



Savings | Choice | Service

COMMERCIAL AIR TREATMENT TECHNOLOGY, RELATED PRODUCTS AND OPTIONAL SERVICES

REQUEST FOR TENDERS NUMBER 2021-378

Request for Tenders Issued On: February 18, 2021

Bidder's Information & OTP Demonstration Session: 2:00 pm on February 23, 2021

Bidder's Deadline to Submit Questions: 2:00 pm on February 25, 2021

**Bidder's Deadline to Submit Questions Related to
Addenda & Question and Answer Documents:** 2:00 pm on March 9, 2021

Closing Date: 2:00:00 pm on March 22, 2021 local time in Toronto, Ontario, Canada

All times specified in this RFT timetable are local times in Toronto, Ontario, Canada.
Please refer to Section 5.1.1 for the complete RFT timetable.

OECEM shall not be obligated in any manner to any Bidder whatsoever until a written Master Agreement has been duly executed with a Supplier.

TABLE OF CONTENTS

| | |
|--|-----------|
| PART 1 – INTRODUCTION | 5 |
| 1.1 Background | 5 |
| 1.2 Objective of this RFT | 5 |
| 1.3 Overview of OEMC | 6 |
| 1.4 Use of OEMC Master Agreements | 6 |
| 1.5 The Ontario Broader Public Sector Procurement Directive | 6 |
| 1.6 Trade Agreements | 6 |
| 1.7 Rules of Interpretation | 6 |
| PART 2 – THE DELIVERABLES | 8 |
| 2.1 Description of Deliverables | 8 |
| 2.2 Authorized Dealer Status | 8 |
| 2.3 Category A – Commercial Stand-Alone Air Treatment Technology, Related Products and Optional Services | 8 |
| 2.3.1 Related Products | 9 |
| 2.3.2 Optional Services | 9 |
| 2.4 Category B – Commercial In-Duct Air Treatment Technology, Related Products and Optional Services | 10 |
| 2.5 Order Management | 11 |
| 2.5.1 Minimum Order | 11 |
| 2.5.2 Order Acknowledgement | 11 |
| 2.5.3 Order Changes and/or Cancellation | 12 |
| 2.5.4 Coordinating Bulk Purchases | 12 |
| 2.6 Warranty | 12 |
| 2.6.1 Manufacturer Product Warranty | 12 |
| 2.7 Delivery | 12 |
| 2.7.1 Delivery Lead Times | 13 |
| 2.7.2 Performance/Surety Bonds | 13 |
| 2.7.3 Back Orders | 13 |
| 2.7.4 Product Substitution | 13 |
| 2.7.5 Damaged or Defective Shipment | 13 |
| 2.7.6 Returns | 13 |
| 2.7.7 Recalls | 13 |
| 2.7.8 Discontinued Products | 14 |
| 2.8 Invoicing | 14 |
| 2.8.1 Payment Terms and Methods | 14 |
| 2.8.2 Electronic Fund Transfer | 14 |
| 2.9 Support to Customers | 14 |
| 2.10 Health and Safety | 15 |
| 2.11 Environmental and Sustainability Considerations | 15 |
| 2.12 Social Procurement | 15 |
| 2.13 Disaster Recovery and Business Continuity | 15 |
| 2.14 Electrical Requirements | 15 |
| 2.15 Licences, Right to Use and Approvals | 15 |
| PART 3 – EVALUATION OF TENDERS | 17 |
| 3.1 Stages of Tender Evaluation | 17 |
| 3.2 Stage I – Review of Qualification Responses (Pass/Fail) | 17 |
| 3.2.1 Product Specifications | 17 |
| 3.3 Stage II – Commercial Response by Category | 18 |
| 3.4 Stage III – Tie Break Process | 19 |
| 3.5 Stage IV – Negotiations | 19 |
| 3.6 Stage V – Master Agreement Finalization | 20 |
| PART 4 – MASTER AGREEMENT STRUCTURE AND MANAGEMENT | 21 |
| 4.1 Master Agreement Structure | 21 |
| 4.1.1 No Contract until Execution of Written Master Agreement | 21 |
| 4.1.2 Customer’s Usage of Master Agreements | 21 |
| 4.1.3 No Guarantee of Volume of Work or Exclusivity of Master Agreement | 22 |
| 4.2 Rates | 22 |

| | | |
|-------|---|----|
| 4.2.1 | Optional Rate Refresh | 22 |
| 4.2.2 | Optional Process to Add Other Products/Services | 23 |
| 4.2.3 | OECM Cost Recovery Fee | 23 |
| 4.2.4 | <i>Financial Administration Act Section 28</i> | 24 |
| 4.3 | Supplier Management Support to OECM | 25 |
| 4.3.1 | Master Agreement Award and Launch | 25 |
| 4.3.2 | Promoting OECM Master Agreements | 26 |
| 4.3.3 | Supplier's Performance Management Scorecard | 26 |
| 4.3.4 | OECM's Supplier Recognition Program | 26 |
| 4.3.5 | Reporting to OECM | 27 |

PART 5 – TERMS AND CONDITIONS OF THE RFT PROCESS 28

| | | |
|--------|---|----|
| 5.1 | General Information and Instructions | 28 |
| 5.1.1 | RFT Timetable | 28 |
| 5.1.2 | Bidder's Information and OTP Demonstration Session | 29 |
| 5.1.3 | Bidder to Follow Instructions | 29 |
| 5.1.4 | OECM's Information in RFT Only an Estimate | 29 |
| 5.1.5 | Bidder's Costs | 29 |
| 5.2 | Communication after RFT Issuance | 29 |
| 5.2.1 | Communication with OECM | 29 |
| 5.2.2 | Bidder to Review RFT | 30 |
| 5.2.3 | Bidder to Notify | 30 |
| 5.2.4 | All New Information to Bidders by way of Addenda | 30 |
| 5.3 | Tender Submission Requirements | 31 |
| 5.3.1 | General | 31 |
| 5.3.2 | Tender in English | 31 |
| 5.3.3 | Tender Submission Requirements | 31 |
| 5.3.4 | Other Tender Considerations | 32 |
| 5.3.5 | Tender Receipt by OECM | 32 |
| 5.3.6 | Withdrawal of Tender | 32 |
| 5.3.7 | Amendment of Tender on OTP | 32 |
| 5.3.8 | Completeness of Tender | 32 |
| 5.3.9 | Tenders Retained by OECM | 32 |
| 5.3.10 | Acceptance of RFT | 32 |
| 5.3.11 | Amendments to RFT | 33 |
| 5.3.12 | Tenders will not be Opened Publicly | 33 |
| 5.3.13 | Clarification of Tenders | 33 |
| 5.3.14 | Verification of Information | 33 |
| 5.3.15 | Tender Acceptance | 33 |
| 5.3.16 | RFT Incorporated into Tender | 33 |
| 5.3.17 | Exclusivity of Contract | 33 |
| 5.3.18 | Substantial Compliance | 33 |
| 5.3.19 | No Publicity or Promotion | 34 |
| 5.4 | Negotiations, Timelines, Notification and Debriefing | 34 |
| 5.4.1 | Negotiations with Preferred Bidder | 34 |
| 5.4.2 | Failure to Execute a Master Agreement | 34 |
| 5.4.3 | Master Agreement | 34 |
| 5.4.4 | Notification to Other Bidders | 34 |
| 5.4.5 | Debriefing | 35 |
| 5.4.6 | Tender Dispute Resolution | 35 |
| 5.5 | Prohibited Communications, and Confidential Information | 35 |
| 5.5.1 | Confidential Information of OECM | 35 |
| 5.5.2 | Confidential Information of the Bidder | 35 |
| 5.5.3 | Bidder's Submission | 36 |
| 5.5.4 | Personal Information | 36 |
| 5.5.5 | Non-Disclosure Agreement | 36 |
| 5.5.6 | Freedom of Information and Protection of Privacy Act | 36 |
| 5.5.7 | Intellectual Property | 36 |
| 5.6 | Reserved Rights and Governing Law of OECM | 36 |
| 5.6.1 | General | 36 |
| 5.6.2 | Rights of OECM – Bidder | 38 |
| 5.6.3 | No Liability | 38 |

| | | |
|--|---|-----------|
| 5.6.4 | Assignment..... | 39 |
| 5.6.5 | Entire RFT | 39 |
| 5.6.6 | Priority of Documents | 39 |
| 5.6.7 | Disqualification for Misrepresentation..... | 39 |
| 5.6.8 | References and Past Performance | 39 |
| 5.6.9 | Cancellation..... | 39 |
| 5.6.10 | Competition Act..... | 39 |
| 5.6.11 | Trade Agreements | 39 |
| 5.6.12 | Governing Law..... | 40 |
| APPENDIX A – DEFINITIONS..... | | 41 |
| APPENDIX B – FORM OF MASTER AGREEMENT | | 44 |
| APPENDIX C – COMMERCIAL RESPONSE | | 45 |
| APPENDIX D – REPORTING REQUIREMENTS..... | | 46 |
| APPENDIX E – PERFORMANCE MANAGEMENT SCORECARD | | 47 |
| APPENDIX F – CODE OF CONDUCT..... | | 49 |
| APPENDIX G – PRODUCT SPECIFICATIONS | | 51 |

PART 1 – INTRODUCTION

This non-binding Request for Tenders (“RFT”) is an invitation to obtain Tenders from qualified Bidders for Commercial Air Treatment Technology, Related Products (“Products”) and Optional Services (“Services”) as described in Part 2– The Deliverables and Part 4 – Master Agreement Structure and Management.

There are two (2) Categories in this RFT:

- (a) Category A – Commercial Stand-Alone Air Treatment Technology, Related Products and Optional Services; and,
- (b) Category B – Commercial In-Duct Air Treatment Technology, Related Products and Optional Services.

The Bidder may submit a Tender for one (1), or both Categories. Each Category will be evaluated, scored, and awarded independently.

OECM intends to award one (1) or more Master Agreements, per Category, with an initial Term of the Master Agreement (“Term”) of three (3) years with an option in favor of OECM to extend the Term on the same terms and conditions for up to two (2) additional years.

Refer to the details contained within Part 2 and Part 4 of the RFT for a full description of the requirements.

This RFT is issued by OECM.

1.1 Background

As a result of the COVID-19 pandemic, Customers (e.g. for their staff, students) may be required to take additional precautions in support of their work and/or operation activities to protect them, and members of the public, from inadvertent exposure to the virus.

In October 2020, in response to the COVID-19 pandemic, the Ontario government introduced a new, time-limited COVID-19 Resiliency Infrastructure Stream (CVRIS) – an initiative that provides up to \$700 million in combined federal-provincial funding for education-related projects that protect the health and well-being of students, staff and children. The Ontario Ministry of Education (“MEDU”) had since invited School Boards across Ontario to submit requests (for HVAC and non-HVAC commodities) for consideration under the time limited CVRIS initiative. Timelines and urgency are key as projects must be completed by December 31, 2021 to ensure School Board funding.

The catalyst for this RFT is the CVRIS initiative and may result in significant School Board demand for 2021. However, the resulting Master Agreements from this RFT process have a Term well beyond 2021 to support all OECM Customers.

1.2 Objective of this RFT

The objective of this RFT is to reduce the costs of associated competitive procurement processes on an ongoing basis (i.e. fewer competitive procurement documents issued by Customers) and to select quality Suppliers that:

- (a) Are the authorized dealer for the proposed Products and Services in Canada;
- (b) Are capable of providing all related Products including consumables (e.g. UV lamps, ionization tubes, filters) and non-consumable accessories (e.g. mounting brackets) for proposed Products;
- (c) Are able to deliver Products and Services within Customer required lead-time;
- (d) Are capable to provide Customers with professional and responsive Customer support and account management; and,
- (e) Work in a cooperative manner with Customers, are flexible, and innovative in providing quality Products/Services.

1.3 Overview of OECM

OECM is a trusted not-for-profit partner for Ontario's education sector, Broader Public Sector ("BPS") entities, Provincially Funded Organizations ("PFO"), Crown Corporations, and other not-for-profit organizations. OECM offers a comprehensive choice of collaboratively sourced and competitively priced products and services through its Marketplace, the goal of which is to generate savings, choice and service for its Customers.

Recognizing the power of collaboration, OECM is committed to fostering strong relationships with both Customers and suppliers by:

- (a) Actively sourcing products and services in an open, fair, transparent and competitive manner, compliant with BPS Procurement Directive and applicable trade agreements;
- (b) Establishing, promoting and managing product and service agreements used throughout its Customer community;
- (c) Supporting Customers' access and use of OECM agreements through analysis, reporting and the development of tools, guides, and other materials;
- (d) Effectively managing supplier contract performance while harnessing expertise and innovative ideas, to drive continuous improvements through a Supplier Relationship Management program;
- (e) Promoting OECM's Supplier Code of Conduct, based on its core values, to ensure that all supplier partners adhere to a set standard when conducting business with OECM and its Customers resulting in continuous, long-term success; and,
- (f) Supporting supplier partners through a Supplier Recognition Program.

1.4 Use of OECM Master Agreements

As of December 31, 2020, one thousand and fifteen (1015) Customers were using one (1) or more OECM agreements with a cumulative spend of more than two (2) billion dollars over the last eleven (11) years.

