that will become employees of Project Co into their roles at the Facility.
- Cooperate in moving furnishings, fixtures and equipment, and coordinating the scheduling of equipment procurement for all categories of equipment, as described in Section 4.19, including those which are to be procured and paid for by NBGH and NEMHC.

4.9 Property Rights and Access

In accordance with the IPFP Framework, NBGH and NEMHC will continue to own the Site and the Facility throughout the term of the Project Agreement, and Project Co will not acquire an estate or interest in the Site or the Facility or any other interest in land pursuant to the Project Agreement or otherwise. The Site will be made available to Project Co through a long-term license of NBGH's interest in the Site and a long-term sub-licence of NEMHC's interest in the Site as described in Section 14.1 of the Project Agreement. The licence and sub- licence will provide for the degree of access necessary for Project Co to perform its obligations under the Project Agreement.

Notwithstanding the foregoing, a lease structure may be proposed as a specific Innovation Submission, to be considered at the sole discretion of the Sponsors, provided that such structure is consistent with the principles of the IPFP Framework.

Project Co is responsible for the provision of all access required to the Site, subject to the procedure described in this RFP.

Any and all temporary or permanent use of any lands not owned or controlled by NBGH or NEMHC or for which NBGH or NEMHC has not previously obtained rights for the access and use of such lands as expressly set out in the RFP and Project Agreement, shall be at Project Co's sole risk and cost. Project Co shall be solely responsible for acquiring any and all such other property rights, temporary work space and temporary access it may require to perform the Project Agreement. Project Co shall not use any such additional property rights, temporary work space or temporary access without first obtaining, in each instance, written agreements for the use or occupancy of such lands, work space and access with the applicable landowners. All such agreements shall be subject to the prior written approval of NBGH, acting reasonably (which approval may be subject to such terms and conditions as NBGH may require to protect its interests), and shall, if required by Governmental Authorities, be subject to the approval of the Governmental Authorities. Project Co shall comply with all terms, conditions and restrictions applicable to such lands in accordance with the agreements with the applicable landowners, Applicable Law and the requirements of Governmental Authorities.

4.10 Site Work

The Site is in an advanced state of readiness for construction. The Site has been cleared and grubbed, a high voltage hydro line has been relocated along the north boundary and a main gas line has been relocated to the south boundary. The building footprint, parking lots and helicopter pad have been preloaded to conform to geotechnical engineering recommendations.

Additional site work requires completion as set out in the Technical Requirements. Details of the work completed to date are also set out in the Technical Requirements.

An environmental assessment of the Site has been completed and confirmation of clearance has been provided by the Project's civil engineer.

Additional materials prepared by or on behalf of NBGH and NEMHC relating to the Project, including early works tender packages for remaining elements of the early works program, are also included in the Data Room. Project Co will be responsible for all elements of site development not already completed as at the date of this RFP or not included in the early works tender packages in the Data Room.

4.11 Early Works

Project Co will be required to enter into an Early Works Agreement. A limited early works package will be negotiated with the Preferred Proponent in accordance with the Preferred Proponent Agreement. The early works package will include mobilization to a maximum \$500,000 in value. In the event that Financial Close is not reached for the Project, the Sponsors

will indemnify the Preferred Proponent for the value of the early works package in accordance with Schedule 7 of the Project Agreement.

4.12 NBGH Permits, Licenses and Approvals

NBGH has obtained and is responsible for paying for the required building permit for the Facility. The corresponding Site Plan Control Agreement has been deposited in the Data Room.

NBGH Permits, Licenses and Approvals are defined in the Project Agreement. Project Co will be responsible for obtaining and paying for any other permits, licences and approvals required to complete the Works.

4.13 Site Plan Control Agreement

Project Co is responsible for complying with the Site Plan Control Agreement including performing the obligations of NBGH and NEMHC.

4.14 Off-Site Infrastructure Agreement

NBGH and NEMHC have an agreement in place with the City to provide certain infrastructure service to the Site which the City is to provide in three phases (“Off-Site Infrastructure Agreement”). Project Co will assume all obligations under the Off Site Infrastructure Agreement and will be responsible for engaging and coordinating with the City in respect of its obligations under this agreement, and managing Project Co’s construction program accordingly, and will bear all risk in this regard. NBGH and NEMHC are responsible for paying for their obligations under this agreement. However, should Project Co make any changes then Project Co will be responsible for any additional costs. Any such changes are subject to NBGH’s approval.

4.15 Design and Construction

As set out in the RFQ, the JEC has completed the Existing Design. Project Co will be responsible for reviewing and implementing the Existing Design and such changes to the Existing Design as may be approved by the Sponsors.

The Sponsors intend to allocate risk associated with the Existing Design as set out in Section 18 of the Project Agreement. The Sponsors intend to transfer to Project Co risks associated with the Existing Design including:

- the risk and responsibility to resolve to the satisfaction of the Sponsors, any errors and/or omissions that may be contained in the Existing Design such as interferences or conflicts between elements that have not been properly or fully resolved, design co-ordination issues, gaps and design completion issues;

- the risk that the mechanical and electrical systems shown and specified in the Existing Design will be adequate to achieve and maintain the specified design conditions in accordance with the Technical Requirements for the Facility, and provide the users with the specified performance levels, provided that, during the 24 month period following the Substantial Completion Date (but not thereafter), Project Co shall give notice to NBGH that it has identified an Existing Design issue related to the mechanical and electrical systems and any Deductions or Failure Points will be held in abeyance as noted in Project Agreement RFP Version 4.1 Section 19.2 M&E Systems Verification Period; and
- all risks associated with the provision, maintenance, repair and as appropriate refresh of all physical plant and plant maintenance and other equipment, fixtures, fittings, building related equipment, building finishes and furnishings as required to achieve the requirements of the Technical Requirements including other provisions of the Project Agreement from the date of Substantial Completion to end of the Project term.

Proponents are encouraged to propose mechanical and electrical design modifications to the Existing Design which Proponents believe are necessary to meet the requirements of the Output Specifications as an Innovation Submission. The Sponsors will enter into discussions and negotiations with the Preferred Proponent on those proposed mechanical and electrical design modifications which are accepted by the Sponsors.

Proponents are required to submit their Base Submission in accordance with the Existing Design. The Proponent will be solely responsible to identify and bear the cost and risk of any and all modifications with regard to coordination with other elements of the Existing Design associated with such proposed modifications.

In addition, the Sponsors request practical solutions from the Proponents for value engineering and life cycle innovations which would improve the value for money of the Project, through the provision of Innovation Submissions in addition to their Base Submissions. Additional details on Innovations are provided in Section 13.

All design by Project Co and any Innovation Submissions and proposed mechanical and electrical modifications, will be subject to design review and acceptance by the Sponsors, and their respective Advisors.

4.16 Facilities Management Services and Project Co Services

Project Co will provide facilities management services defined as Project Co Services in the Project Agreement, including:

- General management services.
- Selected help desk services.
- Plant services.
- Selected utility management services.
- Performance monitoring services.

The Sponsors reserve the right to have Project Co provide the Early Services.

Included in the foregoing is the installation and management of a Building Management System (“BMS”) consistent with the Technical Requirements.

Project Co will be provided with a NBGH/NEMHC contact person (an employee of Meditech) to assist with related hardware/software interface issues.

Facilities management requirements are presented in detail in the Technical Requirements.

NBGH and NEMHC will provide clinical and non-clinical services including:

- General management services.
- Selected Help desk services.
- Food services – non-patient.
- Food services – patient.
- Housekeeping services.
- Laundry/linen services.
- Material services.
- Protection services.
- Utilities management.
- Parking services.
- Diagnostic services.
- Laboratory medicine.
- Medical imaging.
- Morgue and autopsy.
- Pharmacy services.
- Rehabilitation services.
- Surgical services.
- Sterile processing services.
- Information management.
- Learning centre.
- Main public facilities.
- Site administration.
- Staff facilities.
- Volunteer/auxiliary services.
- All Inpatient and outpatient clinical services

Certain of the non-clinical services listed above are shared among Project Co, NBGH and NEMHC. The Technical Requirements provide further detail in this regard.

4.17 Infection Control

Project Co will be responsible for infection control during the Construction Stage. During the Facilities Management Stage, Project Co will be responsible for managing within the hospital's infection control protocols and guidelines as it relates to the services it is providing in accordance with the Technical Requirements.

4.18 Equipment

In addition to all equipment required by Project Co to perform facilities management services, Project Co shall procure, install, deliver, maintain and refresh all equipment as described, required or implied by the Technical Requirements and other provisions of the Project Agreement. Additionally, Project Co will be required to assist in moving furnishings, fixtures and equipment, and coordinating the scheduling of equipment procurement for all categories of equipment set out in Section 4.19, including those which are to be procured and paid for by NBGH and NEMHC.

All equipment which is procured, maintained or refreshed by Project Co must be new, suitable and fit for its intended use and must be integrated and coordinated with the overall design and objectives of the Project.

4.19 Equipment Categories

Category No. 1

Not used.

Category No. 2

Project Co will provide mechanical and electrical rough-ins for and will coordinate and facilitate the installation of all items marked as Owner Purchase/Vendor Installed or Owner Transfer/Vendor Installed (the "**Category 2 Equipment**") listed in Schedule 21 of the Project Agreement

Category No. 3

Project Co will provide mechanical and electrical rough-ins for and will either coordinate and facilitate the installation of or coordinate and install in accordance with manufacturer's instructions, as applicable, all items marked as Owner Purchase/Owner Installed, Owner Purchase/Contractor Installed and Owner Transfer/Owner Installed (the "**Category 3 Equipment**") listed in Schedule 21 of the Project Agreement.

Category No. 4

Project Co will, if applicable, provide mechanical and electrical rough-ins for and will coordinate, procure or transfer, transport, disconnect and reconnect mechanical and electrical services to and install or reinstall in accordance with manufacturer's instructions, as applicable, all items marked as Contractor Procure/Contractor Installed and Contractor Transfer/Contractor Installed (the "**Category 4 Equipment**") listed in Schedule 21 of the Project Agreement.

Category No. 5

Project Co will, if applicable, provide mechanical and electrical rough-ins for and will coordinate, procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace all equipment identified in the Technical Requirements other than the Category 1 Equipment, the Category 2 Equipment, the Category 3 Equipment and the Category 4 Equipment (the "**Category 5 Equipment**").

4.20 Title to Equipment

Subject only to retention of title as set out in the Project Agreement, title to all Equipment and Plant procured or supplied by Project Co shall pass to NBGH immediately upon its delivery to Site, but not the risk of any damage or loss to that equipment. Project Co shall be and remain responsible for all risk of loss or damage to equipment until Project Co has obtained the certificate of Substantial Completion, and thereafter shall be responsible for risk of loss or damage as described in the Project Agreement. Project Co shall retain title as well as risk of loss and damage to all Equipment and Plant as set out in the Project Agreement.

4.21 Equipment Training

For and in respect to each piece of equipment procured or supplied by Project Co, Project Co will provide or at its cost arrange for adequate, appropriate and timely training in such item's proper operation and maintenance to and for all staff (for all of Project Co, NBGH and NEMHC). In addition to all training based on the manufacturer's suggested requirements or specified in the Technical Requirements, Project Co shall provide such training as may be required by the appropriate governing or regulating body or as may be required by a prudent hospital facility operator or hospital equipment service provider operating and maintaining similar equipment procured for a major acute care hospital in Canada.

4.22 Equipment Maintenance

Where and to the extent required by or indicated in the Technical Requirements and as applicable to Project Co supplied equipment for Project Co performed facilities management services, Project Co is responsible for the ongoing maintenance, repair and replacement as necessary of all equipment, through its own staff, a facilities management service provider or

through third party service agreements. Project Co is also responsible for ensuring all operating and maintenance manuals are kept up to date and current.

Proponents should note that Project Co has refresh and maintain requirements for equipment in Categories 1-4 (set out in Schedule 21 of the Project Agreement and the Technical Requirements).

4.23 Decommissioning of Equipment at the End of Useful Life

At the end of its useful life, Project Co will arrange for the safe disposal of all equipment procured, maintained and refreshed by Project Co as applicable and in accordance with Good Industry Practice, all Applicable Laws and the requirements of the Governmental Authorities at the time of disposal.

4.24 Minimizing Disruptions relating to Equipment

Project Co must allow for and provide effective and efficient installation, commissioning, maintenance, repair, decommissioning, refresh and replacement of equipment over the term of the Project Agreement, which will minimize any disruption of services and any additional costs to NBGH and NEMHC.

4.25 IT/Tel Services

Project Co will be required to provide, maintain and repair the fibre optic backbone including all cabling and power points for the IT and technology systems. For the information management, technology and telephone systems please refer to the Cash Allowances section in the Technical Requirements.

Information services, information technology equipment and telecommunication equipment for the Project (including end-use devices) are described in the Technical Requirements and in the Equipment List.

Except for those specific information services, information technology equipment and telecommunication equipment which are expressly specified in the Technical Requirements or elsewhere in the Project Agreement to be provided by NBGH and NEMHC, all information services, information technology equipment and telecommunication equipment described in the Technical Requirements or elsewhere in the Project Agreement shall be provided by Project Co.

Project Co is responsible for cooperating with NBGH or NEMHC employees or direct subcontractors

4.26 Baseline Performance Standards

As presented in greater detail in the Technical Requirements, baseline performance standards will be established at Substantial Completion for actual STC ratings, lighting levels and vibration levels in the Facility. These baseline performance standards, once set, will be the basis for the corresponding Payment Mechanism Adjustments presented in the Project Agreement. The framework for risk transfer with respect to utilities is set out in Schedule 20 of the Project Agreement.

4.27 Expiry Transition Procedure

The Expiry Transition Procedure is set out in Schedule 24 to the Project Agreement.

4.28 [Deleted]

[This section was intentionally deleted from the RFP process.]

4.29 Opportunities Expressly Identified in RFP Submissions

Subject to availability of space at the Site, and subject to Section 4.30 of this RFP on opportunities not available to Project Co, Proponents may include as Innovation Submissions (described in Section 13) other commercial opportunities for the use of the Site. Full details shall be provided of those opportunities, including the financial and other advantages that will accrue to both Project Co and NBGH and NEMHC by pursuing some or all of such additional opportunities.

Subject to zoning and Project Co obtaining any necessary City approvals, opportunities to enhance the value of the Project through commercial development strategies may include, among others:

- Medical offices.
- Conference facilities.
- Hotel or short-term residence facilities.
- Retail facilities but only as part of the development of a facility ancillary and not connected to the Facility.

Proponents are encouraged to consider any opportunities they believe will enhance the overall value of the Project and reduce the payments from NBGH to Project Co during the term of the Project Agreement. The Sponsors are interested in receiving Innovation Submissions that reduce short term and long term operating costs to NBGH and NEMHC.

Only those opportunities, which are expressly described in RFP Submissions and for which Proponents in their RFP Submissions can, to the Sponsors' satisfaction, demonstrate will result in reductions in costs or enhanced value to NBGH and NEMHC, will be considered. The Sponsors expressly reserve the right in their sole discretion to accept or reject any additional opportunities which Proponents may propose. Accordingly, any and all such opportunities should be the subject of an Innovation Submission, and not be included as part of the Base Submission, in case they are not acceptable to the Sponsors.

4.30 Opportunities Not Expressly Identified in RFP Submissions

Subject to Section 4.30 of this RFP on opportunities not available to Project Co, all commercial and other opportunities related to the Facility or the Site belong to NBGH and NEMHC after award of the Project Agreement. However, Project Co is encouraged, subsequent to award of the Project Agreement, to propose for NBGH and NEMHC's consideration commercial or other opportunities for the Facility and the Site. Any such proposals shall describe the opportunity in full with the expected financial and other advantages to both parties. Acceptance of any proposals will be subject to such terms and conditions as NBGH and NEMHC may require in its sole discretion, and NBGH and NEMHC will not be required to accept any such proposals.

NBGH and NEMHC's acceptance of any such proposal from Project Co will be subject to agreement at the time between the parties on, among other things, each party's share of any net revenue or loss after allowance for all costs and expenses, as well as the amount and type of expenses, overhead and administration costs to be allocated to that opportunity. NBGH and NEMHC reserve the right to approve any businesses, product lines, items or conduct located on or to be carried out on the NBRHC Site.

4.31 Opportunities Not Available to Project Co

In all cases, NBGH and NEMHC will have the exclusive right, directly or through arrangement with others, to the following commercial opportunities at the Facility:

- Sale of lottery tickets.
- Parking.
- Retail sales within the Facility.
- Retail catering, food and beverage services within the Facility.

Subject to Section 4.28 and Section 4.29, these opportunities are not to be included in RFP Submissions and Project Co will not engage in or allow any activity which competes with the parking, retail, catering, food or beverage services (or the merchandise sold therein), or the sale of lottery tickets.

Project Co may not use the Site for any uses that are incompatible with the guiding principles, that may detract from the general reputation of NBGH or NEMHC in the community, or that are

otherwise not acceptable to NBGH or NEMHC at their sole discretion. Non-compatible uses of the Site include the following, which is not an exhaustive list:

- A casino or gaming facility.
- Adult or sexually-themed entertainment or sales operations.
- Alcohol or tobacco sales.
- Provision of non-licensed health care or other health care services, except as expressly allowed in the Project Agreement or with the prior written consent of NBGH and NEMHC.
- Retail services or products which NBGH and NEMHC consider may detract from the image and reputation that NBGH and NEMHC wish to promote for the NBRHC and themselves.

For Information Purposes Only

5 HUMAN RESOURCES

5.1 Employee Transition

Details relating to the transition of employees are set out in Section 28 and Schedule 17 of the Project Agreement.

5.2 Familiarity with Labour Conditions

By submission of its RFP Submission, each Proponent represents and warrants that the Proponent and the Proponent Team Members are familiar with all existing collective agreements, applicable provincial labour legislation and jurisprudence and rulings of the Ontario Labour Relations Board as they relate to or may affect the performance or the cost of performance of the Project Agreement.

For Information Purposes Only

6 FINANCIAL ISSUES

6.1 Key Dates

The term of the Project Agreement will start on execution of the Project Agreement and continue for thirty (30) years following the Scheduled Substantial Completion Date. Key dates set out in the Project Agreement include the following:

- **Commercial Close Date:** This is the date on which the Final RFP Project Agreement is executed by Project Co and NBGH. It is anticipated that this will occur in **January, 2007**.
- **Scheduled Substantial Completion Date:** This is the date on which the Facility becomes available for occupancy, as defined more specifically in Schedule 14 to the Project Agreement. It is anticipated that this date will occur in **November 2009** or earlier.
- **Scheduled Final Completion Date:** This is the last date for the completion of minor deficiencies. It is anticipated that this date will occur in **April 2010** or earlier.
- **Expiry Date:** This is the date on which the Project Agreement naturally expires. It is anticipated that this date will be set at thirty (30) years after Scheduled Substantial Completion.

6.2 Tax Issues

Proponents shall be solely responsible for obtaining and relying on tax advice from their own advisors and experts, including obtaining such of their own advance interpretations and rulings in relation to the Project (including in relation to the proposed structure and its tax consequences) as they consider appropriate or necessary. Proponents are advised that hospitals are subject to special GST treatment and may wish to take this into account accordingly.

6.3 Payment Mechanism Principles

The Payment Mechanism serves the following purposes:

- Defining the payment to Project Co by NBGH for value delivered;
- Contributing to the effect of NBGH's intended allocation of risk and responsibility; and
- Achieving accountability of Project Co to NBGH as an integral part of the overall remedy framework.

NBGH will make monthly payments to Project Co commencing on Payment Commencement Date, and ending on the Termination Date.

Each month, Project Co will be paid a Monthly Service Payment which will be calculated in accordance with the following formula:

Monthly Service Payment = Monthly Base Payment – Deductions + Incentives +/- Utility Adjustment.

Please also refer to Schedule 20 of the Project Agreement for additional information.

6.4 Major Maintenance Reserve Account

RFP Proponents are required to include in their RFP Submission an undertaking as set out in Appendix 9 with respect to a Major Maintenance Reserve Account (“MMRA”). This MMRA will be created and funded by Project Co and offered to the lenders as security. NBGH will not have direct access or right of direction with respect to the MMRA; however, NBGH will have visibility into the status and activity of the MMRA and right of audit, such that NBGH can satisfy itself that the implementation of agreed-upon life cycle maintenance investments will not be frustrated due to lack of appropriate funding.

RFP Proponents may propose an alternative to the undertaking set out in Appendix 9 as an Innovation; however, the undertaking set out in Appendix 9 is a mandatory Submission Requirement.

6.5 Cash Allowances

Cash allowances will be dealt with in accordance with Technical Requirements.

6.6 Interest Rate Protection

The Sponsors will provide interest rate protection to the Preferred Proponent for a period between 5 days prior to the RFP Closing Date and Financial Close by protecting both Equity IRR and Debt Service Coverage Ratios (DSCR). Only specified cells will be changed in the Preferred Proponent’s financial model which will be prescribed by the Sponsors based on the Preferred Proponent’s financial model. Changes to the financial model will be carried out to restore both the DSCR and Equity IRR to the same levels as at the RFP Closing Date.

Proponents will be allowed to propose any Canadian benchmarks that are observable and verifiable by a third party as a basis for the RFP Submission. These would include the Government of Canada bond curve and the Canada Swap curve. Proponents are also allowed to propose calculated rates using generally accepted financial practice including costs of forward starting swaps and bond locks. Credit spreads either stated or embedded in swap rates will not be hedged.

Up to four benchmarking exercises will be undertaken up to Financial Close. This will consist of an initial benchmarking, and daily benchmarking as Financial Close approaches. The Government of Canada yield used in setting the interest rate will be determined on the benchmarking day. Other differential amounts (made up of hedging, swap or other adjustments) will be based on an average of the levels for the preceding 5 days inclusive of the benchmarking day (e.g., for a swap rate, the underlying Government of Canada benchmark set on benchmarking day is added to a 5 day average of the swap spread). Subsequent to the benchmarking exercise, the Preferred Proponent and Sponsors shall optimise and re-run the financial model using the updated debt interest rate. The financial model shall be optimized using the optimization procedure detailed in the User Guide provided by the Preferred Proponent. The Sponsors intend to perform the optimization procedure on the audited Preferred Proponent financial model.

6.7 Minor Design Changes

It is the Sponsor's intention that the price agreed at signing of the Project Agreement will not change as a result of minor changes in the design or specifications for the Facility during the Works prior to the commencement of construction of the affected element.

Price changes will be considered only in the event that changes occur to the following:

- Net area of any room within the Facility
- Location of departments or relationship among departments; or
- Standards or specifications for materials, finishes, fixtures, building service equipment, or other elements of the Facility

compared to that specified in the Technical Requirements, as defined in the Project Agreement, which has the effect of changing Project Co's costs to provide the Facility. In this event, it will be considered a Variation (as defined in the Project Agreement) and dealt with in accordance with Schedule 22 to the Project Agreement. It should be noted that any design changes initiated by the Sponsors after construction has commenced will be examined on a case-by-case basis to determine if any price changes are necessary.

7 PROJECT AGREEMENT

7.1 Introduction

All Base Submissions must be based on the Final RFP Project Agreement issued by the Sponsors to Proponents. The Preferred Proponent must be prepared to execute the Final RFP Project Agreement in accordance with the conditions as set out in the Preferred Proponent Agreement. In order to secure the financial commitment of the Preferred Proponent, the Sponsors will require the Preferred Proponent to provide a Preferred Proponent Commitment within the Notification Period in the form of an unconditional irrevocable letter of credit drawn on a Canadian chartered bank. The Preferred Proponent Commitment will be released to Project Co in accordance with the Project Agreement.

The Project Agreement may contain conditions precedent to address the requirement for the Sponsors to obtain all required governmental and other external and internal approvals, including those set out in Section 3.2 of the RFP, and to address the requirement for Project Co to obtain final written confirmation from its Lenders that all conditions precedent in all agreements with Lenders have been satisfied or waived.

RFP Version 1.0 of the Project Agreement was issued on March 1, 2006. Proponents were asked to provide “essential” comments on the RFP Version 1.0 of the Project Agreement by March 22, 2006. Further to the submission of “essential” comments, Commercially Confidential Meetings were held with Proponents during the week of [REDACTED]. A Revised Project Agreement was issued as RFP Version 2.0 of the Project Agreement on May 29, 2006. Comments from Proponents on RFP Version 2.0 of the Project Agreement were received on June 12, 2006. Proponent meetings on RFP Version 2.0 of the Project Agreement were held on [REDACTED]. A Revised Project Agreement was issued as RFP Version 3.0 of the Project Agreement on June 30, 2006. Proponents were invited to provide comments on RFP Version 3.0 of the Project Agreement. Further commercially confidential meetings were held on [REDACTED].