More information about OECM is available on our website - <http://www.oecm.ca/>.

1.5 The Ontario Broader Public Sector Procurement Directive

OECM, and the Customers they service, follow the Ontario BPS Procurement Directive. The directive sets out rules for designated BPS entities on the purchase of goods and services using public funds. The Procurement Directive is available here <https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/bps-procurementdirective>.

1.6 Trade Agreements

OECM procurements are undertaken within the scope of Chapter 5 of the Canadian Free Trade Agreement ("CFTA"), Chapter 19 of the Comprehensive Economic and Trade Agreement ("CETA"), and within the scope of the Trade and Cooperation Agreement between Quebec and Ontario and are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFT. For more information, refer to the Section 5.6.11.

1.7 Rules of Interpretation

This RFT shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender;
- (b) Words in the RFT shall bear their natural meaning;
- (c) References containing terms such as "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";

- (d) In construing the RFT, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (e) Unless otherwise indicated, time periods will be strictly applied; and,
- (f) The following terminology applies in the RFT:
 - i. The terms “must” and “shall” relate to a requirement the Supplier will be obligated to fulfil. Whenever the terms “must” or “shall” are used in relation to OEMC or the Supplier, such terms shall be construed and interpreted as synonymous and shall be construed to read “OEMC shall” or the “Supplier shall”, as the case may be;
 - ii. The term “should” relates to a requirement that OEMC would like the Supplier to fulfil; and,
 - iii. The term “will” describes a procedure that is intended to be followed.

[End of Part 1]

PART 2 – THE DELIVERABLES

This Part of the RFT describes the Products and Services, per Category, which will be incorporated into the final Master Agreement.

OECM requires that the Bidder has a clear and comprehensive understanding of the RFT requirements (i.e. Part 2 – The Deliverables and Part 4 – Master Agreement Structure and Management). The Bidder will be required to indicate their agreement accordingly in the Form of Offer in the Qualification Envelope on OTP.

The Supplier shall provide all RFT requirements for each Category awarded.

2.1 Description of Deliverables

There are two (2) Categories in this RFT:

- (a) Category A – Commercial Stand-Alone Air Treatment Technology, Related Products and Optional Services; and,
- (b) Category B – Commercial In-Duct Air Treatment Technology, Related Products and Optional Services.

The Bidder may submit a Tender for one (1), or both Categories. Each Category will be evaluated, scored, and awarded independently.

Requirements applicable to the specific Categories are set out in the RFT Sections as per the table below:

| Category Title | RFP Section Reference |
|--|-----------------------|
| Category A – Commercial Stand-Alone Air Treatment Technology, Related Products and Optional Services | 2.3 |
| Category B – Commercial In-Duct Air Treatment Technology, Related Products and Optional Services | 2.4 |

Deliverables, in Sections 2,2 and 2.5 to 2.15, are applicable to both Categories.

2.2 Authorized Dealer Status

The Bidder shall be an authorized dealer or the Original Equipment Manufacturer (“OEM”) for proposed Products.

The Bidder shall be authorized to provide the proposed Products (and applicable warranty) and Services in Canada.

During the Term the Supplier must maintain OEM authorized dealer status to provide Products and Services in Canada and provide proof of its status upon OECM’s request. The Supplier must advise OECM of any changes to its dealer status within thirty (30) days of such change.

2.3 Category A – Commercial Stand-Alone Air Treatment Technology, Related Products and Optional Services

The Stand-Alone Air Treatment Technology units are of commercial quality and are self-contained units that may be portable or fixed to a wall or ceiling and are used to clean and purify/treat the air and reduce the spread of viruses (i.e. COVID-19), and contaminants.

The Supplier shall ensure the units, in this Category, provide air filtration through the use of HEPA and/or regular filters (with a minimum MERV 8 rating) and/or other filter types and will include other types of technology used to purify/treat the air.

The Supplier shall provide Products, in Category A, including, but not limited to the following technologies:

- (a) LED technology;
- (b) Plasma production technology (bipolar ionization);
- (c) UV light technology (non-ozone producing); and,
- (d) Other technologies.

The Supplier shall provide units, in this Category, that are suitable for the environments with large groups of people (e.g. School classrooms).

The Supplier shall ensure the Product meet or exceed the following requirements including, but not limited to:

- (a) Minimum purification percentage at 99.9%;
- (b) 120 voltage, 60 hertz ("HZ") and suitable for standard 15 AMPs receptacles;
- (c) Portable and fixed Products;
- (d) Minimum of 200 Cubic Feet per Minutes ("CFM") discharge air volume;
- (e) Products with variable speed control;
- (f) Maximum noise level as required by each Customer (e.g. 62 db.);
- (g) Tamperproof Products;
- (h) UL2998 certified to be ozone-free and mercury-free;
- (i) Comply with Electrical Safety Authority (ESA);
- (j) Have CSA or UL certification;
- (k) Easy to maintain by the Customer; and,
- (l) Have a minimum of a one (1) year warranty.

2.3.1 Related Products

The Supplier shall provide all related Product consumables and non-consumables for the proposed Stand-Alone Air Treatment Technology that may be installed by the Customer or the Supplier including, but not limited to:

- (a) Consumables;
 - i. Various type of filters (e.g. HEPA, carbon, pre-filters);
 - ii. Other consumables (e.g. UV lamps, LED lamps); and,
- (b) Non-consumables (e.g. mounting brackets, grilles).

The Supplier shall provide a list of all consumables including their respective lifespan, for the proposed Stand-Alone Air Treatment Technology, in Appendix C – Commercial Response.

2.3.2 Optional Services

The Supplier may, if requested by the Customer, provide optional Services including, but not limited to:

- (a) Site visits;
- (b) Product recommendations; and,
- (c) Onsite installation and instruction.

The Supplier shall ensure Services performed follow Customer's COVID procedures and other applicable policies and procedures of the Customer.

The Supplier's installation Service technicians shall have up to date training (e.g. on the Ontario Health and Safety Act ("OHSA"), Asbestos Awareness Training, and Ontario Safe Schools Act ("OSSA"). If requested by the Customer, the Supplier shall provide a copy of its Health and Safety Policy and training manuals (e.g. OHSA and OSSA).

2.4 Category B – Commercial In-Duct Air Treatment Technology, Related Products and Optional Services

The In-Duct Air Treatment Technology are units of commercial quality and are installed inside the Customer's existing ventilation system and are used to clean and/or purify/treat the air and reduce, the spread of viruses (i.e. COVID-19) and contaminants.

These technologies may include, but are not limited to:

- (a) LED technology;
- (b) Plasma production technology (bipolar ionization);
- (c) UV light technology (non-ozone producing); and,
- (d) Other technologies.

The Supplier shall ensure the technology in this Category be suitable to serve environments with large groups of people (e.g. School's main air-handling units, roof top units, unit ventilators).

The Supplier shall ensure the Product meet or exceed the following requirements including, but not limited to:

- (a) Eliminates a minimum of 99% of airborne bacteria and viruses;
- (b) Utilizes a power supply of 120 to 230V AC;
- (c) Easily mounted on the side of supply ductwork;
- (d) Provides appropriate treatment technology for various types of ventilation systems having ranges of CFM from 250 CFM to 100,000 CFM;
- (e) Tamperproof Products;
- (f) UL2998 certified to be ozone-free and mercury-free;
- (g) Comply with Electrical Safety Authority (ESA);
- (h) Have CSA or UL certification;
- (i) Easy to maintain by the Customer; and,
- (j) Have a minimum of a one (1) year warranty.

2.4.1 Related Products

The Supplier shall provide all related Product consumables and non-consumables for the proposed In-Duct Air Treatment Technology that may be installed by the Customer or the Supplier including, but not limited to:

- (a) Consumables (e.g. UV lamps LED, ionization tubes); and,
- (b) Non-consumables (e.g. mounting brackets).

The Supplier shall provide a list of all consumables including their respective lifespan for the proposed In-Duct Air Treatment Technology in Appendix C – Commercial Response.

2.4.2 Optional Services

The Supplier may, if requested by the Customer, provide optional Services including, but not limited to:

- (a) Site visits;
- (b) Existing equipment audit and drawings;
- (c) Product recommendations;
- (d) Installation (e.g. by qualified technicians, possess all required licences as applicable by authorities having jurisdiction to install the air treatment technology), design and instruction;
- (e) Onsite installation;
- (f) Reporting (e.g. installation date/location, Product information (e.g. OEM, Product model and serial numbers)); and,
- (g) Commissioning.

The Supplier shall ensure Services performed follow Customer's COVID procedures and other applicable policies and procedures of the Customer.

The Supplier's installation Service technicians shall have up to date training (e.g. on the Ontario Health and Safety Act ("OHSA"), Asbestos Awareness Training, and Ontario Safe Schools Act ("OSSA")). If requested by the Customer, the Supplier shall provide a copy of its Health and Safety Policy and training manuals (e.g. OHSA and OSSA).

2.5 Order Management

The Supplier shall provide a variety of ways for Customers to order Products/Services including, but not limited to:

- (a) Electronic Data Interchange ("EDI");
- (b) Email;
- (c) Supplier's online ordering process;
- (d) Toll free phone; and/or,
- (e) Via purchase order through the Customer's system.

2.5.1 Minimum Order

The Supplier shall not have any minimum Product/Service order value or volume requirements.

2.5.2 Order Acknowledgement

The Supplier shall acknowledge the receipt of an order by Customer immediately or within one (1) Business Day. The Supplier will include in this acknowledgement, any Product/Service ordered that cannot be fulfilled (e.g. back orders).

The Customer, at its sole discretion may:

- (a) Cancel some or the entire order;
- (b) Ask the Supplier to ship only available Products and cancel any backorders; and/or,
- (c) Agree to an alternative delivery schedule based on anticipated Product availability.

The Customer and Supplier, when executing CSA, will determine appropriate order acknowledgment requirements if different than above to ensure timely access to Products/Services.

2.5.3 Order Changes and/or Cancellation

The Supplier shall accept new orders, order changes and/or cancellation as may be required based on Customer's requirements, at no additional cost to the Customer. However, for Products already shipped, the Supplier shall provide support for order change and cancellation policies and any specific expectations may be at an additional cost as agreed to by the Customer and the Supplier.

2.5.4 Coordinating Bulk Purchases

The Supplier shall support coordinated bulk purchases for several Customers during the Term. If this occurs, a lower Rate may be negotiated with the Supplier for bulk purchases. The Customer will ensure reasonable lead times for bulk purchases are requested.

Customers may consolidate volumes and coordinate bulk purchases. Once Products have been received and/or Services are complete at Customer's location, the Supplier shall invoice each Customer accordingly.

2.6 Warranty

2.6.1 Manufacturer Product Warranty

The Supplier shall provide a full replacement warranty for at least one (1) year against, but not limited to the following conditions:

- (a) Faulty material/components; and,
- (b) Manufacturing defects.

All shipping costs related to approved warranty exchanges shall be at no additional cost to the Customers.

Warranty support shall include:

- (a) Customer telephone support during Business Days; and,
- (b) Toll free telephone number.

The Supplier and Customer shall agree upon on the terms (e.g. location of repair, lead-time, response time) when warranty repair is required.

2.6.2 Installation Service Warranty

The Supplier shall ensure that installation Services have a minimum of one (1) year warranty for the labour performed from the date of Service completion at no additional cost to Customers.

The Supplier shall provide all repairs or replacement required under the Service warranty including but not limited to the removal, repair, replacement, cost for parts and labour, shipping and handling.

Any Service warranty repairs should be performed as per requirement under optional Services, Sections 2.3.2 and 2.4.2.

2.7 Delivery

The Supplier should deliver orders with correct Products and quantities within the agreed upon lead time.

Products will be packaged appropriately to ensure safe delivery. All deliveries must include a packing slip specifying the Customer's required information (e.g. name of the employee who placed the order, purchase order number, Products and quantities ordered/shipped/back ordered (if any), and catalogue number.

Deliveries must be made by the Supplier's own transportation fleet or a reputable transportation company that allows for tracking of the shipments.

2.7.1 Delivery Lead Times

The Supplier shall deliver Products as proposed and mutually agreed upon between the Supplier and Customer.

The Supplier shall co-ordinate directly with the Customer regarding the status of orders, and delivery.

2.7.2 Performance/Surety Bonds

A Customer may require a performance/surety bond from the Supplier to guarantee satisfactory completion of a project during a specific timeframe (e.g. during 2021). Performance bonds may range in the amount from fifty percent (50%) to one-hundred percent (100%) of the value of the Product and/or Service requirement.

The Supplier shall, if required by the Customer, provide a performance/surety bond, the terms and costs of which will be mutually agreed upon between the Customer and the Supplier assuring that the Supplier shall perform its obligations under the Customer's CSA.

2.7.3 Back Orders

Back orders should be confirmed at the time of the order acknowledgement with a delivery date.

If delivery date need to be changed due to back orders, the Customer may, at its sole discretion without any cost or penalties:

- (a) Cancel some or the entire order;
- (b) Ask the Supplier to ship only available Products and cancel any backorders; and/or,
- (c) Agree to an alternative delivery schedule based on anticipated Product availability.

2.7.4 Product Substitution

The Supplier shall only substitute Products with approval from Customer's designated personnel.