During the commercially confidential meetings held on [REDACTED], the Sponsors agreed to provide certain excerpts of the Project Agreement to Proponents to obtain further comments from Proponents. The Sponsors have considered comments raised by Proponents in issuing RFP Version 4.0 of the Project Agreement.

The Sponsors are not prepared to make significant changes to the RFP Version 4.0 of the Project Agreement. The Sponsors, therefore, believe that it is in the interests of both Proponents and the Sponsors to delineate all remaining concerns with RFP Version 4.0 of the Project Agreement through the RFP Request for Information forum until [REDACTED] with the understanding that:

- the Sponsors are not prepared to make substantive changes to RFP Version 4.1 of the Project Agreement following the selection of the Preferred Proponent; and
- no additional comments will be considered during the evaluation process.

It is the Sponsor's intent to respond to further Proponents' comments through written addenda on or before October 4, 2006.

The Project Agreement will be finalized in accordance with the Preferred Proponent Agreement.

7.2 Project Agreement Finalization

If, after reasonable attempts at finalizing the Project Agreement with the Preferred Proponent, the Sponsors believe, acting reasonably, that the Preferred Proponent has frustrated such efforts and accordingly that further efforts are unlikely to achieve agreement, then the Sponsors reserve the right to conclude its efforts at finalizing the Project Agreement with that Proponent and instead commence the process for finalizing a Project Agreement with the Reserve Proponent who will then become the Preferred Proponent.

If, for any reason, the Preferred Proponent fails to execute the Project Agreement as set out herein, or within such longer time as may be determined by the Sponsors in their sole discretion, the Sponsors reserve the right to retain the Preferred Proponent Commitment as liquidated damages and not as a penalty and select another Proponent as the Preferred Proponent.

7.3 Allocation of Risks

During the Project Term, risks will be allocated between Project Co and NBGH as set out in the Project Agreement.

For Information Purposes Only

8 SITE

8.1 General

The Site will be made available to Project Co through a long-term licence and sub-licence agreement. At the end of the term of the Project Agreement, the Site will be left by Project Co in good condition and in accordance with the requirements of the Project Agreement. Allocation of risks in respect of the Site conditions is set out in Section 16 of the Project Agreement.

8.2 Legal Description and Zoning

The Site zoning and legal description of the Site is provided in the Parcel Register provided in the Data Room.

8.3 City Development Requirements

The Site is governed by an existing Site Plan Control Agreement (the fees for which have been paid for by NBGH). A copy of the Site Plan Control Agreement is available in the Data Room.

Project Co shall be responsible for fulfilling, satisfying and complying with all requirements of the Site Plan Control Agreement, including all obligations which it imposes on NBGH and NEMHC, at its own cost.

In addition, Project Co is responsible for fulfilling, satisfying and complying with all applicable municipal by-laws.

For Information Purposes Only

9 DATA ROOM

9.1 Data Room and Contents

An electronic Data Room at a secure website address has been established for the convenience of Proponents.

The Data Room will contain a list of all information included in the Data Room. The Data Room will include, among other things:

- The RFP and its appendices.
- Technical Requirements, including the Equipment List.
- Background Information.
- Draft Project Agreement.
- Revised Project Agreement, if and when issued.
- Final RFP Project Agreement, when issued.

Proponents are solely responsible for ensuring they have software which allows them access to download and use any of the information in the Data Room. In the event of conflict between anything downloaded by Proponents and the contents of the Data Room, the contents of the Data Room shall govern and take precedence.

The information in the Data Room may be supplemented or updated from time to time. Proponents are solely responsible for ensuring they check frequently for such updates from time to time and that, from and after the time updated information is issued, only the most current, updated information is used by Proponents.

All information in the Data Room is subject to the disclaimers and limitations of liability and responsibility in the RFP and in any documents in the Data Room, including the provisions of Section 21.10.

Access to the Data Room can be secured through the Contact Person. Upon request, the Contact Person will provide each Proponent with a password to access the Data Room. The Data Room should be accessible upon or shortly after the issue of this RFP.

9.2 Investigations by Proponents

Proponents shall at their own cost obtain such information and perform such investigations as they may consider necessary to satisfy themselves as to all existing conditions and conditions affecting the Project and the performance of the Project Agreement, whether or not included in the Data Room, including those relating to site conditions, labour relations, existing and future site conditions, requirements of the City, requirements of all Applicable Law, by-laws, and requirements of all other Governmental Authorities and other authorities having jurisdiction.

10 INSURANCE AND WORKERS COMPENSATION

10.1 Insurance during RFP Process

During the RFP process and until award of the Project Agreement, the Proponent is required to ensure that it has obtained, and at all times keeps and maintains in force, in accordance with the following requirements, whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants or agents are present at the Site or at any facilities or premises of the Sponsors (including for the purpose of site tours):

- **Comprehensive General Liability** insurance, having an inclusive limit of not less than \$10,000,000 for each occurrence or accident and covering all sums which the Proponent may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations carried out in connection with this Agreement. The policy shall have added as additional named or unnamed insureds each of the Sponsors (and their respective directors, officers, employees, consultants and agents), and an endorsement specifying that the said policy shall be primary and without right of contribution from any insurance otherwise maintained by the Sponsors.
- **Vehicle Public Liability and Property Damage** insurance, in the amount of \$2,000,000 per occurrence, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants and agents) while on or at the Site or on or at any facilities or premises owned by any of the Sponsors.

As a condition of allowing access to the Site or to the facilities or premises of NBGH or NEMHC, the Sponsors reserve the right to require Proponents to provide evidence acceptable to the Sponsors that the above insurance is in place.

If a Proponent proposes to perform any site investigations at the Site the risks related to which may not be fully insured under the above policies, the Sponsors reserve the right to require the Proponent at its own cost to obtain insurance additional to that specified above.

All insurance policies required to be obtained by Proponents shall provide that the insurance shall not be cancelled, reduced, restricted, modified or changed in any way without the insurer giving at least sixty (60) calendar days prior written notice to the Sponsors.

10.2 Workers Compensation during RFP Process

As a condition of allowing access to the Site or to the existing facilities or premises of NBGH or NEMHC (including for the purpose of site tours), each of NBGH or NEMHC reserves the right to require Proponents to provide evidence acceptable to it that the Proponent and its Proponent Team Members are registered with the Workplace Safety Insurance Board of Ontario, where such registration is required by law, or, if such registration is not required by law, to provide

evidence acceptable to it that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to it.

For Information Purposes Only

11 RFP SUBMISSION REQUIREMENTS

RFP Submissions are to consist of the following:

- The **Required Forms**, namely: the Price Bid Form, the Tax Compliance Form, the Conflict of Interest Declaration, the Proposal Form and the Undertaking Concerning Lending Agreements and Major Maintenance Reserve Account; presented in Appendices 3, 6, 7, 8 and 9 of the RFP respectively.
- A **Base Submission**, consisting of the technical and financial Submission Requirements for the Project. An overview of these Submissions Requirements is presented in Section 11 and Section 12 and detail is provided in Appendix 2 of the RFP.
- At the option of the Proponent, **Innovation Submissions** that the Proponent considers will add value to NBGH and NEMHC, consisting of the technical and financial Submission Requirements specific to those Innovation Submissions. An overview of these Submission Requirements is presented in Section 13 and detail is provided in Appendix 2 of the RFP.

For Information Purposes Only

12 BASE SUBMISSIONS

12.1 General

To be eligible for consideration, a Proponent must submit a substantially complete Base Submission which conforms to and includes the mandatory requirements set out in Appendix 2 of the RFP. RFP Submissions that fail to comply with the mandatory requirements may be subject to disqualification pursuant to Section 20.3 and Section 20.4.

12.2 Project Agreement

The Final RFP Project Agreement shall be used without amendment by all Proponents as the basis for all RFP Submissions (this applies to the Base Submissions and any and all Innovation Submissions), provided, however that:

- The Proponent may include, as one or more Innovation Submissions, proposed variations or deviations which the Proponent would like to propose to the Final RFP Project Agreement, in which case acceptance of any such Innovation Submissions shall be at the sole discretion of the Sponsors. Such Innovation Submissions should include the specific wording of all proposed amendments to the provisions of the Final RFP Project Agreement. To facilitate the review and consideration of each proposed amendment in an Innovation Submission to the Final RFP Project Agreement, Proponents should explain the proposed amendment and provide a summary of the benefits which they believe will accrue to NBGH or NEMHC if their Innovation Submission is accepted by the Sponsors. Where an Innovation Submission involves a variation or deviation to the Final RFP Project Agreement, then the requirements of the Preferred Proponent Agreement with respect to forfeiture of the Preferred Proponent Commitment will apply to the Final RFP Project Agreement as amended under the Innovation Submission in question, following the amendment identified in the Innovation Submission.
- A Proponent may not propose a substantially and materially different Project Agreement.

12.3 Technical Requirements

For the Base Submission:

- There should be no departures or deviations at all to any provision of the Technical Requirements.
- The scope of all of the facilities management services in the Technical Requirements must be included.

Any provision of a Base Submission which qualifies, varies, amends or otherwise departs from any provision of the Technical Requirements shall be deemed for all purposes to be deleted from the RFP Submission and of no effect whatsoever, and the RFP Submission shall be deemed to be

based on and incorporate only the Technical Requirements without such qualification, variation, amendment or other departure from the Technical Requirements and without any change to the prices in the RFP Submission.

12.4 Submission Requirements

The Submission Requirements described in Appendix 2 of the RFP apply to all RFP Submissions. Proponents are cautioned, however, to carefully review the whole of the RFP to ensure all requested documentation and information is submitted with their RFP Submissions.

The organization and structure of the Submission Requirements generally corresponds to the Evaluation Categories. To facilitate review and evaluation of RFP Submissions by the Evaluation Committee, Proponents in their RFP Submissions should provide the information requested in the Submission Requirements under the same headings and numbers as used in the Submission Requirements. If information is relevant to more than one heading or numbered Section in the Submission Requirements, Proponents should ensure that either the information is duplicated in each relevant Section or that appropriate cross-references are included to confirm where the information can be found in the RFP Submission. Otherwise, the Proponent assumes the risk that, in evaluating and scoring a particular Evaluation Category, relevant information elsewhere in the RFP Submission may be overlooked by the Evaluation Committee and its Advisors.

Proponents should note that a separate price for the Early Services must be submitted (“Separate Price”). Further details relating to this Submission Requirement are set out in Appendix 2 of the RFP.

RFP Submissions must conform to and provide all information requested in the Submission Requirements and the RFP. As RFP Submissions are scored and ranked and assessed against each other, it is up to Proponents to submit as much information and as many details in their RFP Submissions as they consider necessary to demonstrate to the Evaluation Committee that, in relation to each of the Evaluation Categories, their RFP Submission is superior to that of other Proponents. Proponents should also demonstrate that they are intimately familiar with the challenges faced by the Project and will be able to successfully complete the Project on schedule and in a manner that is mutually beneficial to all parties concerned.

Although irrelevant and marginally relevant material is strongly discouraged, RFP Submissions should be as complete and comprehensive as possible. Proponents should not assume that the Evaluation Committee will refer to or consider the general reputation of Proponents or Proponent Team Members or anything other than what is actually contained within their RFP Submissions, although as described in Section 20.8 the Evaluation Committee at its sole discretion may consider the results of reference checking, its own knowledge and experience, and the comments and recommendations of its Advisors.

13 INNOVATION SUBMISSIONS

13.1 Categories of Innovation Submission

Proponents are strongly encouraged to submit Innovation Submissions that they consider will add value to NBGH and NEMHC as part of their RFP Submissions. There are four categories of Innovation Submissions:

- Innovation Submissions that propose departures from the Existing Design.
- Innovation Submissions that propose other commercial opportunities.
- Innovation Submissions that propose changes to the Technical Requirements other than departures from the Existing Design.
- Innovation Submissions that propose changes to the Project Agreement.

Individual Innovation Submissions may not mix and match among these four types of Innovation Submission. Moreover, each Innovation Submission is to be capable of being assessed for acceptability on its own merits, without reference to or dependency on other Innovation Submissions.

13.2 Parameters for Innovation Submissions

Innovation Submissions for all categories are to fall within the parameters below:

- The Innovation Submissions must provide some form of demonstrable added value to the Sponsors (e.g. life-cycle enhancements, operating system improvements, or cost savings).
- The Innovation Submissions must not adversely impact the functional program requirements or the Clinical Functionality of the Existing Design.
- The Innovation Submissions must not alter the footprint of the Facility or its location or orientation on the Site.
- The Innovation Submissions must not adversely impact the size or layout of the Facility.
- The Innovation Submissions must not adversely impact the Existing Design structurally or architecturally.
- The Innovation Submissions must not alter clinical adjacencies in the Existing Design.
- The Innovation Submissions may alter the mechanical and electrical elements of the Existing Design, provided that the mechanical and electrical elements of the proposed Innovation Submissions meet the design and performance criteria as per the Technical Requirements.
- The Innovation Submissions must be such that the Facility will achieve LEED Certification.
- The Innovation Submissions must not materially postpone the date of Substantial Completion.

- The Innovation Submissions must take the master site plan referenced in the Data Room into account (although Innovation Submissions that are not entirely consistent with the master site plan may be considered provided they deliver sufficient value).
- The Innovation Submissions must provide a material benefit to NBGH or NEMHC or both.

The financial offer associated with each respective Innovation Submission must include any associated design costs and any costs associated with compliance review relating to that Innovation Submission, in accordance with the design review requirements of the Project Agreement.

Of the Innovation Submissions that fall within the above parameters, the Sponsors will determine in their sole discretion which are acceptable to them. Those that are deemed by the Sponsors and MOHLTC to be acceptable will be evaluated according to Section 20.

Acceptance or rejection of Innovations Submissions is at the sole discretion of the Sponsors. The Sponsors will not have any obligation or liability whatsoever in relation to the consideration or rejection of any Innovation Submission.

Project Co will be responsible for securing any approvals or changes to the Site Plan Control Agreement or building permit application or any other required approvals arising out of Innovation Submissions it puts forward, and for the performance of Innovations against stated criteria.

13.3 Commercially Confidential Meetings for Potential Innovation Submissions

The Sponsors will hold a Commercially Confidential Meeting with each Proponent, at the Proponent's option and request, on potential Innovation Submissions that Proponents are considering putting forward. At these sessions, Proponents can present potential Innovation Submissions and discuss with the Sponsors to what extent and in what respects the potential Innovation Submissions are likely to meet with acceptance by the Sponsors during evaluation. The first round of the Commercially Confidential Meetings occurred [REDACTED] and the second round of Commercially Confidential Meetings will be held on [REDACTED].

Section 13.4 provides detailed Innovations Protocol, and Section 13.5 addresses Cogeneration Plant Protocol.

Proponents wishing to participate in a Commercially Confidential Meeting on potential Innovation Submissions are to contact the Contact Person to schedule a time. They are also required to provide text by way of correspondence, preferably at least one week before any scheduled Commercially Confidential Meeting on potential Innovation Submissions, which can help prepare the Sponsors to understand the potential Innovation Submissions Proponents wish to discuss at the Commercially Confidential Meetings. The Sponsors will only discuss such text at the Commercially Confidential Meetings, and will not provide any written commentary or any commentary outside of the Commercially Confidential Meeting process.

Further information on Commercially Confidential Meetings is provided in Section 15.

13.4 Innovation Submissions Protocol

Infrastructure Ontario, in conjunction with the North Bay General Hospital and the Northeast Mental Health Centre held Innovation Submission Meetings with interested Proponents to facilitate an open dialogue on potential Innovation Submissions. The intent of these meetings was to allow the Sponsors to review the potential Innovation Submissions presented by the Proponents and provide the Proponents with guidance as to the potential Innovation Submissions deemed receivable.

In order to ensure the process is a fair, transparent and open process while protecting the commercial interest of Proponents, the following protocol has been established for the follow-up Requests for Information (RFIs) related to potential Innovation Submissions. The protocol is set out to protect the commercial in confidence suggestions made by Proponents and is expected to result in a higher quality of RFP Submissions.

A. Request for Information Related to Innovation Submissions

1. Proponents must clearly mark each and every question related to potential Innovation Submissions as “Commercially Confidential” and “Innovation Submission” in order for the Sponsors to consider the question to be proprietary and confidential.
2. Upon determination by the Sponsors that the question(s) marked “Innovation Submission” and “Commercially Confidential” are related to potential Innovation Submissions and are of a Commercially Confidential nature, the Sponsors will treat all “Innovation Submission” questions, marked as such, as commercially confidential and the response to those questions will be disclosed to only the Proponent who submitted the question.
3. Should the Sponsors determine a Proponent’s request for information contains materials which could impact the Base Bid Submission of all Proponents and could provide an unfair advantage if the information or materials were provided to only one Proponent, the Sponsors will declare the information or materials to be “Non Commercially Confidential”.
4. Materials related to potential Innovation Submissions that are deemed to have an impact on the Base Bid Submission of all Proponents shall be shared with all Proponents in a manner that does not disclose the nature of the RFI submitted or the nature of the potential Innovation Submission.
5. If the Sponsors deem the material contained within the request for information to be “general” and “not related to an Innovation Submission”, the Sponsors shall advise the Proponent, who will have the right to withdraw the question prior to the response being disclosed by the Sponsors to all Proponents. If the Proponent waives their right

to withdrawal, the question and answer shall be provided to all Proponents, without identifying the name of the Proponent who submitted the question.

B. Conditions and Obligations

1. The Fairness Commissioner will review all RFI in order to ensure equitable treatment of all Proponents.
2. Subject to “3” and “4” below, the Sponsors will not distribute proprietary questions or answers. The Sponsors may provide all Proponents with general questions and responses, as part of an Addendum.
3. The Sponsors reserve the right to provide information related to a proprietary question, even if the question is retracted, if the response could have a significant influence on the procurement or outcome. The Sponsors will not provide the name of the Proponent when providing the information.
4. The Sponsors have the final and irrevocable decision on the nature of the request (i.e. general and for disclosure to all Proponents).

13.5 Cogeneration Plant Protocol

The Sponsors inform the Proponents that the inclusion of a cogeneration plant is receivable as an Innovation under 13.1 of the RFP. The Sponsors have no obligation to accept this or any other Innovation. The inclusion of Innovations both for evaluation and implementation are at the Sponsors’ sole and absolute discretion.

The Proponents are reminded that as per Section 3.2 of Appendix 2 of the RFP:

“The Innovation Submissions included separately within Package A-3 and Package B-3 of the RFP Submissions will be considered as firm commitments made by the Proponent. Such commitments, where accepted by the Sponsors, will be incorporated into the Project Agreement to ensure measurable contractual performance at the specified level of commitment.”

And in accordance with PACKAGE B-3: PRICED INNOVATION SUBMISSIONS, Section 1.1

“The aggregate net present value of the Proponent’s proposed Annual Unitary Charge will be evaluated and scored by the Sponsors”

It is therefore expected that for an Innovation to contribute positively to the evaluation, the Innovation should have a positive net impact on NPV.

14 RFP SUBMISSION FORMAT

14.1 RFP Submission Format

RFP Submissions must be organized to correspond to the headings and numbering in Appendix 2 of the RFP. If an executive summary or other general narrative text is included with the RFP Submission, the headings and numbering in that summary or narrative text should also correspond, where possible, to those in the Submission Requirements.

For Information Purposes Only

15 COMMERCIALY CONFIDENTIAL MEETING PROCESS

Commercially Confidential Meetings will occur under this RFP in the two contexts below or as provided for by Addenda (the “Commercially Confidential Meetings”):

- In the context of meetings on comments on the Project Agreement, in any of its forms, and the RFP, held bilaterally between the Sponsors and each of the Proponents individually.
- In the context of meetings on potential Innovation Submissions, designed to provide Proponents with an indication of the degree of likelihood of acceptance of Innovation Submissions they are considering putting forward. These meetings will also be held bilaterally between the Sponsors and each of the Proponents individually.

No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meeting by any personnel of the Sponsors or Advisors shall amend or waive any provision of the RFP or the Project Agreement, or be binding on the Sponsors or their respective personnel or Advisors, or be relied upon in any way by Proponents, except when and only to the extent expressly confirmed in writing by the Contact Person by means of an Addendum to the RFP issued in accordance with Section 16.1 by the Sponsors.

The Fairness Commissioner will be present during some or all of these meetings. The Sponsors reserve the right to have any of its Advisors participate in such meetings and conference calls as the Sponsors at their sole discretion may require to facilitate discussion or to advise the Sponsors on the Project. The Sponsors reserve and have the right at their sole discretion to issue written guidance notes, directions or an Addendum to the RFP to all Proponents.

16 INQUIRIES AND COMMUNICATION PROCESS

16.1 Inquiries and Questions

Except for communications during meeting, all inquiries, questions and other communications regarding the RFP, the Project Agreement, Technical Requirements, or RFP Submissions, should be submitted using the web based format to be provided and should be directed to the Contact Person at the Submission Address set out in Section 19.

Details on the web based format will be provided to Proponents when available. Should Proponents have inquiries or questions prior to the establishment of the web based format, those questions should be faxed to the Contact Person in the form as set out in Appendix 4 of the RFP.

The following shall apply to all questions:

- Written responses by the Sponsors will be issued to all Proponents.
- Response to questions of a minor or administrative nature that the Sponsors consider, in their sole discretion, to relate only to the Proponent who submitted the question may be addressed only to that Proponent by way of a letter of clarification.

No communications or responses from the Sponsors in relation to the RFP, the RFP process, the Project Agreement, or the Project may be relied upon by Proponents unless and only to the extent confirmed in writing by an Addendum to the RFP, or the Project Agreement or by a formal written response issued by the Contact Person to a Proponent in accordance with this Section 16.1. Any reliance by a Proponent on any information obtained by a Proponent which is not contained in an Addendum to the RFP or in a formal written response issued in accordance with this Section 16.1 by the Contact Person to a question shall be at the Proponent's sole risk and without recourse against the Sponsors, its Advisors or their respective directors, officers, employees, and agents.

In addition to Commercially Confidential Meetings which are provided for in the procurement process, Proponents are permitted to submit Commercial in Confidence questions in writing using the Request for Information Form. Where a question is deemed to be Commercial in Confidence, the response will only be forward to the Proponent who submitted the question. In the event that the Sponsors deemed the questions be of a general nature, the Proponent would be given the opportunity to either withdraw the question or allow for the question and response to be circulated to all Proponents.

The Sponsors reserve the right to provide information to all Proponents, even if the question is retracted, if the question and response could have a significant influence on the procurement or outcome.

Proponents are encouraged to limit their written questions to those that are of a logistical or time sensitive nature and address the remaining questions through the Commercially Confidential Meeting process.”

16.2 Access to Site

Proponents are not permitted to access the Site without prior written arrangement in each instance with the Sponsors.

Proponents wishing to arrange a Site visit for any purpose (other than for a meeting previously arranged by the Contact Person) should submit their request to the Contact Person in accordance with Section 16.1 and describe the date(s) and time(s) they will be at the Site and the purpose for the visit(s). The request should be submitted at least forty-eight (48) hours in advance of the time for the Site visit(s).

Each of NBGH and NEMHC reserve the right to have a person present during any and all Site visits to monitor the Proponent's activities during the Site visit, particularly if the purpose of the Site visit includes any activities which may disturb the environment or cause damage to any property at or adjacent to the Site.

16.3 Access to Existing Facilities

Access to the Existing Facilities requires a sensitive approach by Proponents and the Sponsors.

Accordingly, except for specific meetings previously agreed to in writing by the Sponsors, Proponents are not permitted to access the Existing Facilities for any reason without first obtaining prior written authorization from the Sponsors in each instance.

To arrange a visit to the Existing Facilities (other than for a specific meeting previously arranged through and confirmed in writing by the Sponsors), the following procedure will apply:

- Proponents must submit a request to visit the Existing Facilities by submitting a request in accordance with Section 16.1 to the Contact Person at least forty-eight (48) hours prior to the time for commencement of the visit, identifying the following:
- Purpose, date(s), time(s) and areas of access requested for the proposed visit (with alternate date and time in case the requested date and/or time is not convenient or acceptable to the Sponsors).
- Name and other details of the person(s) who will be present on behalf of the Proponent.
- The Sponsors will use reasonable efforts to accommodate and coordinate all requests, and through the Contact Person will confirm final arrangements for the date(s) and time(s) of the visit.

Once a visit to the Existing Facilities has been arranged and confirmed by the Contact Person, unless otherwise expressly indicated in the written confirmation from the Contact Person of the meeting, the following will apply to the visit:

- All authorized visitors, upon their arrival at the Existing Facilities, must without exception.
- Report to Plant Services to sign in and collect ID badges.