2.7.5 Damaged or Defective Shipment

The Customer may not accept the delivery of the Products if they are:

- (a) Damaged (or the packaging is damaged); or,
- (b) Substituted without prior approval of the Customer.

The Supplier shall be responsible for all shipping costs related to the return and replacement of any damaged or defective Products from the Customer's location. Customers will not be responsible for any additional costs (e.g. re-stocking fees) due to damaged or defective Products received.

2.7.6 Returns

The Supplier shall accept all Products returned by the Customer that were ordered incorrectly and not used within thirty (30) days from delivery date, at no additional cost (e.g. restocking or shipping fee) to the Customer.

The Supplier shall provide its return policy and process required for returns to the Customer prior to executing a CSA with the Customer.

2.7.7 Recalls

The Supplier shall ensure that Products meet current guidelines (including health and safety) and shall advise OEM and Customers of any changes to the Products which may impact the future availability and/or safe use of the Products.

The Supplier shall immediately report recalled (i.e. unsafe) Products to OEM and Customers advising applicable details (e.g. catalogue number, OEM name). The Supplier shall comply with the

requirements of any Applicable Law in respect to recalled Products and repair or replace the Product at no additional cost to Customer.

2.7.8 Discontinued Products

The Supplier shall not arbitrarily discontinue Products and shall provide the Customer with sufficient notice (e.g. within sixty (60) days) prior to discontinuation.

Further, the Supplier shall ensure that in the event a Product becomes unavailable and a replacement is proposed, the replacement Product shall have equal or greater functional capabilities/specifications than those of the retiring Product at a similar Rate.

2.8 Invoicing

Flexibility in invoicing processes is required. The Customer and Supplier can mutually agree to invoicing details when executing a Customer-Supplier Agreement ("CSA").

The invoices, in either paper or electronic format, as detailed in the Customer's CSA shall be itemized and contain, at a minimum, the following information:

- (a) Customer name and location;
- (b) Customer purchase order number (if applicable) and order date;
- (c) Description of Products/Services provided, quantities and Rates; and,
- (d) HST and total cost.

2.8.1 Payment Terms and Methods

The Customer's common payment terms are net thirty (30) days.

The Supplier shall accept payment from Customers by cheque, Purchasing Card, Visa Payables Automation (via ghost card) or Electronic Funds Transfer ("EFT") at no additional cost to the Customer.

Different payment terms may be agreed to when executing a CSA (e.g. 2%/10 early payment discount for Customers).

Note – Customer's payment terms will not be in effect until the Supplier provides an accurate invoice.

2.8.2 Electronic Fund Transfer

The Supplier shall provide the Customer with the necessary banking information to enable EFT, at no additional cost to the Customer, for any related invoice payments including, but not limited to:

- (a) A void cheque;
- (b) Financial institution's name;
- (c) Financial institution's transit number;
- (d) Financial institution's account number; and,
- (e) Email address for notification purposes.

2.9 Support to Customers

The Supplier shall provide effective support to Customers including, but not limited to:

- (a) Providing a responsive account executive (with applicable back-up) assigned to the Customer to support their needs by providing day-to-day and ongoing administrative support, and operational support;
- (b) Managing issue resolution in a timely manner;

- (c) Complying with agreed upon escalation processes to resolve outstanding issues;
- (a) Responding to Customer's inquiries (e.g. to day-to-day activities) within one (1) Business Day;
- (b) Ensuring minimal disruption to the Customer;
- (c) Providing easy access to the Supplier (e.g. online, toll free telephone number, email, voicemail, chat or fax);
- (d) Providing written notice to Customers on any scheduled shut down that would impact services (e.g. inventory count, relocation of warehouse, website maintenance);
- (e) Provide Customer reporting; and,
- (f) Attending meetings with Customers, as requested.

2.10 Health and Safety

The Supplier shall ensure Products and applicable Services (e.g. installation, maintenance, and operation) shall comply at all times with Applicable Law including, but not limited to that relating to the environment, health and safety, product safety, conventions, standards, and guidelines. During the Term, the Supplier shall immediately notify OEMC and Customer of any Product/Service which does not fully meet the requirements of Applicable Law. Such Products and/or Services shall immediately be removed from the Master Agreement and the appropriate recall or other instructions shall be given to Customers.

Given the nature of the emerging technologies involved in the Products and applicable Services, the Customer must satisfy itself as to the safety of using such Products and applicable Services and that they fully comply with all applicable policies and procedures of the Customer.

2.11 Environmental and Sustainability Considerations

OECM and its Customers are committed to reducing their carbon footprint. The Supplier should keep Customers informed about any environmentally friendly processes, Products, Services (i.e. installation), new technologies and/or green initiatives. The Supplier should, in consultation with OEMC, make any environmentally friendly processes, Products, Services (e.g. installation), new technologies and/or green initiatives, related to this RFT Deliverables, available to Customers as required.

2.12 Social Procurement

OECM and its Customers are committed to social procurement. The Supplier should keep OEMC and Customers informed about social procurement processes.

2.13 Disaster Recovery and Business Continuity

The Supplier shall possess and provide to OEMC and/or Customers upon request, information about disaster recovery and business continuity programs including processes, policies, and procedures related to safety standards, preparing for recovery or continuation of Product/Service availability critical to Customers.

2.14 Electrical Requirements

The Supplier shall ensure Products are energy efficient and authorized or approved by the Customer and in accordance with the Ontario Electrical Safety Code, Standards Council of Canada ("SCC") and with the Canadian Standards Association ("CSA Group") or Underwriters Laboratories of Canada ("ULC") and shall bear the certification organization's mark identifying the goods certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the Products at Customer's facilities.

2.15 Licences, Right to Use and Approvals

The Supplier shall obtain all licences, right to use and approvals required in connection with the supply of the Products/Services and provide them at Customer and OEMC request. The costs of obtaining such licences, right to use and approvals shall be the responsibility of, and shall be paid for by, the Supplier.

Where a Supplier is required by Applicable Law to hold or obtain any such licence, right to use and approval to carry on an activity contemplated in its Tender or in the Master Agreement, neither acceptance of the Tender

nor execution of the Master Agreement by OECM shall be considered an approval by OECM for the Supplier to carry on such activity without the requisite licence, right to use or approval.

[End of Part 2]

PART 3 – EVALUATION OF TENDERS

3.1 Stages of Tender Evaluation

OECM will conduct the evaluation of Tenders, for each Category, in the following stages:

| Stage | Type of Evaluation | Refer to RFT Section | Scoring Methodology and Maximum Points (if applicable) | Minimum Requirement (if any) |
|-----------|-------------------------------|----------------------|--|------------------------------|
| Stage I | Qualification Response | 3.2 | Pass/Fail | Pass |
| Stage II | Commercial Response | 3.3 | 200 | Not Applicable |
| Stage III | Tie Break Process | 3.4 | No Point Allocation | Not Applicable |
| Stage IV | Negotiations | 3.5 | No Point Allocation | Not Applicable |
| Stage V | Master Agreement Finalization | 3.6 | No Point Allocation | Not Applicable |

3.2 Stage I – Review of Qualification Responses (Pass/Fail)

Stage I will consist of a review to determine which Tenders comply with all qualification requirements.

The Bidder **must** complete the following information/forms in Ontario’s Tenders Portal (“OTP”) attesting to their qualification, demonstrating their capabilities for fulfilling the Deliverables, for proposed Category, to proceed to the next stage of evaluation.

| Title | OTP Envelope |
|---|---------------|
| Form of Offer | Qualification |
| Compliance with Form of Master Agreement | Qualification |
| Appendix G – Product Specifications (in Microsoft Excel only) | Qualification |
| Appendix C – Commercial Response (in Microsoft Excel only) | Commercial |

If the Bidder fails to insert information contained in the above forms, OECM may provide an opportunity to rectify such deficiency within a period of two (2) Business Days from notification thereof. Only Bidders satisfying the identified deficiencies within allotted time will proceed to Stage II.

3.2.1 Product Specifications

The Bidder **must** complete and upload Appendix G – Product Specifications, for each Category being proposed, into the OTP Qualification Envelope.

The Commercial Air Treatment units proposed, per Category, must meet or exceed the minimum specifications in this RFT, particularly those set out in:

- (a) Section 2.3 for Category A; and,
- (b) Section 2.4 for Category B.

For certainty, if the Commercial Air Treatment units proposed, per Category, do not meet or exceed the minimum specification as noted in this RFT, the Tender will not pass this Stage I and will not proceed to Stage II.

3.3 Stage II – Commercial Response by Category

The Bidder **must** complete and upload Appendix C – Commercial Response, for each Category being proposed, into the OTP Commercial Envelope.

Upon the completion of Stage I of the evaluation, the Commercial Response will be opened for all Eligible Tenders, for both Categories.

Point allocations for the Commercial Response sections, per Category, are as follows:

| Commercial Response Sections per Category | Available Points per Category |
|---|-------------------------------|
| 1.0 Commercial Air Treatment Unit | 50 |
| 2.0 Consumable Maintenance Cost | 100 |
| 3.0 Product Life Cycle Cost | 45 |
| 4.0 Non-Consumable Accessories | Not Evaluated |
| 5.0 Optional Services | 5 |
| 6.0 Additional Products | Not Evaluated |
| TOTAL POINTS PER CATEGORY: | 200 |

Sub-point allocations are also set out in the Appendix C – Commercial Response.

Rates for installation Services will be averaged and the average installation Service Rate will be evaluated and scored using a relative formula.

The Rates for all proposed Products/Services will be evaluated and scored using a relative formula.

See example below:

| EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR 1.0 COMMERCIAL AIR TREATMENT UNIT | | |
|--|---|------------------|
| Proposed Rates | Calculation | Resulting Points |
| If Bidder 1 proposes the lowest average Rate of \$100.00, it would receive 100% of the points allocated. | $\$100.00 \div \$100.00 \times 50 \text{ Points}$ | 50 |
| If Bidder 2 proposes the second lowest average Rate of \$200.00, it would receive 50% of the points allocated. | $\$100.00 \div \$200.00 \times 50 \text{ Points}$ | 25 |
| If Bidder 3 proposes the third lowest average Rate of \$400.00, it would receive 25% of the points allocated. | $\$100.00 \div \$400.00 \times 50 \text{ Points}$ | 12.5 |

Where \$0.00 is entered in any Rate cell, it is deemed to mean that the particular Product/Service **will be provided to Customers at no additional cost**. Therefore, when evaluating and scoring the Rates, a Tender specifying \$0.00 in a Rate cell in the Commercial Response shall receive the maximum point allocation for that particular Product/Service. The remaining Tenders will be evaluated using a relative formula based on the remaining percentage of available points regardless of the Tenders of \$0.00 Rate as per below example.

| EXAMPLE – WHERE FIVE (5) TENDERS WERE RECEIVED WITH \$0.00 RATE PROPOSED | | |
|---|---------------------------------|---|
| Number of Tenders with a proposed Rate of \$0.00 for a particular Product/Service | The number of remaining Tenders | The percentage (%) of the sub-point allocation for the remaining Tenders will be: |
| 1 | 4 | 80% |
| 2 | 3 | 60% |
| 3 | 2 | 40% |
| 4 | 1 | 20% |

Where N/A or not applicable is entered in a Commercial Response cell or a Commercial Response cell is left blank for the Product/Service, it is deemed to mean that the particular Product/Service will **not be provided** to Customers. Therefore, when evaluating and scoring the Rates, a Tender specifying N/A or not applicable, or left blank in Appendix C – Commercial Response will receive a zero (0) point allocation for that particular pricing section.

Subject to the express and implied rights of OECEM; the Bidders with the highest scoring Tenders or all Bidders, per Category, may become the Preferred Bidders, and be invited to negotiations as further described below.

Reference checks will be performed to confirm or clarify information provided within the Tender. The reference checks themselves will not be scored, however, OECEM may disqualify a Bidder related to the information obtained during the reference check.

3.4 Stage III – Tie Break Process

At this stage, where two (2) or more of the highest scoring Eligible Tenders, for either Category, achieve a tie score on completion of the Stage II, OECEM may invite all Bidders to negotiations.

3.5 Stage IV – Negotiations

Concurrent negotiations, with the Preferred Bidders, will be based on the RFT requirements, and the Tenders, understanding that OECEM is seeking the best overall solution and value for money for Customers.

The negotiations may include:

- (a) Products and/or Services;
- (b) Lead time;
- (c) Master Agreement management (e.g. performance, KPIs, penalties, reporting);
- (d) Master Agreement terms and conditions;
- (e) Performance/Surety Bonds;
- (f) Additional references, if required;
- (g) Rates; and,
- (h) Best and Final Offer.

OECEM may also request supplementary information from a Preferred Bidder to verify, clarify or supplement the information provided in its Tender or confirm the conclusions reached in the evaluation and may include requests by OECEM for improved Rates.

OECEM intends to complete negotiations within three (3) calendar days after notification. If, for any reason, OECEM and a Preferred Bidder fail to reach an agreement within the aforementioned timeframe, OECEM may (a) request the Preferred Bidder to submit its Best and Final Offer; (b) terminate negotiations with that particular Preferred Bidder; (c) extend the negotiation timeline; or (d) publish one (1) or some of the Suppliers, who have executed Master Agreements within our promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Bidders would be added to OECEM's website at a later date.