- On completion of the visit, return all ID badges to Plant Services.
- All visitors must respect the privacy of patients and staff during their visits. Visitors must ensure that disturbances are minimized by visiting only those specific areas for which authorization has been granted in the notice from the Contact Person confirming the date, time and other details for the visit. Photography is not permitted at these facilities unless expressly authorized in advance through the Contact Person.
- As the Existing Facilities are in use and unforeseen circumstances may arise at any time, the Sponsors reserve the right at all times to postpone the visit, curtail the visit, restrict access to areas previously authorized, or otherwise change any and all aspects of the visit.

16.4 Communications with City, Other Governmental Authorities and Utilities

Proponents may communicate directly with the City, other governmental authorities, or utilities in respect to their requirements related to the Project. The Sponsors at their sole discretion may request representatives from the City and other governmental authorities to be present during any one or more of any meetings with Proponents.

In no event will the Sponsors be responsible for any representations, statements, assurances, commitments or agreements which Proponents receive or believe they may have received from the City, other governmental authorities, or utilities. Proponents rely on such representations, assurances, commitments and agreements at their sole risk without recourse against the Sponsors. If Proponents wish to rely on such representations, assurances, commitments and agreements they are solely responsible for ensuring they are incorporated into binding written agreements between the Proponent and the City, other governmental authorities, or utilities.

16.5 Media Releases and Public Disclosures

Project Co shall not, and shall ensure that no Project Co Team Member shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the Project, the Project Agreement, the Hospital Services, or any matters related thereto, without the prior written consent of NBGH.

Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with NBGH's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by NBGH from time to time.

17 CHANGES TO PROPONENTS AND PROPONENT TEAM MEMBERS

It is recognized that Proponents may require a change in their shareholders, in their proposed Proponent Team Members, or in their proposed contractors, consultants and others from those which Proponents identified in the RFQ Submissions, or from those which Proponents name in their RFP Submissions.

If, prior to submission of its RFP Submission, as applicable, a Proponent discovers or requires a change in its shareholders, in its Proponent Team Members, or in any proposed contractors, consultants, advisors or others named in the RFQ Submission, or if a Proponent requires a change to any personnel named in the RFQ Submission, the Proponent shall notify the Sponsors within five (5) business days in writing by delivery or facsimile to the Contact Person. Such notification shall clearly identify the proposed substitution and include sufficient documentation to demonstrate that the proposed substitute has, overall, comparable or better qualifications, experience and ability in comparison to the original named entity or person.

The Proponent shall provide such further documentation as may be requested by the Sponsors at their sole discretion to satisfy itself as to the qualifications, experience and ability of the proposed substitute. If the Sponsors consider the proposed substitute to be acceptable to the Sponsors, in their sole discretion, the Sponsors may consent to such substitution. Consent to such substitution, however, may be subject to such terms and conditions as the Sponsors may require. If the proposed substitute is not acceptable to the Sponsors, the Proponent shall propose an alternate substitute who the Proponent can demonstrate, to the Sponsors' satisfaction, does have the requisite qualifications, experience, ability and availability for the proposed role.

If at or after the submission of an RFP Submission and prior to execution of the Project Agreement there is an actual or proposed addition, deletion, substitution or other change in the membership or effective control of the Proponent, of any member of a Proponent, or of any Proponent Team Member, or if there is a change in circumstances that may materially adversely affect a Proponent, the members of the Proponent, or any Proponent Team Member in a way which could impair the Proponent's or the Proponent Team Member's ability to perform its respective obligations under the Project Agreement, then the Proponent shall promptly notify the Sponsors in writing by delivery or facsimile to the Contact Person. Such a change, even if after the applicable RFP Closing Date, shall not automatically disqualify a Proponent.

The Sponsors reserve the right in their sole discretion to allow a proposed or actual change on such terms and conditions (if any) as they may require, to disallow any actual or proposed change, and in the case of an actual change previously made without consent by the Sponsors to disqualify the Proponent and terminate its continued involvement, or allow the Proponent to continue under such terms and conditions as the Sponsors at their sole discretion may require. In exercising their sole discretion, the Sponsors will take into account the extent to which the addition, deletion, substitution or other change has or may have, in the sole opinion of the Sponsors, a material adverse impact on the Proponent and its ability, if ultimately chosen as Project Co, to successfully complete the Works on schedule and budget. If a change or substitution is allowed by the Sponsors, the Evaluation Committee may request additional

information to form part of the RFP Submission and to be taken into account in the evaluation process.

For Information Purposes Only

18 AMENDMENTS TO RFP SUBMISSIONS PRIOR TO RFP CLOSING DATE

At any time prior to the deadline for RFP Submissions set out in Section 19, a Proponent may amend its RFP Submission. A Proponent wishing to amend its RFP Submission may be requested to submit a complete as amended RFP Submission in the manner and within the deadlines set out in this RFP as if such amended RFP Submission were a new RFP Submission. If so requested, the Proponent must withdraw, in writing, its original RFP Submission. Should the original RFP Submission not be withdrawn, the revised RFP Submission may not be reviewed. This Section 18 applies whether the amendment is initiated by a Proponent or submitted by a Proponent in response to additional information provided by the Sponsors.

For Information Purposes Only

19 RFP CLOSING DATE, CONTACT PERSON AND SUBMISSION ADDRESS

RFP Submissions must be received on or before the RFP Closing Date set out below:

RFP Closing Date: October 19, 2006, 2:00.00 p.m. (local Toronto time)

Time will be measured by the OIPC clock located at the Submission Address below. RFP Submissions received after the RFP Closing Date will not be considered and will be returned unopened.

RFP Submissions must be delivered to attention of the Contact Person at the Submission Address below:

Contact Person: 

Submission Address: Ontario Infrastructure Projects Corporation
6th Floor
777 Bay Street
Toronto, ON M5G 2C8
Fax: (416) 212-6319

Faxed or e-mailed RFP Submissions will not be accepted in response to this RFP.

It is the sole responsibility of Proponents to ensure that RFP Submissions are received on or before the RFP Closing Date and to obtain confirmation (a date and time stamp receipt) from the OIPC as to whether their RFP Submission was received prior to the RFP Closing Date.

20 REVIEW AND EVALUATION OF RFP SUBMISSIONS

20.1 Evaluation Committee and Advisors

RFP Submissions will be evaluated by a committee established for that purpose by the Sponsors (“Evaluation Committee”). The size, structure and composition of the Evaluation Committee will be at the Sponsors’ sole discretion.

The Evaluation Committee may be assisted by any of its Advisors and any other personnel from the Sponsors’ organizations.

In its evaluation and scoring of RFP Submissions, the Evaluation Committee may consider any and all reports, comments and recommendations from and by the Advisors and other personnel from other Sponsors’ organizations in relation to any and all parts of the RFP Submissions. Without limiting the ability of the Evaluation Committee to establish its own procedures for the review, evaluation and scoring of RFP Submissions, the Evaluation Committee may use the Advisors in any way that the Evaluation Committee in its sole discretion considers will be of assistance to the Evaluation Committee. Final scoring, however, will be performed only by the Evaluation Committee.

20.2 Fairness Commissioner

The Sponsors have appointed Property One Consulting as the Fairness Commissioner to oversee the procurement process.

20.3 Completeness Review

The RFP Submissions will be subjected to a completeness review to ensure substantial completeness. The completeness review will ensure that the mandatory requirements have been provided. Failure to provide a substantially complete RFP Submission may result in the RFP Submission not being evaluated and in the disqualification of the Proponent.

20.4 Compliance Review

Base Submissions will initially be reviewed on a preliminary basis by the Evaluation Committee and its Advisors to determine whether they comply with the requirements of the RFP. Base Submissions which do not, at the sole discretion of the Evaluation Committee, comply with the RFP may, subject to Section 20, be rejected and not considered further in the evaluation process.

20.5 Innovation Submissions Review

Following this review of RFP Submissions, the Evaluation Committee will meet to review the Innovation Submissions. The Sponsors will determine whether each Innovation Submission is of sufficient potential interest to the Sponsors to warrant submission to the Evaluation Committee for review and evaluation together with the remainder of RFP Submissions. If the Sponsors determine at their sole discretion that:

- The Innovation Submission is of potential interest to the Sponsors, then such Innovation Submission will be reviewed and evaluated by the Evaluation Committee together with the Base Submission. The Innovation Submission will not be considered if it results in a net negative impact on the Proponents' score.
- If the Sponsors are not prepared to consider such Innovation Submission, then such Innovation Submission will be rejected and will not be reviewed and evaluated further.
- Prior to accepting or rejecting any Innovation Submission, the Sponsors may (through the Contact Person or by meeting with the Proponent) request the Proponent to clarify the Innovation Submission or submit additional information as may be required by the Sponsors to understand the Innovation Submission and determine whether the Innovation Submission may potentially be of interest to the Sponsors.

Whether an Innovation Submission is acceptable to the Sponsors is at the Sponsors' sole discretion, and the Sponsors are entitled to reject any Innovation Submission at any time without further analysis or consideration, and without giving any reasons for such rejection. In considering whether an Innovation Submission is generally acceptable to the Sponsors, the Sponsors may take into account any factors which they consider relevant and the weight to be given to those factors, including among other things:

- Perceived increased risks to NBGH and/or NEMHC, as determined by the Sponsors, if any changes are required to the Project Agreement, particularly to the Payment Mechanism and the Technical Requirements.
- Changes to the Existing Design or Technical Requirements deemed unacceptable or undesirable by the Sponsors.
- Changes to schedule and/or Scheduled Substantial Completion Date or Scheduled Final Completion Date deemed unacceptable to the Sponsors.
- Life cycle cost elements or implications that are not acceptable to the Sponsors.
- Whether changes may be required to the Technical Requirements that adversely impact, in the sole opinion of the Sponsors, Clinical Functionality or the type, manner or method of Hospital Services which will be provided at the Facility.

- Any unacceptable risk of potential delays to the Scheduled Substantial Completion Date or the Scheduled Final Completion Date in the event that changes to zoning, permitting licences and other approvals are required.
- Comments from and opinions of the Evaluation Committee, the Advisors, the Fairness Commissioner, and other consultants and personnel of the Sponsors.

After completion of this preliminary review of RFP Submissions, those Base Submissions and Innovation Submissions not rejected as a result of this preliminary review will be reviewed and evaluated by the Evaluation Committee as described in Sections 20.10 and 20.11.

20.6 Clarifications and Additional Information

If an RFP Submission appears unclear, deficient or to have an omission, the Evaluation Committee, at its sole discretion, has the option to and may request clarifications and additional information from the Proponent from time to time prior to the completion of the scoring of RFP Submissions by the Evaluation Committee. In addition, the Evaluation Committee at its sole discretion may also from time to time request that a Proponent submit additional information relating to any aspect of its RFP Submission which the Evaluation Committee would like to have to assist it to understand and evaluate the RFP Submission. Without limiting the generality of the foregoing, such requests may be made for information that has been partially or wholly omitted from an RFP Submission, and whether such omission would otherwise render the RFP Submission void.

If the Evaluation Committee requests clarifications or additional information, such requests will be made in writing and submitted to the applicable Proponent by the Contact Person on behalf of and for the Evaluation Committee. The Evaluation Committee may consider and take into account in the evaluation and scoring of RFP Submissions any and all clarifications and additional information provided by Proponents in response to such written requests, in the same manner, for the same purposes and to the same extent as if those clarifications and additional information were originally part of the RFP Submission and submitted prior to the RFP Closing Date.

If, during any interviews of Proponents by the Evaluation Committee or if, during any meetings between Proponents and Advisors, Proponents are orally requested to provide any clarifications or to provide additional information and those clarifications or additional information can not be provided immediately, such clarifications and additional information are not to be provided after the interview or meeting unless expressly requested in writing by the Evaluation Committee in accordance with the foregoing paragraph of this Section 20.6.

Any clarifications or information provided after the RFP Closing Date that are not given orally during interviews and meetings or not given in response to an express written request in accordance with the foregoing may not be considered by the Evaluation Committee or the Advisors.

To assist with the review and understanding of any particular aspect of RFP Submissions, the Evaluation Committee may at its sole discretion at any time and from time to time meet with Proponents individually or request written clarifications. The agenda and procedure for such clarification meetings will be prepared by the Evaluation Committee. Such meetings will be scheduled at mutually agreeable times with Proponents.

The Evaluation Committee reserves the right, during any one or more meetings between a Proponent and any or all members of the Evaluation Committee, to have present any of its Advisors or any personnel of the Sponsors.

During such meetings, Proponents will discuss and clarify their RFP Submissions and respond to questions from the Advisors. Proponents, however, will not be allowed to submit new materials to supplement or add to their RFP Submissions except when expressly requested by the Evaluation Committee, through the Contact Person, to submit that information.

20.7 Interview by Evaluation Committee

An interview will be scheduled separately for each Proponent with the Evaluation Committee, at a time and location to be determined by the Evaluation Committee. The agenda and procedure for the interview is at the sole discretion of the Evaluation Committee.

The Evaluation Committee will take the results of the interview into account in the evaluation and scoring of the Evaluation Categories in Appendix 2 of the RFP.

At the beginning of its interview, the Proponent will be invited to make a presentation to the Evaluation Committee to highlight key aspects of its RFP Submission.

The Evaluation Committee may require Proponents to provide the Sponsors with confirmation in writing as to any specific assurances or commitments which Proponents make during the interview, in which case any such written assurances and commitments shall then be deemed to be part of the RFP Submission and may be considered and relied upon by the Evaluation Committee and the Sponsors.

20.8 Right to Verify

The Evaluation Committee at its sole discretion may, itself or through the Advisors:

- Independently verify any information contained in any RFP Submission (including conducting credit, reference and other checks).
- Independently verify any statements or information presented during the interviews and meetings described in Sections 20.6 and 20.7.

- Obtain references from individuals and organizations other than those listed by Proponents in their RFP Submissions.

20.9 Use of RFQ Submissions by Evaluation Committee

The Evaluation Committee in its evaluation and consideration of RFP Submissions may at its sole discretion take into account and rely upon any and all of the following:

- Information submitted as part of the RFQ Submissions that the Submission Requirements expressly state will be used and relied upon by the Evaluation Committee and/or the Sponsors. In such case, Proponents should ensure that if any such RFQ Submission information is incorrect or has been superseded that it is corrected and new information is provided as part of the RFP Submission.
- The results of reference checking of Proponents and Proponent Team Members that was performed during the review and evaluation of RFQ Submissions in the RFQ stage.

20.10 Scoring by the Evaluation Committee

In evaluating RFP Submissions, the Sponsors will assign a score to the Base Submission (including the accepted Innovation Submissions) for each Proponent. The Sponsors will then, subject to Section 3.1, select as the Preferred Proponent the Proponent with the highest scoring RFP Submission which is the combination of the Base Submission and any accepted Innovation Submissions. The Evaluation Committee will score RFP Submissions in accordance with the Evaluation Categories listed and described in Appendix 2 of the RFP.

Scoring of Evaluation Categories will be based entirely on the evaluation of RFP Submissions by the Evaluation Committee. In determining whether any points should be awarded for any particular Evaluation Category and, if so, the number of points, the Evaluation Committee will consider the contents of every RFP Submission, including by comparison to the requirements of the RFP and the Technical Requirements. In such evaluation, the Evaluation Committee at its sole discretion may create additional sub-criteria to the Evaluation Criteria in Appendix 2 of the RFP and may, among other things, take into account its assessment of:

- The results of interviews and meetings described in Sections 20.6 and 20.7.
- Any additional information and clarifications that may have been specifically requested by the Evaluation Committee and provided by the Proponent, including during and following the meetings and interviews described in Sections 20.6 and 20.7.
- Comments received by the Evaluation Committee from its Advisors:
- Results of reference checking, both during the RFQ stage and following receipt of RFP Submissions.
- Innovation Submissions.

RFP Submissions will receive points based on the Evaluation Committee’s determination as to the extent to which the Evaluation Committee believes that such RFP Submissions provide overall benefits or value, both quantitative and qualitative, to NBGH and NEMHC in relation to that Evaluation Category and its intent.

The evaluation categories (each of which referred to as an “Evaluation Category”) that will be used to assess each RFP Submission, and the maximum points for each Evaluation Category, are as follows:

Evaluation Categories	Available Points
Technical	
Facilities Management	20
Project Management, Development, Construction and LEED	30
Commercial and Financial	
Net Present Value	25
Degree of Financing Commitment (RFP Version 4.1, Appendix 2, Package B2, Section 2.3/3.0)	15
Degree of Financial Support (RFP Version 4.1, Appendix 2, Package B2, Section 2.1/2.2/2.4)	10
Maximum Points Available	100

Proponents should note that a minimum score of at least fifty percent (50%) of available points must be achieved for each of the Evaluation Categories set out above. Failure to achieve the minimum score in any of the Evaluation Categories will prevent a Proponent becoming the Preferred Proponent.

The Evaluation Committee will use the following process for awarding points to a RFP Submission for each Evaluation Category:

- For each Evaluation Category, the Evaluation Committee will first assign a percentage score (out of a possible 100%).
- The percentage score assigned by the Evaluation Committee will then be converted into a points score for each Evaluation Category, by multiplying the percentage score for each Evaluation Category by the total points available for that Evaluation Category.
- Innovation Submissions which have a net negative impact on the overall score, as determined by the Evaluation Committee in its sole discretion, will not be considered nor taken into account in scoring.

Accordingly, Proponents should use the Submission Requirements as general guidelines only and should provide, in a clear and concise form, any and all additional information, data, current references, representations and commitments in their RFP Submissions that they consider necessary to demonstrate to the Evaluation Committee’s satisfaction that their RFP Submissions contain features which provide overall benefits or value, both quantitative and qualitative, to NBGH and NEMHC in relation to that Evaluation Category, including in comparison to the requirements of the RFP and the Technical Requirements. Further, Proponents should ensure that they adequately and clearly highlight and explain any unique or innovative features of their RFP Submissions to ensure they are recognized and considered by the Evaluation Committee. At the Sponsors’ sole discretion, any such information, data, representations and commitments may ultimately be included in the Project Agreement with that Proponent as binding obligations of Project Co.

The financial analyses may include, among other things:

- An assessment of the expected net present value of the payment schedules in the RFP Submissions.
- Sensitivity analyses to take into account such factors as the Sponsors and the Advisors may consider appropriate.
- Estimated net present value of the impact, including any impact on Hospital Services and operations, of the Base Submission and any accepted Innovation Submission.

The Sponsors’ decisions shall be final and not subject to dispute or review by Proponents.

20.11 Technical Evaluation

The Technical Evaluation will be scored in accordance with the following evaluation sub-categories (each of which referred to as an Evaluation Sub-Category), as follows:

Technical Evaluation Sub-Category	Available Points
Project Management Plan	4
Development Plan	5
Construction Plan	14
LEED Plan	7
<i>Maximum Project Management, Development, Construction and LEED Points</i>	30
Hard Facilities Management Strategy	12
Capital Replacement (Life Cycle) Plan	8
<i>Maximum Facilities Management Points</i>	20
Maximum Technical Points	50

20.12 Commercial and Financial

The Sponsors value the certainty of achieving Financial Close in the time frame set out in Section 1.6 of the RFP. The Sponsors also value the achievement of Value for Money as set out in the IPFP Framework.

The following sections describe the scoring methodology for Net Present Value and Degree of Financing Commitment.

20.13 Net Present Value

The Sponsors will review and perform its own analysis of the financial models and Net Present Value provided by Proponents. The Proponent with the lowest Net Present Value will be awarded 25 points. The other Proponents will be awarded points based on the formula below:

$$\text{Price Score} = (\text{Pricelowest}) \div (\text{Priceactual}) \times (\text{Maximum Points})$$

Where:

Pricelowest means the lowest price bid evaluated

Priceactual means the actual Net Present Value price bid being evaluated

Maximum Points means 25 points.

20.14 Degree of Financing Commitment

A Proponent that provides underwritten financing in accordance with the following will receive 15 points:

- i) a financial institution's commitment to provide a letter of credit for \$1 million in the form set out in the Preferred Proponent Agreement;
- ii) a letter from its Lender addressed to the Sponsors in accordance with Appendix 2, Package B-2, Section 2.3 of this RFP;
- iii) a letter of support from the Equity Providers in accordance with Appendix 2, Package B-1, Section 2.2 of the RFP;
- iv) an executed copy of the Proposal Form.

A Proponent that provides non-underwritten financing and provides a letter of credit for \$5 million in the form set out in the Preferred Proponent Agreement will be scored in accordance with the evaluation sub-categories set out in the table below:

Evaluation Sub-Category	Available Points
a) Letters of Support from Lender(s) or Financial Institution(s) Support (RFP Version 4.1, Appendix 2, Package B2, Section 2.3)	5
b) Quality and achievability of Financing Plan (RFP Version 4.1, Appendix 2, Package B2, Section 3.0)	10
Degree of Financing Commitment	15

20.15 Degree of Financial Support

Irrespective of an underwritten or non-underwritten financing, the Proponent will be scored for additional points in accordance with the evaluation sub-categories set out in the table below:

Evaluation Sub-Category	Available Points
a) Construction Support/Subcontractor Support (RFP Version 4.1, Appendix 2, Package B2, Section 2.1/2.4)	5
b) Letter of Support from Equity Provider(s) (RFP Version 4.1, Appendix 2, Package B2, Section 2.2)	5
Degree of Financial Support	10

If the Preferred Proponent submits underwritten financing with a one million dollar (\$1,000,000) letter of credit or non-underwritten financing with a five million dollar (\$5,000,000) letter of credit and fails to achieve the Financial Close Target Date as set out in Section 2.3 of the Project Agreement, the Sponsor will be entitled to call on such letter of credit as Liquidated Damages and the Sponsors will be entitled to pursue negotiations with the Reserve Proponent.

20.16 Ranking of RFP Submissions

All RFP Submissions not rejected at the outset pursuant to Section 20.3 and Section 20.4 and thus evaluated and scored by the Evaluation Committee against the Evaluation Categories in Appendix 2 of the RFP will be ranked according to their total score as awarded by the Evaluation Committee, with the highest overall score ranked as the highest RFP Submission. The preliminary rankings and scorings and any written comments and recommendations of the Evaluation Committee relating to the RFP Submissions will then be forwarded to the Sponsors.

If two RFP Submissions have exactly the same overall score, the RFP Submission with the highest score in the Evaluation Category designated “Commercial and Financial” will be ranked higher.

The process for selecting the Preferred Proponent is set out in Section 3.1.

20.17 Waiver of Non-Conformities and Qualifications

Notwithstanding any other provision of the RFP to the contrary, and without limiting but in addition to the provisions of Sections 20.3, 20.4 and 20.6, if any RFP Submission is received which fails to conform or includes qualifications to the requirements of the RFP, which in the opinion of the Sponsors is materially incomplete, obscure or irregular, which contains exceptions or variations not acceptable to the Sponsors, or which omit any material information required to be submitted by the RFP, then the Sponsors at their sole discretion reserve the right to waive such non-conformance with or qualifications to the requirements of the RFP on such terms and conditions as the Sponsors may consider appropriate, even if any such non-conformance, qualification or failure to comply with the requirements of this RFP would otherwise render the RFP Submission null and void, and submit the RFP Submission to the Evaluation Committee for review and evaluation and, ultimately, for consideration by the Sponsors in the same manner as for RFP Submissions that conform to the requirements of the RFP.

Further, if an Innovation Submission is received with deviations from, exceptions to or qualifications of the Technical Requirements, the Payment Mechanism or the Project Agreement, as applicable, and if only some of the proposed deviations, exceptions or qualifications are not acceptable to the Sponsors at their sole discretion but the balance of the Innovation Submission is generally of interest to the Sponsors, then the Sponsors at their sole discretion and at any time may meet with the Proponent and provide the Proponent with an opportunity to withdraw those deviations, exceptions or qualifications from the Innovation Submission which are not acceptable to the Sponsors, or to otherwise modify the Innovation Submission in such a manner as will make it initially generally acceptable to the Sponsors. If the Proponent fails to do so, the Innovation Submission will be rejected at that time without further consideration. If the Proponent makes the changes requested, the Innovation Submission may be reviewed and considered by the Evaluation Committee, but the Sponsors nevertheless at all times reserve the right to reject the Innovation Submission at any time thereafter if, after further review of the Innovation Submission as so amended, the Sponsors determine the Innovation Submission is not of further interest or acceptable to the Sponsors.

20.18 Debriefing

After Financial Close, representatives of the Sponsors and the Evaluation Committee, together with the Fairness Commissioner, will be prepared to meet with the unsuccessful Proponents to provide them with a de-briefing.

21 GENERAL MATTERS

21.1 Conflicts in Documents

If there is any provision in any part of the Technical Requirements, the Project Agreement or any part of the RFP which a Proponent considers to be in conflict with and which may prevent the Facility from achieving and satisfying NBGH's and NEMHC's Clinical Functionality requirements, prior to submitting its RFP Submission the Proponent shall notify the Contact Person in writing in accordance with Section 16.1, giving the details of such apparent conflict and seeking clarification. If notice of apparent conflict is not given by a Proponent in accordance with the foregoing, the provision which will provide the higher overall value and higher clinical and non-Clinical Functionality to the Sponsors, in the opinion of the Sponsors, shall govern and take precedence.