Upon successful negotiations, the Preferred Bidder will be invited to execute a Master Agreement.

3.6 Stage V – Master Agreement Finalization

The Preferred Bidder will be given three (3) Business Days to execute the Master Agreement, unless otherwise specified by OEMC. Once the Master Agreement has been executed, Customers may execute a CSA and begin purchasing Products/Services.

OEMC shall at all times be entitled to exercise its rights under Section 5.6.

[End of Part 3]

PART 4 – MASTER AGREEMENT STRUCTURE AND MANAGEMENT

4.1 Master Agreement Structure

OECM may, through this RFT process, enter into Master Agreements with one (1) or more Suppliers for the provision of the Products and Services.

The Term is intended to be for three (3) years, with an option in favour of OECM to extend the Term on the same terms and conditions for up to two (2) additional years. Performance as set out in Appendix E – Performance Management Scorecard and, if applicable, Supplier Recognition Program evaluation results will be considered when contemplating a Master Agreement extension.

Customers participating in the Master Agreements will execute a CSA with a Supplier as attached in Appendix B – Form of Master Agreement. The Supplier shall provide a copy of every CSA to OECM within thirty (30) days of execution.

The Master Agreement must be fully executed before the provision of any Deliverables commences.

4.1.1 No Contract until Execution of Written Master Agreement

This RFT process is intended to identify Bidders for the purpose of negotiation of potential Master Agreements. The negotiation process is further described in Part 3 – Evaluation of Bids, and in Section 3.5 of this RFT.

No legal relationship or obligation regarding the procurement of any Products/Services shall be created between the Bidder and OECM by this RFT process until the successful completion of negotiation and execution of a written Master Agreement for the provision of the Product/Services has occurred.

4.1.2 Customer's Usage of Master Agreements

The establishment and use of the Master Agreement consists of a two (2) part process.

Part One, which is managed by OECM, is the creation of the Master Agreement through the issuance of this RFT, the evaluation of Bids submitted in response to it and the negotiation and execution of the Master Agreement.

Part Two, which is managed by the Customer and is focused on the Customer's specific needs. Depending on the Customer's internal policies, and potential dollar value of the Product/Services a Customer may:

- (a) Sign a CSA with a Supplier and then immediately obtain Product/Services based on the Master Agreement terms, conditions, and Rates (which are maximum Rates); or,
- (b) Obtain Rates through the optional Second Stage Selection Process ("Second Stage") which is managed by the Customer. The Second Stage is a request (e.g. a non-binding request via a Second Stage tool (e.g. Quick Quote ("QQ"), or Customer's process (e.g. directly or via an online e. tendering platform)) to the Supplier from the Customer for their specific Product/Service requirements. If selected by the Customer, the Supplier shall provide the Product/Services in accordance with the specifications stated in the Master Agreement and in the Customer's CSA including Rates (which may be lower than the Master Agreement maximum Rates).

When a Second Stage request is issued, which does not constitute a contract A, contract B situation, it will identify the required Product/Services, or it may request the Supplier to propose appropriate Products to fulfill the Customer's requirements and any other applicable information. The Customer may negotiate their unique requirements with the Supplier and mutually agree to additional terms and conditions (e.g. reporting, Rates, payment terms) ensuring the additional terms and conditions are not in any way inconsistent with the Master Agreement.

The Supplier must respond to a Second Stage Selection Process request and, at minimum, the response should set out the following:

- (a) Proposed Products/Services;
- (b) Capacity, lead times for Products/Services; and,
- (c) Final, net Rates. The Rates should be valid for a period of not less than ninety (90) days. Limited time offer Rates and/or promotional Rates must be specified by the Supplier, if applicable to the specific Second Stage request.

Customers are not obligated to sign a CSA to obtain specific Product/Services Rates. However, a CSA must be signed before the provision of any Products and/or Services commence.

4.1.3 No Guarantee of Volume of Work or Exclusivity of Master Agreement

Nothing in this RFT is intended to relieve the Bidder from forming its own opinions and conclusions with respect to the matters addressed in this RFT. Volumes are an estimate only and may not be relied on by the Bidder.

OECM makes no guarantee of the value or volume of work to be assigned to the Supplier.

The Master Agreement executed with the Supplier may not be an exclusive Master Agreement for the provision of the Deliverables. Customers may contract with others for the same or similar Deliverables to those described in this RFT.

4.2 Rates

The proposed Rates shall be firm Rates, per Category, for the first year of the Master Agreement and shall be:

- (a) Maximum Rates applicable to all Customers;
- (b) In Canadian funds and shall include all applicable costs, including, but not limited to overhead, materials, fuel, fuel surcharge, duties, tariffs, travel, delivery, office support, profit, permits, licences, labour, insurance, and Workplace Safety Insurance Board costs; and,
- (c) Exclusive of the HST, or other similar taxes.

The Supplier may, however, lower its Rates for at any time or for specific Products/Services when the Customer and Supplier mutually agree without affecting the Rates in the Master Agreement.

In extenuating circumstances (e.g. caused by pandemics, epidemics, quarantines, or civil disturbances caused by severe medical emergencies or diseases, government declared emergencies), OECM may consider a Rate adjustment substantially effecting the provision of Products/Services resulting from new or changed municipal, provincial, or federal regulations, by-laws and fluctuations in foreign exchange rates as published by the Bank of Canada, tariffs, or ordinances. Any such request from the Supplier must be accompanied and supported by documentation deemed appropriate by OECM. OECM may use a third-party index (e.g. Consumer Price Index ("CPI")) in its Rates review. The Supplier must submit documentation (i.e. Rate impact analysis) demonstrating how the request affects the delivery of Products/Services in this Master Agreement. OECM will not consider any fixed costs or overhead adjustments in its review of the Supplier's documentation.

4.2.1 Optional Rate Refresh

OECM's goal is to keep Rates as low as possible for Customers. However, the Supplier may request a Rate refresh at the first anniversary of the Master Agreement (e.g. in March 2022) .

The Supplier shall provide a written notice with supporting documentation to OECM at least one-hundred and twenty (120) days prior to the Master Agreements' anniversary date if requesting a Rate refresh.

As part of any review OECM will consider Rate adjustments that reflect changes in operation, adjustments due to new or changed municipal, provincial, or federal regulations, by-laws, and fluctuations in foreign exchange rates as published by the Bank of Canada, tariffs, or ordinances. Any Rate refresh request from a Supplier must be accompanied by supporting documentation (e.g. detailed calculations and individual Customer impact analysis) to support any Rate adjustment.

OECM may use a third-party index (e.g. Consumer Price Index) in its Rates review. OECM will not consider any fixed costs or overhead adjustments in its review.

Volumes and Supplier performance (i.e. Supplier's Performance Management Scorecard and/or Supplier Recognition Program evaluation results) will be considered when contemplating a Rate refresh.

If a proposed Rate refresh was agreed upon between OECM and the Supplier, the new Rates would only be applicable to Products/Services ordered after the effective date of the new Rates. The effective date of the Rate change must allow Customers a minimum of thirty (30) days' prior notice from OECM. If, however, a proposed Rate increase is not accepted by OECM the Master Agreement may be terminated within one-hundred and twenty (120) days unless the Supplier agrees to withdraw its request for a Rate increase and continue the provision of the Products/Services at the existing agreed upon Rates.

If a Rate refresh is not requested, the existing Rates shall remain in effect until the next Rate refresh opportunity.

Decreases to the Rates shall be accepted at any time during the Term.

Based on above, the Master Agreement will be amended, if needed.

4.2.2 Optional Process to Add Other Products/Services

During the Term, if mutually agreed by OECM and the Supplier, other Products (e.g. newly available Products, additional Products, innovation) and Services may be added to the Master Agreement to align with Customer needs.

The Supplier shall provide written notice to OECM of at least sixty (60) days if requesting a Product/Service refresh.

Additional Product/Service requests from the Supplier must be accompanied by appropriate documentation (e.g. Product/Service description, and rationale for the addition).

Volumes and Supplier's performance (i.e. as described in Appendix E – Performance Management Scorecard and/or Supplier Recognition Program evaluation results) will be considered when contemplating adding Products/Services. In the event the Supplier's performance is poor and/or unacceptable, OECM may not agree to the Supplier's Product/Service refresh request. All other Products/Services shall remain unchanged.

Rates, for newly added Products/Services, will be negotiated at the time ensuring Rate alignment with similar Products/Services currently available on the Master Agreement.

Based on above, the Master Agreement will be amended, if needed.

4.2.3 OECM Cost Recovery Fee

As a not-for-profit/non-share capital corporation, OECM recovers its operating costs from its agreements through a Cost Recovery Fee ("CRF"). CRFs from the resulting Master Agreement from this RFT and other OECM agreements are structured to support OECM's financial model, while providing savings to Customers.

The Supplier shall pay to OECM a CRF of two percent (2%) on all Products/Services invoiced, excluding HST, by the Supplier to the Customers throughout the Term.

CRF will be calculated as follows:

| EXAMPLE OF HOW CRF WILL BE CALCULATED WITH A CRF = 2% | | | |
|---|------------------------|------------|--|
| Sales per Quarter | CRF Calculation | CRF | Total Quarterly CRF Payment to OEMC |
| If Supplier has \$100,000 total sales in the third quarter of 2021 | \$100,000 x 2% | \$2,000.00 | \$2,000.00 |
| If Supplier has \$200,000 total sales in the fourth quarter of 2021 | \$200,000 x 2% | \$4,000.00 | \$4,000.00 |
| If Supplier has \$50,000 total sales in the first quarter of 2021 | \$50,000 x 2% | \$1,000.00 | \$1,000.00 |

The CRF shall be paid to OEMC, via EFT, on a quarterly basis based on the calendar year by the tenth (10) Business Day of the applicable quarter.

CRF payment dates, for the first year of the Master Agreement, will be as follows:

| CRF Payments | Payment Date |
|---|---------------------|
| The first CRF, including any Customer purchases made between the Master Agreement execution date and June 30, 2021, shall be paid to OEMC by: | July 12, 2021 |
| The next CRF, including any Customer purchases made between July 1, 2021 to September 30, 2021, shall be paid to OEMC by: | October 13, 2021 |
| The next CRF, including any Customer purchases made between October 1, 2021 to December 31, 2021 shall be paid to OEMC by: | January 11, 2021 |
| The next CRF, including any Customer purchases made between January 1, 2022 to March 31, 2021, shall be paid to OEMC by: | April 12, 2021 |

HST is applicable to the CRF payments made to OEMC.

The CRF will be reviewed (e.g. annually) and may, at OEMC's sole discretion, be adjusted downwards.

During the Term, OEMC may implement other CRF methodologies. Should this take place, the maximum CRF noted above shall not increase.

The Supplier shall be responsible for paying interest, as specified in Article 4.09 of the Master Agreement, for late CRF payments.

Upon termination or expiry of the Master Agreement, the Supplier will submit all outstanding CRF payments within thirty (30) days of the Master Agreement termination or expiry date.

4.2.4 Financial Administration Act Section 28

In accordance with the requirements of the *Financial Administration Act* ("FAA"), notwithstanding anything else in the CSA, or in any other agreement between the Customer and the Supplier executed to carry out the services provided for herein, the remedies, recourse or rights of the Supplier shall be limited to the Customer and to the right, title and interest owned by the Customer in and to all of its real or personal property, whether now existing or hereinafter arising or acquired from time to time. The Supplier unconditionally and irrevocably waives and releases all other claims, remedies,

recourse or rights against the Crown in right of Ontario in respect of the CSA, and agrees that it shall have no remedies, recourse or rights in respect of the CSA against the Crown in right of Ontario, any Ontario Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against the Customer and its assets.

If the Supplier and the Customer agree that a CSA is exempt from the application of subsection 28(1) of the *Financial Administration Act* pursuant to Ontario Regulation 376/18: Section 28 Exemptions – Colleges, the Customer represents and warrants that the CSA (i) complies with all applicable policies of the Customer; (ii) complies with all applicable laws and Ontario government directives applicable to it; and, (iii) relates to activities of the Customer that are permitted under its objects and that are undertaken within Canada. The Supplier represents and warrants that the CSA complies with all Applicable Laws and Ontario government directives applicable to it.

4.3 Supplier Management Support to OECM

OECM will oversee the Master Agreement, and the Supplier shall provide appropriate Master Agreement management support including, but not limited to:

- (a) Assigning to OECM a Supplier Account Executive and team responsible for supporting and overseeing all aspects of the Master Agreement;
- (b) Working and acting in an ethical manner demonstrating integrity, professionalism, accountability, transparency and continuous improvement;
- (c) Promoting the Master Agreement within the Customer community;
- (d) Maintaining OECM's and Customer's confidentiality by not disclosing Confidential Information without the prior written consent of OECM and/or the Customer, as the case may be, as further described in Appendix B – Form of Master Agreement;
- (e) Attending business review meetings with OECM to review such information as:
 - i. CSAs and upcoming opportunities; and,
 - ii. Review and monitor performance management compliance;
- (f) Complying with Appendix F – Code of Conduct requirements as described on the OECM website at <https://oecm.ca/oecm-advantage/our-supplier-partners/supplier-code-of-conduct>;
- (g) Managing issue resolution in a timely manner;
- (h) Complying with agreed upon escalation processes to resolve outstanding issues;
- (i) Timely submission of reports as described in Appendix D – Reporting Requirements; and,
- (j) Ensuring Products/Services delivered, throughout the Term, are the same or better than the sample provided with its Tender; and,
- (k) Complying with Master Agreement close out processes (e.g. ensuring all Master Agreement obligations have been fulfilled, such as submission of final reporting and CRF payments to OECM).

4.3.1 Master Agreement Award and Launch

Once the Master Agreement is awarded, the Supplier will meet with OECM to discuss an effective launch strategy, and shall provide:

- (a) Supplier's profile and logo;
- (b) Supplier's contact information;
- (c) Customer engagement strategy;
- (d) Access to knowledge sharing materials (e.g. webinars);

- (e) Marketing materials, and,
- (f) Other relevant materials.

4.3.2 Promoting OEMC Master Agreements

To support Customers, OEMC and the Supplier will work together to encourage the use of the Master Agreement resulting from this RFT.

The Supplier will actively promote the Master Agreement to Customers by:

- (a) Conducting sales and marketing activities directly to onboard Customers;
- (b) Executing CSAs with interested Customers;
- (c) Providing excellent and responsive Customer support;
- (d) Gathering and maintaining Customer and market intelligence, including contact information;
- (e) Identifying Customer savings; and,
- (f) Identifying improvement opportunities (e.g. new Products/Services).

OEMC will promote the use of the Master Agreement with Customers by:

- (a) Using online communication tools to inform and educate;
- (b) Holding information sessions and webinars, as required;
- (c) Attending, when appropriate, Customer and Supplier events;
- (d) Facilitating CSA execution, where appropriate;
- (e) Facilitating Second Stage requests, as required;
- (f) Providing effective business relationship management;
- (g) Managing and monitoring Supplier performance;
- (h) Facilitating issue resolution; and,
- (i) Marketing Supplier promotions.

4.3.3 Supplier's Performance Management Scorecard

To ensure Master Agreement requirements are met, the Supplier's performance will be measured and tracked by OEMC as described in Appendix E – Performance Management Scorecard.

4.3.4 OEMC's Supplier Recognition Program

OEMC's suppliers play a fundamental role in ensuring Customers' needs are met with consistent and exceptional service. As part of OEMC's efforts to provide greater value to Customers and support their Supplier selection process across OEMC agreements, OEMC has implemented a Supplier Recognition Program ("SRP"). Through the SRP, OEMC will objectively assess supplier's performance using an open, fair and transparent framework to recognize and reward top-performing Suppliers on an annual basis.

The following four (4) key areas of focus that suppliers will be measured upon include:

- (a) Supplier performance;
- (b) Master Agreement performance (see Section 4.3.3 and Appendix E (Performance Management Scorecard));
- (c) Generated savings and value; and,

(d) Customer feedback during the Term.

Further details will be provided to the Suppliers.

4.3.5 Reporting to OEM

The Supplier shall be responsible for providing reports as further described in Appendix D – Reporting Requirements.

Report details will be discussed and established at the Master Agreement finalization stage between OEM and the Preferred Bidder. Other reports may be added, throughout the Term, if mutually agreed upon between OEM and the Supplier, and/or the Customer and Supplier.

[End of Part 4]

PART 5 – TERMS AND CONDITIONS OF THE RFT PROCESS

5.1 General Information and Instructions

Procurement Process Non-Binding

This RFT process is non-binding, and it does not intend to create, and shall not create, a formal legally binding procurement process, and shall not give rise to the legal rights or duties applied to a formal legally binding procurement process. This procurement process shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) This RFT shall not give rise to any contract A – based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and,
- (b) Neither the Bidder nor OECM shall have the right to make any breach of contract, tort or other claims against the other with respect to the award of a Master Agreement, failure to award a Master Agreement or failure to honour a response to this RFT.

Non-Binding Rates

While the Tender Rates will be non-binding prior to the execution of a written Master Agreement, such information will be assessed during the evaluation and ranking of the Tenders, as further described in Part 3 – Evaluation of Tenders. Any inaccurate, misleading, or incomplete information, including withdrawn or altered Rates, could adversely impact any such evaluation, ranking, or Master Agreement award.

5.1.1 RFT Timetable

The following is a summary of the key dates for this RFT process:

| RFT Timetable | |
|---|------------------------------|
| Event | Time/Date |
| OECM's Issue Date of RFT: | February 18, 2021 |
| Bidder's Information and OTP Demonstration Session: | 2:00 pm on February 23, 2021 |
| Bidder's Deadline to Submit Questions: | 2:00 pm on February 25, 2021 |
| OECM's Deadline for Issuing Answers: | March 3, 2021 |
| Bidder's Deadline to Submit Questions Related to Addenda & Question and Answer Documents: | 2:00 pm on March 9, 2021 |
| OECM's Deadline for Issuing Final Documents: | March 15, 2021 |
| Closing Date: | 2:00:00 pm on March 22, 2021 |
| Anticipated Master Agreement Start Date: | March 2021 |

Note – all times specified in this RFT timetable are local times in Toronto, Ontario, Canada.

OECM may amend any timeline, including the Closing Date, without liability, cost, or penalty, and within its sole discretion.

In the event of any change in the Closing Date, the Bidder may thereafter be subject to the extended timeline.

5.1.2 Bidder's Information and OTP Demonstration Session

The Bidder should participate in the Bidder's Information and OTP Demonstration Session, which will take place at the time set out in Section 5.1.1.

Prior to the Bidder's Information and OTP Demonstration Session, OECM will send a **Message** via OTP with the teleconference and webinar information to the Bidders who expressed interest on OTP.

The Bidder's Information and OTP Demonstration Session is an opportunity for the Bidder to enhance its understanding of the RFT process and to learn how to use OTP to submit its Tender.

Any changes to the Bidder's Information and OTP Demonstration Session meeting date will be issued in an addendum on OTP.

Information provided during this session will be posted on OTP.

In the event of a conflict or inconsistency between the Bidder's Information and OTP Demonstration Session and the RFT, the RFT shall prevail.

The Bidder can contact OTP technical support directly for further assistance, using the contact details set out in Section 5.3.1.

5.1.3 Bidder to Follow Instructions

The Bidder should structure its Tender in accordance with the instructions in this RFT. Where information is requested in this RFT, any response made in the Tender should reference the applicable section numbers of this RFT where that request was made.

5.1.4 OECM's Information in RFT Only an Estimate

OECM makes no representation, warranty or guarantee as to the accuracy of the information contained in this RFT or issued by way of addenda. Any data contained in this RFT or provided by way of addenda are estimates only and are for the sole purpose of indicating to Bidders the general size of the work.

It is the Bidder's responsibility to avail itself of all the necessary information to prepare a Tender in response to this RFT.

5.1.5 Bidder's Costs

The Bidder will bear all costs and expenses incurred relating to any aspect of its participation in this RFT process, including all costs and expenses relating to the Bidder's participation in:

- (a) The preparation, presentation and submission of its Tender;
- (b) The Bidder's attendance at any meeting in relation to the RFT process;
- (c) The conduct of any due diligence on its part, including any information gathering activity;
- (d) The preparation of the Bidder's own questions; and,
- (e) Any discussion and/or finalization, if any, in respect of the Form of Master Agreement.

5.2 Communication after RFT Issuance

5.2.1 Communication with OECM

All communications regarding any aspect of this RFT must be sent to OECM as a **Message** in OTP.

If the Bidder fails to comply with the requirement to direct all communications to OECM through OTP, it may be disqualified from this RFT process. Without limiting the generality of this provision, Bidders shall not communicate with or attempt to communicate with the following as it relates to this RFT:

- (a) Any employee or agent of OECM;

- (b) Any member or advisor of the Project Advisory Committee;
- (c) Any member of OECM's governing body (such as Board of Directors, or advisors);
- (d) Any employee, consultant or agent of OECM's Customers; and,
- (e) Any elected official of any level of government, including any advisor to any elected official.

5.2.2 Bidder to Review RFT

The Bidder shall promptly examine this RFT and all Appendices, including the Form of Master Agreement and:

- (a) Shall report any errors, omissions or ambiguities; and,
- (b) May direct questions or seek additional information **on** or **before** the Bidder's Deadline to Submit Questions to OECM.

All questions submitted by Bidders shall be deemed to be received once the **Message** has entered into OECM's OTP inbox.

In answering a Bidder's questions, OECM will set out the question, without identifying the Bidder that submitted the question and OECM may, in its sole discretion:

- (a) Edit the question for clarity;
- (b) Exclude questions that are either unclear or inappropriate; and,
- (c) Answer similar questions from various Bidders only once.

Where an answer results in any change to the RFT, such answer will be formally evidenced through the issue of a separate addendum for this purpose.

To ensure the Bidder clearly understand issued addenda, OECM allows Bidders to ask questions related to addenda, and question and answer documents. Refer to Section 5.1.1 for timelines.

OECM is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the Bidder to seek clarification, by submitting questions to OECM through OTP, on any matter it considers to be unclear. OECM shall not be responsible for any misunderstanding on the part of the Bidder concerning this RFT or its process.

5.2.3 Bidder to Notify

In the event the Bidder has any reason to believe that an error, omission, uncertainty or ambiguity, as set out in Section 5.2.2 exists, the Bidder must notify OECM through OTP prior to submitting a Tender.

If appropriate, OECM will then clarify the matter for the benefit of all Bidders.

The Bidder shall not:

- (a) After submission of a Tender, claim that there was any misunderstanding or that any of the circumstances set out in Section 5.2.2 were present with respect to the RFT; and,
- (b) Claim that OECM is responsible for any of the circumstances listed in Section 5.2.2 of this RFT.

5.2.4 All New Information to Bidders by way of Addenda

This RFT may only be amended by an addendum in accordance with this section.

If OECM, for any reason, determines that it is necessary to provide additional information relating to this RFT, such information will be communicated to all Bidders by addenda on OTP. Each addendum shall form an integral part of this RFT.

Any amendment or supplement to this RFT made in any other manner will not be binding on OECM.

Such addenda may contain important information including significant changes to this RFT. The Bidder is responsible for obtaining all addenda issued by OECM.

The Bidder who intends to respond to this RFT is requested not to cancel the receipt of addenda or amendments option provided by OTP, since it must obtain all information and documents that are issued on OTP.

In the event that a Bidder chooses to cancel the receipt of addenda or amendments, its Tender may be rejected.

5.3 Tender Submission Requirements

5.3.1 General

The Bidder shall submit its Tender through OTP at <https://ontariotenders.app.jaggaer.com/esop/nac-host/public/web/login.html>.

The Bidder should contact OTP technical support if it experiences technical difficulties or to seek support about the use of OTP via:

- (a) Email at etenderhelp_CA@jaggaer.com;
- (b) By phone at 866-722-7390; or,
- (c) Accessing website information at [https://ontariotenders.app.jaggaer.com/esop/nac-host/public/attach/eTendering responding to tender guide.pdf](https://ontariotenders.app.jaggaer.com/esop/nac-host/public/attach/eTendering%20responding%20to%20tender%20guide.pdf).

To be considered in the RFT process, a Tender must be submitted and received **before** the Closing Date as set out in Section 5.1.1 and on OTP.

The Bidder is strongly encouraged to become familiar with the use of OTP well in advance of the Closing Date.

The Bidder will not be able to submit a Tender after the Closing Date, as OTP will close the access to the RFT on the Closing Date.

A Tender sent by, email, facsimile, mail and/or any other means other than stated in this RFT shall **not** be considered. Notwithstanding anything to the contrary contained in any applicable statute relating to electronic documents transactions, including the *Electronic Commerce Act, 2000, S.O. 2000, c. 17*, any notice, submission, statement, or other instrument provided in respect of the RFT may not be validly delivered by way of electronic communication, unless otherwise provided for in this RFT.

5.3.2 Tender in English

All Tender submissions are to be in English only. Any Tender received by OECM that is not entirely in the English language may be disqualified.

5.3.3 Tender Submission Requirements

The Bidder is solely responsible for submitting its Tender on OTP prior to the Closing Date.

The Tender should be submitted in accordance with the instructions set out on OTP and in this RFT as set out below.

| Appendix/Form Title | OTP Envelope | Complete Form within OTP | Complete Appendix and Upload to OTP |
|--|---------------|--------------------------|-------------------------------------|
| Form of Offer | Qualification | √ | |
| Compliance with Form of Master Agreement | Qualification | √ | |
| Appendix G – Product Specifications (in Microsoft Excel only) | Qualification | | √ |
| Appendix C – Commercial Response (in Microsoft Excel only) | Commercial | | √ |
| Technical Specifications for Each of the Proposed Units in Appendix C. | Commercial | | √ |

5.3.4 Other Tender Considerations

In preparing its Tender, the Bidder should adhere to the following:

- (a) Information contained in any embedded link will not be considered part of a Tender, and will not be evaluated or scored;
- (b) The Tender should be complete in all respects. Tender evaluation and scoring applies only to the information contained in the Tender, or accepted clarifications as set out in Section 5.3.13 Clarification of Tenders.

5.3.5 Tender Receipt by OECM

Every Tender received will be date/time stamped by OTP.

A Bidder should allow sufficient time in the preparation of its Tender to ensure its Tender is received **on** or **before** the Closing Date.