Subject to the foregoing, in the event of conflict or inconsistencies between or among any of the documents listed below, the documents shall govern in the following order of precedence, with the first listed taking precedence over each of the documents listed after it:

- Current drafting of the Project Agreement
- Technical Requirements
- RFP

If there is a conflict between one of the above documents as issued to Proponents in paper form and the same document as issued to Proponents in digital, electronic or other computer readable form, the paper form shall govern and take precedence. If there is a conflict between any of the above documents as issued to Proponents in paper form and the same document in the Data Room, the document as issued to Proponents in paper form shall govern.

21.2 Conflict of Interest

If Proponents, prior to or following submission of their RFP Submissions, discover any perceived, potential or actual conflicts of interest or any existing business relationships they may have with any one or more of the Sponsors, any of their board members (as applicable), MOHLTC, and the Government of Ontario, the Proponent shall promptly disclose the conflict to the Sponsors in writing through the Contact Person.

Proponents shall also, in their RFP Submission, disclose perceived, potential and actual conflicts of interest, and any existing business relationships, they may have with any one or more of the Sponsors, any of their board members (as applicable), MOHLTC and the Government of Ontario.

At the time of disclosure of the perceived, potential or actual conflict of interest or existing business relationship, the Proponent shall provide the Sponsors with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable such conflict. The Proponent

shall submit such additional information to the Sponsors as the Sponsors may require to consider the conflict.

The Sponsors reserve the right to waive any and all perceived, potential or actual conflicts, whether arising out of existing business relationships or otherwise. Any waiver may be upon such terms and conditions as the Sponsors at their sole discretion may require to satisfy themselves that the conflict has been appropriately managed, mitigated and minimized, including requiring the Proponent and affected entities to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the Sponsors at their sole discretion to mitigate the impact of such conflict or existing business relationship and to ensure that any and all confidential information the Proponent may have continues to be kept confidential and not disclosed or used except as expressly allowed by the Sponsors. Without limiting the generality of the foregoing, the Sponsors may at their sole discretion require the Proponent or Proponent Team Member to substitute a new person or entity for the person or entity giving rise to the conflict or has the existing business relationship. Proponents are encouraged to bring all such perceived or potential conflicts and existing business relationships to the attention of the Sponsors prior to the submission of RFP Submissions so that the Sponsors may be able to advise them of whether a waiver will be granted and, if so, the terms and conditions (if any) that may be imposed by the Sponsors as a condition of granting a waiver.

21.3 Confidentiality

The Sponsors have required Proponents to execute a confidentiality agreement as a pre-condition to receiving this RFP. In addition and in any event, and without limiting any other confidentiality obligations imposed on a Proponent, the Proponent shall at all times hold all Confidential Information in confidence and shall not use or disclose (except as and only to the extent necessary for the preparation of its RFP Submission and, if awarded to the Proponent, for the performance of the Project Agreement), any Confidential Information to anyone without the Sponsors' prior written approval. Whenever requested by the Sponsors, the Proponent shall execute and deliver to the Sponsors, and shall cause its personnel and Advisors and its Proponent Team Members and their personnel and Advisors, to execute and deliver to the Sponsors a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the Sponsors at their sole discretion.

The RFP Submission and all information submitted by a Proponent to the Sponsors, the Evaluation Committee and its Advisors, shall become the property of the Sponsors upon their submission.

The confidentiality obligations of the Proponent shall not apply to any information which falls within any one or more of the following exceptions:

- Information which is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the foregoing confidentiality obligations by the Proponent or by any act or fault of the Proponent.

- Information which was in the Proponent's possession prior to its disclosure to the Proponent by the Sponsors, and provided that it was not acquired by the Proponent under an obligation of confidence.
- Information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

The Sponsors will use reasonable efforts to maintain the confidentiality of RFP Submissions but only so far as the consultation, evaluation, scoring; and approval processes for proceeding to the next stage of the implementation process will allow, having regard to the involvement of third parties including the City in such processes.

Each Proponent must declare and continue to be under an obligation to declare that it does not have knowledge of or the ability to avail itself of confidential information of the Sponsors relevant to the Project where the Sponsors have not specifically authorized such use.

21.4 Restrictions on Communications between Proponents

A Proponent and Proponent Team Members shall not discuss or communicate, directly or indirectly, with any other Proponent (including any Proponent Team Member of such other Proponent), any information whatsoever regarding the preparation of their RFP Submissions in a fashion that would contravene the Applicable Law. Proponents shall prepare and submit RFP Submissions independently and without any connection, knowledge, comparison of information, or arrangement, direct or indirect, with any other Proponent (including any Proponent Team Member of such other Proponent).

21.5 No Lobbying

Proponents and Proponent Team Members will not in relation to the Project engage in any form of political or other lobbying whatsoever to influence the outcome of the RFP, the RFP stage or any subsequent stages of the implementation process. Further, other than as expressly directed or allowed by this RFP, no such person shall attempt to communicate or communicate in relation to the Project, directly or indirectly, with any representative of the Sponsors, any personnel of the Sponsors, PIR, MOHLTC, any Minister or Deputy Minister of the Government of Ontario, the Evaluation Committee, or the Advisors to the Sponsors, or any director, officer, employee, agent, consultant or representative of any of the foregoing, before or after the RFP Closing Date, including:

- Commenting on or attempting to influence views on the merits of the Proponent's RFP Submissions in preference to RFP Submissions of other Proponents.
- Influencing, or attempting to influence, through outside pressures, the scoring and ranking by the Evaluation Committee of the RFP Submissions, or the identification of the Preferred Proponent.

- Promoting the Proponent or its interests in the Project in preference to that of other Proponents.
- Criticizing aspects of the RFP, the Draft Project Agreement, the Revised Project Agreement, the RFP Version 4.1 of the Project Agreement, the Project Agreement, or the Technical Requirements in a manner, which may give the Proponent a competitive or other advantage over other Proponents.
- Criticizing the RFP Submissions of other Proponents.

In the event of any lobbying or communication in contravention of the foregoing, the Sponsors at their sole discretion may at any time, but will not be required to, reject any and all RFP Submissions submitted by that Proponent without further consideration and, at the Sponsors sole discretion, either terminate that Proponent's right to continue participating in the RFP stage or any subsequent stages of the implementation process, or impose such conditions on that Proponent's continued participation in the RFP stage and the implementation process as the Sponsors at their sole discretion may consider in the public interest or otherwise appropriate.

21.6 Public Announcements and Publicity

Neither Proponents nor their Representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, interest in or participation in the Project or this procurement process without the Sponsors' prior written consent, which consent may be arbitrarily withheld or delayed.

Other than as expressly permitted or required in this RFP, any attempt on the part of any Proponent or any of its Representatives to contact any of the following persons, directly or indirectly, with respect to this RFP, may lead to disqualification of a Proponent and/or rejection of an RFP Submission:

- any member of the JEC, NBGH or NEMHC;
- any member of an evaluation team or the Evaluation Committee;
- any expert or Advisor assisting the Sponsors, an evaluation team or the Evaluation Committee;
- any member of the Executive Council (Provincial Cabinet) or the staff of any such member;
- any member of the Premier's Office or Cabinet Office;
- any staff, contractor, agent or representative of the Ministry of Finance, including the Minister's Office, Ministry of Public Infrastructure Renewal, including the Minister's Office, Ministry of Health and Long-Term Care, including the Minister's Office, the Ministry of Government Services, including the Minister's Office, the Ontario Financing Authority, including the CEO's office, or the Ontario Infrastructure Projects Corporation, including the CEO's office;
- any Government member of the Provincial Legislature; or

- any other Proponent or Representative thereof (except Team Members that are part of more than one Proponent).

Proponents should be aware of and be prepared to accept the Government of Ontario's commitment to openness and transparency in relation to the RFP and this Project. The Sponsors are bound by this public policy commitment and Proponents shall cooperate and extend all reasonable accommodation to assist the Sponsors to meet this public policy commitment.

To ensure that all publicity originating from or directed to Proponents and their Proponent Team Members is fair and accurate and will not inadvertently or otherwise influence the outcome of the RFP process, all publicity in relation to the Project, including communications with the press, the media and the public, by or from Proponents or their Proponent Team Members (or their respective directors, officers, employees, consultants and agents) shall be coordinated with and are subject to the prior written approval of the Sponsors.

No press releases shall be issued by any Proponent or Proponent Team Member in relation to the Project without first submitting same to the Sponsors for review and approval. Proponents and their Proponent Team Members shall promptly notify the Sponsors of requests for information or interviews from the press and media. The subject and content of all responses to such information requests and to interviews shall be reviewed and coordinated in advance with the Sponsors in the same manner as press releases to provide a fair and accurate release of information in a coordinated fashion. Proponents shall use reasonable efforts to ensure all of its Proponent Team Members and others associated with the Proponent comply with these requirements.

21.7 Freedom of Information and Protection of Privacy Act

Proponents are advised that the Sponsors may be required to disclose this RFP and a part or parts of any RFP Submission pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario).

Proponents may mark any part of their RFP Submission as confidential except the name of the Proponent and its Team Members. A watermark or rubber stamp imprint is suitable for this purpose. Subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario), the Sponsors will use reasonable commercial efforts to safeguard the confidentiality of any information so marked, but shall not be liable to any Proponent, Team Member or other person where such information is disclosed by virtue of an order of the Information and Privacy Commissioner of Ontario or otherwise as required by law.

Proponents who are concerned about the nature or extent of the disclosure requirements under the *Freedom of Information and Protection of Privacy Act* (Ontario) should consult their legal advisors.

21.8 Copyright and Use of Information in RFP Submissions

Proponents shall not use or incorporate into their RFP Submissions any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to NBGH or NEMHC, the right to use and employ such concepts, products and processes in and for the Project.

All requirements, designs, documents, plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the property of the Sponsors and must be treated as confidential and not used for any purpose other than preparing a Proposal and fulfilling the Project Agreement. Upon request of the Sponsors, all such designs, documents, plans and information (and any copies thereof created by or on behalf of the Proponent) must be returned to the Sponsors.

Unless the Sponsors otherwise agrees in writing, the Sponsors shall be entitled to retain and use, without compensation to any Proponent or anyone else, all RFP Submissions and any additional information submitted by or through Proponents in connection with their RFP Submissions, including any concept, element, idea or other information disclosed in or evident from the foregoing or which may be revealed during any meetings or interviews with Proponents. It is a fundamental condition of the Proponent's participation in the RFP process that the Sponsors shall have and shall be deemed to be granted a royalty free licence without restriction to use for the Facility and for the Project (including without limitation to use for any one or more of agreements with any Preferred Proponent, agreements with third parties if Preferred Proponent negotiations are unsuccessful, and/or any contract in relation to the subject matter of the Project or the Facility), and that the Sponsors shall have the right to grant royalty free sub-licenses to any and all of OIPC and MOHLTC for other projects, all of the foregoing and including the following:

- All information contained in an RFP Submission or which is disclosed by or through a Proponent to the Sponsors during the evaluation of RFP Submissions or during the process of executing a Project Agreement.
- Any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any RFP Submissions or the Project Agreement (including the Payment Mechanism and the Technical Requirements).

Proponents shall ensure that all intellectual property rights associated with any and all of the foregoing (including copyright and moral rights but excluding patent rights) provide for and give the Sponsors the aforesaid rights. It is expressly understood and agreed that any actual or purported restriction in the future on the Sponsors' ability to use any of the above ideas, concepts, products, alternatives, processes, recommendations, suggestions, other information or anything else obtained by or through Proponents shall be absolutely null and void and unenforceable as against the Sponsors, the Government of Ontario, and their respective

Advisors, and that the provisions of this Section 21.8 of this RFP shall take precedence and govern.

21.9 Ineligible Proponent Team Members and Advisors

Each Proponent must declare in their RFP Submission or as soon as it arises, and continue to be under an obligation to declare, all conflicts of interest, or any situation that might reasonably be perceived as a conflict of interest, that exists now or may exist in the future. In this Section 21.9, "Conflict of Interest" includes any situation or circumstance where in relation to the Project, the Proponent's other commitments, relationships or financial interests:

- could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of independent judgment by any personnel of the Sponsors or their Advisors; or
- could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Project Agreement.