5.3.6 Withdrawal of Tender

A Bidder may withdraw its Tender by deleting its submission on OTP **before** the Closing Date or at any time throughout the RFT process until the execution of a Master Agreement. To withdraw a Tender after the Closing Date, the Bidder should send a **Message** to OECM through OTP.

5.3.7 Amendment of Tender on OTP

A Bidder may amend its Tender after submission through OTP, but only if the Tender is amended and resubmitted **before** the Closing Date.

5.3.8 Completeness of Tender

By submitting a Tender, the Bidder confirms that all components required to use and/or manage the Products/Services have been identified in its Tender or will be provided to OECM or its Customers at no additional cost. Any requirement that may be identified by the Bidder after the Closing Date or subsequent to signing the Master Agreement shall be provided at the Bidder's expense.

5.3.9 Tenders Retained by OECM

All Tenders submitted by the Closing Date shall become the property of OECM and will not be returned to the Bidder.

5.3.10 Acceptance of RFT

By submitting a Tender, a Bidder agrees to accept the terms and conditions contained in this RFT, and all representations, terms, and conditions contained in its Tender.

5.3.11 Amendments to RFT

Subject to Section 5.1.1 and Section 5.2.4, OECM shall have the right to amend or supplement this RFT in writing prior to the Closing Date. No other statement, whether written or oral, shall amend this RFT. The Bidder is responsible to ensure it has received all addenda.

5.3.12 Tenders will not be Opened Publicly

The Bidder is advised that there will not be a public opening of this RFT. OECM will open Tenders at a time subsequent to the Closing Date.

5.3.13 Clarification of Tenders

OECM shall have the right at any time after the Closing Date to seek clarification from any Bidder in respect of the Tender, without contacting any other Bidder.

OECM will exercise this right in a similar manner for all Bidders.

Any clarification sought shall not be an opportunity for the Bidder to either correct errors or to change its Tender in any substantive manner. Subject to the qualification in this provision, any written information received by OECM from a Bidder in response to a request for clarification from OECM may be considered, if accepted, to form an integral part of the Tender.

OECM shall not be obliged to seek clarification of any aspect of any Tender.

5.3.14 Verification of Information

OECM shall have the right, in its sole discretion, to:

- (a) Verify any Bidder's statement or claim made in its Tender or made subsequently in a clarification, interview, site visit, oral presentation, demonstration, or discussion by whatever means OECM may deem appropriate, including contacting persons in addition to those offered as references, and to reject any Bidder statement or claim, if such statement or claim or its Tender is patently unwarranted or is questionable; and,
- (b) Access the Bidder's premises where any part of the work is to be carried out to confirm Tender information, quality of processes, and to obtain assurances of viability, provided that, prior to providing such access, the Bidder and OECM shall have agreed on access terms including pre-notification, extent of access, security and confidentiality. OECM and the Bidder shall each bear its own costs in connection with access to each other's premises.

The Bidder shall co-operate in the verification of information and is deemed to consent to OECM verifying such information, including references.

5.3.15 Tender Acceptance

The lowest price Tender or any Tender shall not necessarily be accepted. While price is an evaluation criterion, other evaluation criteria as set out in Part 3 will form a part of the evaluation process.

5.3.16 RFT Incorporated into Tender

All provisions of this RFT are deemed to be accepted by each Bidder and incorporated into each Tender.

5.3.17 Exclusivity of Contract

The Master Agreement, if any, with the Preferred Bidder will not be an exclusive agreement for the provision of the described Deliverables.

5.3.18 Substantial Compliance

OECM shall be required to reject Tenders, which are not substantially compliant with this RFT.

5.3.19 No Publicity or Promotion

No Bidder, including the Preferred Bidder, shall make any public announcement or distribute any literature regarding this RFT or otherwise promote itself in connection with this RFT or any arrangement entered into under this RFT without the prior written approval of OECM.

In the event that a Bidder, including the Preferred Bidder, makes a public statement either in the media or otherwise in breach of this requirement, in addition to any other legal remedy it may have in law, in equity or within the context of this RFT, OECM shall be entitled to take all reasonable steps as may be deemed necessary by OECM, including disclosing any information about a Tender, to provide accurate information and/or to rectify any false impression which may have been created.

5.4 Negotiations, Timelines, Notification and Debriefing

5.4.1 Negotiations with Preferred Bidder

OECM reserves the right to accept or reject any Tenders in whole or in part; to waive irregularities and omissions, if doing so is in the best interests of OECM and its Customers.

The Preferred Bidder shall execute the Master Agreement in the form attached to this RFT with negotiated changes, if any, and satisfy any other applicable conditions of this RFT within three (3) days of invitation to enter into negotiations. This provision is solely to the benefit of OECM and may be waived by OECM at its sole discretion.

If the Preferred Bidder and OECM cannot execute the Master Agreement within the allotted three (3) days, OECM will, as described in Section 3.5 and 3.6, be at liberty to extend the timeline, request the Preferred Bidder to submit its Best and Final Offer, terminate discussions/negotiations with the Preferred Bidder, or publish one (1) or some of the Suppliers, who have executed Master Agreements within OECM's promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Bidders would be added to OECM's website at a later date.

5.4.2 Failure to Execute a Master Agreement

When the Preferred Bidder successfully reaches an agreement with OECM at the end of the negotiation process in accordance with the evaluation set out in this RFT, the Preferred Bidder will be allotted five (5) Business Days to execute the Master Agreement unless otherwise specified by OECM.

If the Preferred Bidder cannot execute the Master Agreement within the allotted timeframe, OECM may rescind the invitation to execute a Master Agreement or publish one (1) or some of the Suppliers, who have executed Master Agreements within OECM's promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Bidders would be added to OECM's website at a later date.

In accordance with the process rules in this Part 5 – Terms and Conditions of the RFT Process, there will be no legally binding relationship created with any Bidder prior to the execution of a written agreement.

5.4.3 Master Agreement

If a Master Agreement is subsequently negotiated and awarded to a Preferred Bidder as a result of this RFT process:

- (a) Any such Master Agreement will commence upon signature by the duly authorized representatives of OECM and the Preferred Bidder; and,
- (b) May include, but not be limited to, the general Master Agreement terms contained in Appendix B – Form of Master Agreement.

5.4.4 Notification to Other Bidders

Once the Master Agreement is executed, other Bidders will be notified directly in writing and shall be notified by public posting in the same manner that the RFT was originally posted of the outcome of the procurement process and the award of the contract.

5.4.5 Debriefing

Any Bidder may request a debriefing after receipt of a notification of award. All requests must be in writing to OECM and should be made within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the Bidder in presenting a better Tender in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

5.4.6 Tender Dispute Resolution

In the event that the Bidder wishes to review the decision of OECM in respect of any material aspect of the RFT process, and subject to having attended a debriefing, the Bidder shall submit a protest in writing to OECM within ten (10) days from such a debriefing.

Any request that is not timely received will not be considered and the Bidder will be notified in writing.

A protest in writing should include the following:

- (a) A specific identification of the provision and/or procurement procedure that is alleged to have been breached;
- (b) A specific description of each act alleged to have breached the procurement process;
- (c) A precise statement of the relevant facts;
- (d) An identification of the issues to be resolved;
- (e) The Bidder's arguments and supporting documentation; and,
- (f) The Bidder's requested remedy.

For the purpose of a protest, OECM will review and address any protest in a timely and appropriate manner. OECM will engage an independent and impartial third party should the need arise.

5.5 Prohibited Communications, and Confidential Information

5.5.1 Confidential Information of OECM

All correspondence, documentation, and information of any kind provided to any Bidder in connection with or arising out of this RFT or the acceptance of any Tender:

- (a) Remains the property of OECM and shall be removed from OECM's premises only with the prior written consent of OECM;
- (b) Must be treated as confidential and shall not be disclosed except with the prior written consent of OECM;
- (c) Must not be used for any purpose other than for replying to this RFT and for the fulfillment of any related subsequent agreement; and,
- (d) Must be returned to OECM upon request.

5.5.2 Confidential Information of the Bidder

Except as provided for otherwise in this RFT, or as may be required by Applicable Laws, OECM shall treat the Tender and any information gathered in any related process as confidential, provided that such obligation shall not include any information that is or becomes generally available to the public other than as a result of disclosure by OECM.

During any part of this RFT process, OECM or any of its representatives or agents shall be under no obligation to execute a confidentiality agreement.

In the event that a Bidder refuses to participate in any required stage of the RFT because OECM has refused to execute any such confidentiality agreement, the Bidder shall receive no points for that particular stage of the evaluation process.

5.5.3 Bidder's Submission

All correspondence, documentation, and information provided in response to or because of this RFT may be reproduced for the purposes of evaluating the Tender.

If a portion of a Tender is to be held confidential, such provisions must be clearly identified in the Tender.

5.5.4 Personal Information

Personal Information shall be treated as follows:

- (a) Submission of information – The Bidder should not submit as part of its Tender any information related to the qualifications or experience of persons who will be assigned to provide Products/Services unless specifically requested. OECM shall maintain the information for a period of seven (7) years from the time of collection. Should OECM request such information, OECM will treat this information in accordance with the provisions of this section;
- (b) Use – Any personal information as defined in the *Personal Information Protection and Electronic Documents Act, S.C. 2005, c. 5* that is requested from a Bidder by OECM shall only be used to select the qualified individuals to undertake the Products/Services and to confirm that the work performed is consistent with these qualifications; and,
- (c) Consent – It is the responsibility of the Bidder to obtain the consent of such individuals prior to providing the information to OECM. OECM will consider that the appropriate consents have been obtained for the disclosure to and use by OECM of the requested information for the purposes described.

5.5.5 Non-Disclosure Agreement

OECM reserves the right to require any Bidder to enter into a non-disclosure agreement satisfactory to OECM.

5.5.6 Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act (Ontario)*, applies to information provided by the Bidder. A Bidder should identify any information in its Tender, or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by OECM and its Customers. The confidentiality of such information will be maintained by OECM, except as otherwise required by law or by order of a court, tribunal, or the Ontario Privacy Commissioner.

By submitting a Tender, including any Personal Information requested in this RFT, the Bidder agrees to the use of such information for the evaluation process, for any audit of this procurement process, and for contract management purposes.

5.5.7 Intellectual Property

The Bidder shall not use any intellectual property of OECM or Customers including, but not limited to, logos, registered trademarks, or trade names of OECM or Customers, at any time without the prior written approval of OECM and the respective Customer.

5.6 Reserved Rights and Governing Law of OECM

5.6.1 General

In addition to any other express rights or any other rights, which may be, implied in the circumstances, OECM reserves the right to:

- (a) Make public the names of any or all Bidders;

- (b) Request written clarification or the submission of supplementary written information from any Bidder and incorporate such clarification or supplementary written information, if accepted, into the Tender, at OECM's discretion, provided that any clarification or submission of supplementary written information shall not be an opportunity for the Bidder to correct errors in its Tender or to change or enhance the Tender in any material manner;
- (c) Waive formalities and accept Tenders that substantially comply with the requirements of this RFT;
- (d) Verify with any Bidder or with a third party any information set out in a Tender;
- (e) Check references other than those provided by Bidders;
- (f) With supporting evidence, disqualify any Bidder on grounds such as:
 - i. Bankruptcy or insolvency;
 - ii. False declarations;
 - iii. Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior agreement or agreements;
 - iv. Final judgments in respect of serious crimes or other serious offence; or,
 - v. Professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Bidder;
- (g) Disqualify any Bidder whose Tender contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Bidder whose Tender is determined by OECM to be non-compliant with the requirements of this RFT;
- (i) Disqualify a Tender based upon the past performance or on inappropriate conduct in a prior procurement process, or where the Bidder has or the principals of a Bidder have previously breached an agreement with OECM, or has otherwise failed to perform such agreement to the reasonable satisfaction of OECM (i.e. has not submitted required reporting and/or Cost Recovery Fees to OECM);
- (j) Disqualify any Bidder, who, in relation to this RFT or the evaluation and selection process, has engaged directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Supplier.
- (k) Disqualify the Bidder who has been charged or convicted of an offence in respect of an agreement with OECM, or who has, in the opinion of OECM, engaged in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion, unethical conduct, including lobbying as described above or other forms of deceitfulness, or other inappropriate communications offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of OECM, or where the Bidder reveals a Conflict of Interest or Unfair Advantage in its Tender or a Conflict of Interest or evidence of any Unfair Advantage is brought to the attention of OECM;
- (l) Disqualify any Tender of any Bidder who has breached any Applicable Laws or who has engaged in conduct prohibited by this RFT, including where there is any evidence that the Bidder or any of its employees or agents colluded with any other Bidder, its employees or agents in the preparation of the Tender;
- (m) Make changes, including substantial changes, to this RFT provided that those changes are issued by way of addenda in the manner set out in this RFT;
- (n) Accept or reject a Tender if only one (1) Tender is submitted;
- (o) Reject a Subcontractor proposed by a Bidder within a Consortium;
- (p) Select any Bidder other than the Bidder whose Tender reflects the lowest cost to OECM;

- (q) Cancel this RFT process at any stage and issue a new RFT for the same or similar requirements, including where:
- i. OECCM determines it would be in the best interest of OECCM not to award a Master Agreement,
 - ii. the Tender prices exceed the bid prices received by OECCM for Products/Services acquired of a similar nature and previously done work,
 - iii. the Tender prices exceed the costs OECCM or its Customers would incur by doing the work, or most of the work, with its own resources,
 - iv. the Tender prices exceed the funds available for the Products/Services, or,
 - v. the funding for the acquisition of the proposed Products/Services has been revoked, modified, or has not been approved,

and where OECCM cancels this RFT, OECCM may do so without providing reasons, and OECCM may thereafter issue a new request for Tenders, request for qualifications, sole source, or do nothing;

- (r) Discuss with any Bidder different or additional terms to those contained in this RFT or in any Tender;
- (s) Accept any Tender in whole or in part;
- (t) If OECCM receives a Tender from a Bidder with Rates that are abnormally lower than the Rates in other Tenders, OECCM may verify with the Bidder that the Bidder satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Tenders in its absolute discretion, including where a Bidder has launched legal proceedings against OECCM and/or its Customers or is otherwise engaged in a dispute with OECCM and/or its Customers;

and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and OECCM shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any third party resulting from OECCM exercising any of its express or implied rights under this RFT.

By submitting a Tender, the Bidder authorizes the collection by OECCM of the information set out under (d) and (e) in the manner contemplated in those subparagraphs.

5.6.2 Rights of OECCM – Bidder

In the event that the Preferred Bidder fails or refuses to execute the Master Agreement within allotted time from being notified, OECCM may, in its sole discretion:

- (a) Extend the period for concluding the Master Agreement, provided that if substantial progress towards executing the Master Agreement is not achieved within a reasonable period of time from such extension, OECCM may, in its sole discretion, terminate the discussions;
- (b) Exclude the Preferred Bidder from further consideration and begin discussions with the next highest scoring Bidder without becoming obligated to offer to negotiate with all Bidders; or,
- (c) Exercise any other applicable right set out in this RFT including, but not limited to, cancelling the RFT and issuing a new RFT for the same or similar Products/Services.

OECCM may also cancel this RFT in the event the Preferred Bidder fails to obtain any of the permits, licences, and approvals required pursuant to this RFT.

5.6.3 No Liability

The Bidder agrees that:

- (a) Any action or proceeding relating to this RFT process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Bidder irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
- (b) It irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFT process on any jurisdictional basis; and,
- (c) It shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFT.

The Bidder further agrees that if OECM commits a material breach of OECM's obligations pursuant to this RFT, OECM's liability to the Bidder, and the aggregate amount of damages recoverable against OECM for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of OECM, shall be no greater than the Tender preparation costs that the Bidder seeking damages from OECM can demonstrate. In no event shall OECM be liable to the Bidder for any breach of OECM's obligations pursuant to this RFT, which does not constitute a material breach thereof. The Bidder acknowledges and agrees that the provisions of the *Broader Public Sector Accountability Act, 2010* shall apply notwithstanding anything contained herein.

5.6.4 Assignment

The Bidder shall not assign any of its rights or obligations hereunder during this RFT process without the prior written consent of OECM. Any act in derogation of the foregoing shall be null and void.

5.6.5 Entire RFT

This RFT and all Appendices form an integral part of this RFT.

5.6.6 Priority of Documents

In the event of any inconsistencies between the terms, conditions, and provisions of the main part of the RFT and the Appendices, the RFT shall prevail over the Appendices during this RFT process.

5.6.7 Disqualification for Misrepresentation

OECM may disqualify the Bidder or rescind a Master Agreement subsequently entered if the Bidder's Tender contains misrepresentations or any other inaccurate, misleading or incomplete information.

5.6.8 References and Past Performance

The evaluation may include information provided by the Bidder's references and may also consider the Bidder's past performance with OECM and/or its Customers.

5.6.9 Cancellation

OECM may cancel or amend the RFT process without liability at any time.

5.6.10 Competition Act

Under Canadian law, a Tender must be prepared without conspiracy, collusion, or fraud. For more information, refer to the Competition Bureau website at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home>, and in particular, part VI of the *Competition Act*, R.S.C. 1985, c. C-34.

5.6.11 Trade Agreements

The Bidder should note that procurements coming within the scope of either Chapter 5 of the Canadian Free Trade Agreement, Chapter 19 of the Comprehensive Economic and Trade Agreement ("CETA") or within the scope of the Trade and Cooperation Agreement between Quebec and Ontario are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFT.

For more information, refer to the following:

- (a) Canadian Free Trade Agreement website at <https://www.cfta-alec.ca/>;
- (b) Trade and Cooperation Agreement between Quebec and Ontario at <https://www.cfta-alec.ca/wp-content/uploads/2017/07/OQTCA-Consolidated-Jan-24-2017.pdf>; and,
- (c) Comprehensive Economic and Trade Agreement at <http://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/index.aspx?lang=eng>.

5.6.12 Governing Law

The terms and conditions in this Part 5:

- (a) Are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision);
- (b) Are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and,
- (c) Are to be governed by and construed in accordance with the laws of the province or territory within which the Customer is located and the federal laws of Canada applicable therein.

[End of Part 5]

APPENDIX A – DEFINITIONS

Unless otherwise specified in this RFT, capitalized words and phrases have the meaning set out in Appendix B – Form of Master Agreement attached to this RFT.

“**Applicable Law**” means any common law requirement and all applicable and enforceable statutes, regulations, directives, policies, administrative interpretations, orders, by-laws, rules, guidelines, approvals and other legal requirements of any government and/or regulatory authority in effect from time to time;

“**Best and Final Offer**” or “**BAFO**” means a process during the negotiation stage in which a Preferred Bidder may be invited by OECS to submit a best and final offer on a process or section of the RFT to improve on their original Tender submission. BAFO cannot be requested by a Bidder;

“**Bidder**” means an entity that submits a Tender in response to this RFT and, as the context suggest, refers to a potential Bidder;

“**Broader Public Sector**” or “**BPS**” means:

- (a) Select classified, non-classified and hydro entities (referred to as Other Included Entities in the Management Board of Cabinet Procurement Directive);
- (b) The Legislative Assembly;
- (c) Every municipality in Ontario as defined in the *Municipal Affairs Act and the Municipal Act*;
- (d) Every regional municipality in Ontario as defined in the *Regional Municipalities Act*;
- (e) The District Municipality of Muskoka as described in the *District Municipality of Muskoka Act*;
- (f) Every local board in Ontario as defined in the *Municipal Affairs Act and the Municipal Act*;
- (g) Every university in Ontario;
- (h) Every college of applied art and technology in Ontario;
- (i) Every post-secondary institution in Ontario, the enrollments of which are used to calculate annual operating grant entitlement;
- (j) Every school board in Ontario as defined in the *Education Act*;
- (k) Every hospital listed in the Schedule to the Classification of Hospitals Regulations made under the *Public Hospitals Act*; and,
- (l) Every private hospital operated under the authority of a licence issued under the *Private Hospitals Act* including:
 - i. Community Health Centres; and,
 - ii. Community Care Access Locations;

See <https://www.ontario.ca/page/broader-public-sector-accountability>;

“**Business Day**” or “**Day**” means Monday to Friday between the hours of 8:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario), or as otherwise agreed to by the parties in writing;

“**Closing Date**” means the Tender submission date and time as set out in OTP and in Section 5.1.1 and may be amended from time to time in accordance with the terms of this RFT;

“**Commercial Envelope**” means an area in OTP where the Bidder would upload its completed Commercial Response;

“**Commercial Response**” means the Rates the Bidder uploads to OTP within Appendix C – Commercial Response as part of the Commercial Envelope;

“Confidential Information” means confidential information of OECCM and/or any Customer (other than confidential information which is disclosed to the Preferred Bidder in the normal course of the RFT) where the confidential information is relevant to the Deliverables required by the RFT, its pricing or the RFT evaluation process, and includes all information concerning the business or affairs of the party or its directors, governors, trustees, officers or employees that is of a confidential nature, which information if in written or other tangible form, is clearly designated as confidential, or if disclosed orally, is designated as confidential in a written memorandum delivered by the disclosing party promptly following such disclosure. For the purposes of greater certainty, Confidential Information shall:

- (a) Include: (i) all new information derived at any time from any such Confidential Information whether created by OECCM, the Customer, the Bidder or any third-party; (ii) all information (including Personal Information) that OECCM or the Customer is obliged, or has the discretion, not to disclose under provincial or federal legislation; and, (iii) pricing under this RFT;
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the disclosing party of any duty of confidentiality owed by it hereunder; (ii) the disclosing party can demonstrate to have been rightfully obtained it, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the disclosing party free of any obligation of confidence; (iii) the disclosing party can demonstrate to have been rightfully known to or in the possession of it at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the disclosing party; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFT process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including, but not limited to (i) having or having access to information in the preparation of its Tender that is confidential to OECCM and not available to other respondents; (ii) communicating with any person with a view to influencing preferred treatment in the RFT process; or (iii) engaging in conduct that compromises or could reasonably be seen to compromise the integrity of the open and competitive RFT process and render that process non-competitive and unfair; or,
- (b) in relation to the performance of its contractual obligations in an OECCM contract, the Bidder’s other commitments, relationships or financial interests (i) could or could reasonably be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could reasonably be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Consortium” means when more than one (1) business entities (i.e. Consortium members) agree to work together and submit one (1) Tender to satisfy the requirements of the RFT. One (1) of the Consortium members shall identify itself as the Bidder and assume full responsibility and liability for the work and actions of all Consortium members;

“Cost Recovery Fee” or **“CRF”** means a fee, which contributes to the recovery of OECCM’s operating costs as a not-for-profit/non share capital corporation, which is based on the before tax amount invoiced by the Supplier to Customers for Deliverables acquired through OECCM’s competitively sourced agreements. Once Customer-Supplier Agreements have been executed, this fee is remitted by the Supplier to OECCM on a quarterly basis;

“Customer” is typically an organization such as educational entities (e.g. school boards or authorities, Provincial and Demonstration Schools Branch with the Ontario Ministry of Education, colleges, and universities, and may also include Private Schools and Private Career Colleges), Crown corporations, First Nations federal agencies, health and social service entities, municipalities, not-for-profit organizations, provincially funded organizations (“PFO”), shared service organizations, utilities and local boards, any other Ontario Public Sector and Broader Public Sector agencies, boards or commissions or similar entities not mentioned here;

“Customer-Supplier Agreement” or **“CSA”** means a schedule attached to the Master Agreement, which is executed between Customers and a Supplier for the provision of the Deliverables in the RFT;

“Deliverable” means all products to be provided or related services performed by the Supplier, under the Master Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Supplier within scope of the resulting Master Agreement;

“Eligible Tender” means a Tender that meets or exceeds the prescribed requirement, proceeding to the next stage of evaluation;

“Master Agreement” or **“Agreement”** means the agreement to be made between the Preferred Bidder and OECM based on the template attached as Appendix B – Form of Master Agreement with negotiated changes, together with all schedules and appendices attached thereto and all other documents incorporated by reference therein, as amended from time to time by agreement between OECM and the Supplier;

“OECM” means the Ontario Education Collaborative Marketplace;

“OECM’s Deadline for Issuing Final Addenda” means the date and time as set out in Section 5.1.1 of this RFT and may be amended from time to time in accordance with the terms of this RFT;

“Ontario Tenders Portal” or **“OTP”** means the electronic tendering platform <https://ontariotenders.app.jaggaer.com/esop/nac-host/public/web/login.html> through which a Bidder’s Tender must be submitted by the Closing Date;

“Optional Second Stage Selection Process” or **“Second Stage”** means an optional process for a request from one (1) or more Suppliers via a Second Stage tool (e.g. Quick Quote (“QQ”), or Customer’s process (e.g. directly or via an online e.tendering platform) from a Customer or from OECM on behalf of a Customer, seeking Rates and relevant Products/Services specific to a Customer’s organization;

“PFO” means a provincially funded organization;

“Personal Information” has the same definition as in subsection 2(1) of FIPPA and in subsection 2(1) of MFIPPA, that is, recorded information about an identifiable individual or that may identify an individual and includes all such information obtained by the Bidder from OECM or the Customer or created by the Bidder pursuant to the RFT;

“Preferred Bidder” means the Bidder that is invited into negotiations in accordance with the evaluation process set out in this RFT;

“Product” means all Products to be provided by the Supplier, under the Master Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Supplier;

“Project Advisory Committee” or **“PAC”** means the individuals providing input into the development of this RFT, and

“Purchasing Card” or **“P-Card”** means the corporate charge cards used by the Customer, as may be changed from time to time;

“Rates” means the maximum prices per unit of measure, in Canadian funds, for the Products as set out in the Bidder’s submitted Appendix C - Commercial Response;

“Request for Tenders” or **“RFT”** means this Request for Tenders #2021-378 issued by OECM, including all appendices and addenda thereto;

“Service” means all Services to be provided by the Supplier, under the Master Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Supplier;

“Subcontractor” includes the Supplier’s subcontractors or third-party providers or their respective directors, officers, agents, employees or independent contractors, who shall fall within the meaning of Supplier for the purposes of the Master Agreement as mutually agreed upon by the Customer;

“Supplier” means a Preferred Bidder who has fully executed a Master Agreement with OECM and has assumed full liability and responsibility for the provision of Deliverables pursuant to the Master Agreement either as a single Supplier or a lead Supplier engaging other suppliers or Subcontractors;

“Tender” means all documentation and information submitted by a Bidder in response to the RFT;

“Term” has the meaning set out in Part 1 of this RFT; and,

“Unfair Advantage” means any conduct, direct or indirect, by a Bidder that may result in gaining an unfair advantage over other Bidders, including, but not limited to (i) possessing, or having access to, information in the preparation of its Tender that is confidential to OECM and which is not available to other Bidders, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFT process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFT process and result in any unfairness.