In connection with its RFP Submission, each Proponent shall:

- avoid any Conflict of Interest in relation to the Project;
- disclose to the Sponsors without delay any actual or potential Conflict of Interest that arises during the RFP process; and
- comply with any requirements prescribed by the Sponsors to resolve any Conflict of Interest.

In addition to all contractual or other rights or rights available at law or in equity or legislation, the Sponsors may immediately exclude a Proponent from further consideration where:

- the Proponent fails to disclose an actual or potential Conflict of Interest;
- the Proponent fails to comply with any requirements prescribed by the Sponsors to resolve a Conflict of Interest; or
- the Proponent's Conflict of Interest cannot be resolved.

As a result of their involvement in the Project, the following Persons (and, subject to the rules set out below, any Person controlled by, that controls or that is under common control with such listed Persons (each, an "Affiliate") and the subcontractors, consultants employees and representatives of such listed Persons) are not eligible to participate as Team Members:

- Agnew, Peckham and Associates Ltd.
- Anrep Krieg Desilets Gravelle Inc.
- Aramark
- Bay Consulting Group
- Barker Dunn Rossi/Gestalt
- Bennett Jones LLP

- Cassels, Brock & Blackwell LLP
- BMO Nesbitt Burns
- Carecor
- Consolati Consultants Inc.
- Critchley Delean Trussler Evans Bertrand Architects Inc.
- Ehvert Engineering
- Entro Communications
- Equipment Planning Associates Limited
- Food Systems Consulting Inc.
- Glaholt LLP
- Halsall Associates Ltd Engineers-Consultants
- Health Care Equipment & Laboratory Planners Inc.
- Health Care Planning Review Inc.
- HH Angus & Associates Ltd.
- HOK Canada Inc.
- Howe, Gastneier Chapnik Ltd.
- Intech Risk Management Inc.
- I.R. Security Technologies
- J.L. Richards Associates Limited
- JF Dougan Consulting
- Larden-Muniak Inc.
- Lowry Otto Erskine Williams Architect Inc.
- Marshall & Murray Incorporated
- Miller Thompson LLP
- Mitchell Architects Inc.
- Northland Engineering (1987) Limited
- Option - NFA Inc.
- Osler Hoskin & Harcourt LLP
- Pacific Meridian Consulting Inc.
- Piotrowski Consultants
- PricewaterhouseCoopers LLP
- Property One Consulting
- R. Kendall Consulting Inc.
- RPG
- REMCOR Project Services Inc.
- Resource Planning Group

- Rowan Williams Davies and Irwin Inc.
- Seawood Solutions
- Trow Associates Inc.
- Vertechs Design Inc.
- ZW Group Inc.

An Affiliate may be eligible to participate as a Team Member, only after it has obtained a clarification letter from the Contact Person permitting it to participate as a Team Member. To obtain authorization for an Affiliate to participate as a Team Member, the Proponent must submit a request for clarification through the process outlined in Section 16.1 of this RFP that includes the following information:

- the full legal name of the Affiliate that it wishes to include on its Team;
- information regarding the Affiliate's relationship to the Person listed in this Section 21.9;
- a description of the policies and procedures that will be put in place to prevent any Conflict of Interest; and
- the justification for excluding the Affiliate from the Conflict of Interest provisions of this RFP.

Upon receipt of this information, the Sponsors shall, at their sole discretion, make a determination as to whether they deem there to be a real, perceived or potential Conflict of Interest. The Proponent shall be notified of the Sponsors' decision by means of a clarification letter. If the Affiliate has been deemed to have a Conflict of Interest, it shall be added to the list of companies that are not eligible to participate as Team Members.

A subcontractor or consultant to any of the above listed Persons may be eligible to participate as a Team Member provided that it has undertaken to implement internal policies and procedures to protect and/or to return or destroy all confidential information which it obtained from or through the Sponsors in the performance of such work and services, and to abide by all confidentiality obligations previously imposed on it in relation to such confidential information, work and services.

Where this Section 21.9 applies, the Sponsors reserve the sole discretion to exclude any Proponent, Affiliate or any subcontractor or consultant to any Proponent on the grounds of Conflict of Interest. The Sponsors may also, in their sole discretion, waive the ineligibility of any one or more of the aforementioned entities on such terms and conditions as the Sponsors, in their sole discretion, may require, including that the Proponent or entity put into place adequate safeguards to mitigate the impact of any Conflict of Interest and to ensure that any and all Confidential Information it may have continues to be kept confidential and not disclosed or used except as expressly allowed by the Sponsors.

Other firms or persons that may be contracted or retained by the Sponsors to work on the Project may also be ineligible.

21.10 No Reliance on Information

Unless as otherwise stated in the Project Agreement with respect to the Existing Design, the Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP (or its appendices) or made available to Proponents in the Data Room, or of any other background or reference information or documents prepared by the Government of Ontario or by third parties and which may be made available to Proponents by or through the Sponsors. Proponents shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents on any and all of such information shall be at the Proponent's sole risk and without recourse against the Sponsors or the Government of Ontario.

Without limiting the generality of the foregoing:

- Any and all use of or reliance upon any information by Proponents shall be and is subject to all express disclaimers of liability provided with the information, as well as all disclaimers of liability in the Project Agreement.
- The Sponsors and the Government of Ontario do not warrant and are not responsible in any way for the scope, completeness, appropriateness or accuracy of the Background Information, or any information, representations, statements, assumptions, opinions, interpretations in the Background Information, including in relation to any one or more of: descriptions of the Site, geological or subsurface conditions; dewatering; opinions or interpretations based on existing or assumed information; previous studies or optimization; conceptual designs or layouts, statements or estimates of quantities of any part of the work; assumptions or descriptions as to construction means or methods; availability and quality of construction materials; soil disposal; requirements of the City, requirements of other governmental Authorities, or for any assumptions or interpretations made by Proponents based on any information contained in any of the Background Information, any interpretations, conclusions, opinions or assumptions reached or made by Proponents based on anything in the Background Information.
- Where investigations and information relating to site conditions or subsurface conditions, has been performed or obtained by the Sponsors, and produced or made available to Proponents through the Sponsors, such investigations and information are of a preliminary nature only and are not to be relied upon by Proponents except at their sole risk. Proponents are cautioned that any bore hole logs or test pit logs provided with any geotechnical information record only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative of conditions encountered either at locations immediately adjacent thereto or, with respect to groundwater and other conditions, at any other times. Data shown for bore hole logs and test pit logs may not necessarily be representative of anticipated conditions. Proponents shall perform such additional geotechnical and other investigations as they consider necessary and shall obtain and rely on their own geotechnical consultants for all interpretation and opinions, including based on any bore hole logs and test pit logs made available through the Sponsors and others.

By submitting an RFP Submission, each Proponent acknowledges, represents and warrants that its RFP Submission is based on and relies solely upon the Proponent's own examination, knowledge, information, judgment and investigations and not upon any statement, representation or information made, furnished or given by or on behalf of any of the Sponsors or the Government of Ontario, or their directors, officers, employees, consultants or agent, except where expressly made in the body of the RFP (excluding the appendices to the RFP) and warranted in the body of the RFP to be accurate by the Sponsors for purposes of reliance by the Proponent.

21.11 Proponent Team Members and Subcontractors

Proponents shall ensure that all their Proponent Team Members, subcontractors, suppliers, manufacturers and subconsultants, and everyone associated with or related to the foregoing, are subject to and comply with the provisions of this RFP, particularly the provisions of Sections 21.2, 21.3, 21.4, 21.5, 21.6 and 21.8 of the RFP.

21.12 The Sponsors' Right to Amend or Cancel RFP

The Sponsors reserve the right at their sole discretion at any time and for whatever reason, and without liability to the Proponents or anyone else, by Addenda to modify, amend or otherwise change, to extend any schedule or time periods (including the RFP Closing Date and the schedule for implementation of the Project) specified within, and to suspend, postpone or cancel, the RFP. All such Addenda shall be issued by the Sponsors in writing and shall be expressly identified as an Addendum to this RFP.

The Sponsors reserve the right to cancel this RFP and issue a new request for proposals for any or all parts of the Project at their discretion. In such case, the Sponsors may proceed with the Project in such manner as the Sponsors at their sole discretion consider appropriate to obtain the best overall value for the Sponsors.

21.13 The Sponsors' Right to Reject Any and All RFP Submissions

The Sponsors reserve the right at their sole discretion to reject any Base Submission that does not satisfy the conditions described in Section 11 and Section 12.

The Sponsors also reserve the right their sole discretion to reject any and all Innovation Submissions for whatever reasons the Sponsors at their sole discretion deem appropriate and to be solely in the best interest of the Sponsors, including to obtain higher overall value to the Sponsors as determined by the Sponsors, and notwithstanding any custom of the trade to the contrary nor anything contained elsewhere in the RFP. Without limiting but in addition to the foregoing, the Sponsors reserve the right at their sole discretion to refuse to consider, to remove from the evaluation process entirely, and to reject outright any RFP Submission which in the opinion of the Evaluation Committee is materially incomplete, obscure or irregular, unrealistic,

unreasonable, unaffordable, which contains exceptions or variations not acceptable to the Evaluation Committee and the Sponsors, or which omits any material information required to be submitted by the RFP.

As described in Section 21.14, the Sponsors shall not, under any circumstances, be responsible to any Proponent for any costs incurred or damages suffered by a Proponent in relation to the RFP (including in relation to the preparation of, review or evaluation of an RFP Submission).

21.14 Proponents' Expenses

Proponents are solely responsible and without recourse to the Sponsors for their own expenses in preparing and submitting an RFP Submission, and for participating in the RFP stage, including but not limited to attending any interviews by the Evaluation Committee, attending meetings with the Advisors, and providing any clarifications and additional information that may be requested by the Evaluation Committee or the Sponsors.

21.15 No Liability

In consideration of the Proponent receiving the RFP and being invited to submit an RFP Submission for review and evaluation by the Sponsors, the Proponent shall indemnify and hold harmless the Sponsors, the Advisors, PIR, MOHLTC and their respective agents, officers, directors and employees and other releasees from and against any and all Claims brought by third parties (including Proponent Team Members) against them arising out of or related to the RFP, the participation of the Proponent in the implementation process, or the preparation, submission, negotiation, acceptance or rejection of any RFP Submission. Without limiting the generality of the foregoing, it is expressly understood and agreed that the Sponsors shall not be under any obligation whatsoever to award the Project Agreement to the Proponent or anyone else and may cancel the RFP at any time for whatever reasons the Sponsors in their sole discretion considers to be in the best interests of the Sponsors.

21.16 Delay in Project Agreement Award

If it appears to the Sponsors, in the Sponsor's sole opinion, that the Project Agreement may not be executed by the Preferred Proponent within the time set out in the Preferred Proponent Agreement, the Sponsors may at their sole discretion and without liability immediately terminate all further negotiations and attempts to finalize the Project Agreement with that Preferred Proponent, retain the Preferred Proponent Commitment as liquidated damages and not as a penalty and select another Proponent as the Preferred Proponent.

If a Project Agreement is not fully executed by the Financial Close Target Date, and if the Sponsors and the Preferred Proponent wish thereafter to continue the process of finalizing a Project Agreement with the Sponsors, as a condition of continuing such negotiations, the Preferred Proponent may request equitable adjustments to the prices in the Project Agreement

and to the schedule for completion of the Project to the extent it can demonstrate they result solely from such delay (and such delay has not been caused or contributed to, directly or indirectly, by the Preferred Proponent) and would not otherwise have been incurred. Prior to the request for any such price adjustment, the Preferred Proponent should recommend alternatives (e.g. variations to the Project) to the Sponsors that may partially or wholly eliminate the need for a price adjustment. The Sponsors reserve the right to verify, validate and approve any price adjustment.

21.17 RFP Submission Irrevocability

All RFP Submissions shall remain valid and irrevocable for 120 days following the RFP Closing Date and any Revised Proposals submitted by the Negotiations Proponent(s) in accordance with Section 3.1 of this RFP, shall remain valid and irrevocable for 120 days from the date of submission of the Revised Proposal.

In addition, the Preferred Proponent will be required to maintain their Annual Unitary Charge, as submitted in the Price Bid Form, from Commercial Close to Financial Close.

21.18 Power of the Legislative Assembly

Proponents are advised that no provision of this RFP (including a provision stating the intention of the Sponsors) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

21.19 Jurisdiction

This RFP, and each of the documents contemplated by or delivered under or in connection with this RFP, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario RFP and Ontario documents, respectively, without regard to conflict of laws principles.