APPENDIX B – FORM OF MASTER AGREEMENT

This appendix is posted as a separate PDF document on OTP.

APPENDIX C – COMMERCIAL RESPONSE

The Bidder **must** complete this appendix, posted as a separate Microsoft Excel document, and upload it into OTP.

APPENDIX D – REPORTING REQUIREMENTS

Once CSAs have been executed, the Supplier must provide the following reports to OEMC for the Term. Reports shall be submitted via email in Microsoft Excel format according to the frequency set out below.

| Supplier Reporting Requirements | | |
|---|-------------------------|---|
| Reports | Frequency | Due Date |
| <u>Integrated Reporting Template</u> | | |
| <ol style="list-style-type: none"> 1. Sales Report including, but not limited to: <ol style="list-style-type: none"> (a) Customer's name; (b) Invoice number and date; (c) Manufacturer's name and model number; (d) Supplier's Product number; (e) Product/Service description; (f) Unit of measure; (g) Quantity shipped per unit of measure; (h) Rate per Product/Service; (i) Total; and, (j) Cost Recovery Fees. 2. CSA Status Report including, but not limited to: <ol style="list-style-type: none"> (a) The number of executed CSAs; and, (b) CSAs pending execution. 3. Second Stage Report including, but not limited to: <ol style="list-style-type: none"> (a) Customer's name; (b) Reference number; (c) Number of requests received and submitted; (d) Product/Service requirement (e.g. type, committed volume); and, (e) Status (e.g. complete, due date to return to Customer). | Monthly | 8th Business Day |
| <u>Performance Reporting</u> | | |
| <ol style="list-style-type: none"> 1. Key Performance Indicators Report - As set out in Appendix E – Performance Management Scorecard | Quarterly (calendar) | 8th Business Day following each quarter |
| <u>Other Reports:</u> | | |
| Specific Customer Reports - As requested (e.g. spend, back order, delivery) | As requested | As requested |
| OECM Ad Hoc Reports - As requested and mutually agreed upon | As requested | As requested |

Final reporting requirements will be determined during negotiations.

APPENDIX E – PERFORMANCE MANAGEMENT SCORECARD

Master Agreement performance means the Supplier aligns with OECM's three (3) pillars of Savings, Choice and Service, supporting the growth of the Master Agreement among Customers, and providing quality Products/Services at competitive Rates.

Supplier performance means the Supplier meets or exceeds the performance requirements described below and adheres to all the other contractual requirements.

As part of OECM's efforts to provide greater value to Customers, OECM has implemented a Supplier Recognition Program ("SRP"). Through the SRP, OECM will objectively assess Supplier's performance using an open, fair and transparent framework to recognize and reward top-performing suppliers on an annual basis.

To ensure Master Agreement requirements are met, the Supplier's performance will be measured and tracked by OECM to ensure:

- (a) On time delivery of high-quality Resources at the Master Agreement Rates or lower;
- (b) Customer satisfaction;
- (c) On-time Master Agreement activity reporting to OECM;
- (d) On-time Cost Recovery Fee remittance; and,
- (e) Continuous improvement.

Reporting, as described in Appendix D – Reporting Requirements is mandatory for the Supplier to submit as they provide evidence and justification of adherence to the Master Agreement. Through consolidation of reporting information, OECM provides Customers a thorough understanding of the Supplier's performance aiding the adoption of the Master Agreement.

By providing the reports, OECM is able to analyze and maintain the integrity of the Supplier's performance.

Failure, by the Supplier, to provide accurate reports by the due dates set out in Appendix D – Reporting Requirements may be deemed poor performance and will reflect on the Supplier's Performance Management Scorecard and SRP results.

During the Term, the Supplier shall collect and report the agreed upon results of the performance measures as requested by OECM. The Performance Management Scorecard and other performance indicators will be used to measure the Supplier's performance throughout the Term, ensuring Customers receive appropriate Products/Services on time. The Supplier's performance score will be considered when OECM contemplates Master Agreement decisions such as:

- (a) The approval or rejection, in whole or in part, of the Supplier's Rate refresh requests;
- (b) The approval or rejection of the Supplier's request to add other related Resources to the Master Agreement;
- (c) Master Agreement extensions; and,
- (d) Master Agreement termination.

The Supplier shall maintain accurate records to facilitate the required performance management reporting requirements related to OECM and Customer KPIs.

During the business review, OECM will review the KPIs with the Supplier. The KPIs include but are not limited to the following:

| Supplier Provided Customer Performance Measures | | |
|--|--|---|
| Key Performance Indicator | Performance Measurement | Performance Goal |
| Customer Issues – Number of Customer complaints | Total of Customer complaints annually out of total Customer requests | Less than 2% of total Customer requests |
| On-time deliveries | Actual lead time versus lead time agreed upon | Better than or equal to 98% of the time |
| Quality of Products | Percentage of returns by Customer | Less than 2% of total orders |
| Accurate Invoicing | Number of Invoicing errors annually | Less than 2% annually |

| OECM Evaluation of Supplier's Performance | | |
|---|---|-------------------------|
| Key Performance Indicator | Performance Measurement | Performance Goal |
| On time executed CSA submissions | Within 30 days of execution | 98% of the time |
| On time and completed KPI Report submissions | 8th Business Day following each quarter | 98% of the time |
| On time Rate Refresh submissions | At least one-hundred-and-twenty (120) days prior to the Master Agreement's anniversary date | 98% of the time |
| On time and completed Integrated Reporting Template submission, including: - Sales Report; - CSA Status Report; and, - Second Stage Report | 8th Business Day of each month | 98% of the time |
| On time Cost Recovery Fee Payment Remittance | Tenth (10 th) Business Day of each calendar quarter | 98% of the time |
| Response Time to OECM Inquiries | One (1) Business Day | 98% of the time |

Other KPIs, as mutually agreed upon between the Supplier and OECM, may be added during the Term.

Customer may, when executing a Customer-Supplier Agreement, seek other KPIs.

Penalties and Rewards

The Supplier shall be responsible for all liquidated damages incurred by the Customers as a result of Supplier's failure to perform according to the Master Agreement and/or Customer-Supplier Agreement. Additional penalties for failure to meet or rewards for exceeding the Master Agreement and/or Customer-Supplier Agreement requirements may be mutually agreed upon between the Customer and the Supplier, at the time of Customer-Supplier Agreement execution. Any penalty and/or reward shall be reported to OECM.

APPENDIX F – CODE OF CONDUCT

The Supplier will take every measure to comply with OECEM's Supplier Code of Conduct ("SCC") principles set out below and to adopt behaviours and practices that are in alignment with these principles or those of OECEM's Customers as mutually agreed upon between the Customer and Supplier. OECEM's core values are in alignment with and entrenched within the key principles of the SCC. The SCC applies to the Supplier's owners, employees, agents, partners and subcontractors who provide Products/Services to OECEM and/or Customers.

The Supplier will manage their operations according to the most stringent standards of ethical business, integrity and equity. The Supplier must therefore:

- (a) Refrain from engaging in any form of non-competitive or corrupt practice, including collusion, unethical bidding practices, extortion, bribery and fraud;
- (b) Ensure that responsible business practices are used, including ensuring that business continuity and disaster recovery plans are developed, maintained and tested in accordance with applicable regulatory, contractual and service level requirements, and that healthy and safe workplaces that comply with relevant health and safety laws are provided;
- (c) Ensure the protection of the confidential and personal information they receive from OECEM, and only use this information as part of their business relations with OECEM;
- (d) Comply with intellectual property rights relating to the Products/Services provided to OECEM and its Customers;
- (e) Never place an OECEM employee in a situation that could compromise his/her ethical behaviour or integrity or create a conflict of interest;
- (f) Divulge all actual and potential conflicts of interest to OECEM; and,
- (g) Disclose to OECEM any behaviour deemed unethical on the part of an OECEM employee.

Also, the Supplier shall:

- (a) Comply with all foreign and domestic applicable federal/provincial/municipal laws and regulations including, but not limited to the environment, health and safety, labour and employment, human rights and Product safety and anti-corruption laws, trade agreements, conventions, standards, and guidelines, where the Products/Services are provided to OECEM Customers. Fair competition is to be practised in accordance with applicable laws. All business activities and commercial decisions that restrict competition or may be deemed to be uncompetitive are to be avoided;
- (b) Not try to gain improper advantage or engage in preferential treatment with OECEM employees and Customers. The Supplier must avoid situations that may adversely influence their business relationship with OECEM or can be directly or indirectly perceived as a conflict of interest and interfere with the provision of the Products/Services to OECEM or its Customers. The Supplier must disclose any actual or potential conflicts of interest promptly to OECEM;
- (c) Never offer to OECEM staff bribes, payments, gifts of entertainment or any type of transactions, inducements, services, discounts and/or benefits that may compromise or appear to compromise an OECEM's employees' ability to make business decisions in the best interest of OECEM and its Customers. If a Supplier is unsure whether a gift or entertainment offer to an OECEM employee complies with OECEM's SCC, the Supplier should consult with the intended recipient's manager;
- (d) Not engage in any improper conduct to gain influence or competitive advantage especially that which would put OECEM or its Customers at risk of violating anti-bribery and/or anti-corruption laws. The Supplier must ensure that the requirements of all these applicable laws are met, and not engage in any form of corrupt practices including extortion, fraud or bribery;
- (e) Ensure that any outsourcing and/or subcontracting used to fulfill Products/Services are identified and approved by the Customer and monitored to ensure compliancy with contractual obligations and adherence to OECEM's SCC. Supplier's employees, subcontractors and other service providers must adhere to the requirements of the SCC, which must be made available as necessary. The Supplier must also ensure that its subcontractors and other service providers are paid properly and promptly to avoid any disruption in the provision of Products/Services by the Supplier to OECEM or its Customers;

- (f) Maintain workplace professionalism and respect for the dignity of all employees, Customers, and individuals. The Supplier must never exercise, tolerate or condone harassment, discrimination, violence, retaliation and any other inappropriate behaviour;
- (g) Abide by applicable employment standards, labour, non-discrimination and human rights legislation. Where laws do not prohibit discrimination, or where they allow for differential treatment, the expectation of the Supplier is to be committed to non-discrimination principles and not to operate in an unfair manner. The Supplier must be able to demonstrate that their workplaces operate under the following principles:
 - i. Child labour is not accepted;
 - ii. Discrimination and harassment are prohibited, including discrimination or harassment based on any characteristic protected by law;
 - iii. Employees are free to raise concerns and speak up without fear of reprisal;
 - iv. Appropriate and reasonable background screenings, including investigations for prior criminal activity, have been completed to ensure integrity and character of the Supplier's employees; and,
 - v. Clear and uniformly applied employment standards are used that meet or exceed legal and regulatory requirements;
- (h) Provide healthy and safe workplaces for their employees. These workplaces must comply with applicable health and safety laws, statutes and regulations to ensure a safe and healthy work environment. Employers must also ensure that their employees are properly trained and that they have easy access to information and instructions pertaining to health and safety practices; and,
- (i) Give high priority to environmental issues and implement initiatives to foster sound environmental management through practices that prevent pollution and preserve resources. The Supplier must conduct business in an environmentally responsible and sustainable manner. The Supplier must comply with all applicable environmental laws, statutes and regulations, including, but not limited to, waste disposal (proper handling of toxic and hazardous waste), air emissions and pollution, to ensure that they meet all legal requirements and strive to prevent or mitigate adverse effects on the environment with a long-term objective of continual improvement.

The Supplier is expected to:

- (a) Abide by OEMC's SCC;
- (b) Report violations of the SCC or identify any Customer requests that might constitute violations; and,
- (c) Cooperate and collaborate with OEMC and bring about the resolution of SCC compliance issues.

Compliance with SCC principles is a criterion that is taken into consideration in OEMC's supplier selection process and ongoing performance and relationship management.

The practices adopted by the Supplier must be verifiable. Such verification may be conducted by way of a Supplier's self-evaluation and/or an audit completed by OEMC at its discretion. The Supplier must provide, upon request, OEMC with documents attesting to their compliance with the SCC.

In addition, OEMC may elect to visit the Suppliers' facilities if OEMC so chooses. Appropriate notice will be provided to the Supplier. Whenever a situation of non-compliance is identified, OEMC will endeavor to work with the Supplier in order to develop a corrective plan to resolve the non-compliant issues in a timely manner.

Failure to comply with OEMC's SCC may result in termination of this Master Agreement.

For more information, visit OEMC's website at <https://oecm.ca/oecm-advantage/our-Supplier-partners/Supplier-code-of-conduct>.

APPENDIX G – PRODUCT SPECIFICATIONS

The Bidder **must** complete this appendix, posted as a separate Microsoft Excel document, and upload it into OTP.