



Savings | Choice | Service

CREDIT AND DEBIT CARD PROCESSING DEVICES AND SERVICES

REQUEST FOR PROPOSALS NUMBER 2019-343

(Final with Amendments)

Request for Proposals Issued On: January 17, 2020

Proponent's Information & OTP Demonstration Session: 10:00 am on January 23, 2020

Proponent's Deadline to Submit Questions: 2:00 pm on January 24, 2020

**Proponent's Deadline to Submit Questions Related to
Addenda & Question and Answer Documents:** 2:00 pm on February 6, 2020

Closing Date: 2:00:00 pm on February 19, 2020 local time in Toronto, Ontario, Canada

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

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

TABLE OF CONTENTS

PART 1 – INTRODUCTION	5
1.1 Background and Historical Data	5
1.2 Objective of this RFP	5
1.3 Supplier Expertise and Capabilities	5
1.4 Project Advisory Committee.....	6
1.5 Use of OECM Master Agreements	6
1.6 Overview of OECM	6
1.7 The Ontario Broader Public Sector Procurement Directive.....	7
1.8 Trade Agreements	7
1.9 Rules of Interpretation.....	7
PART 2 – THE DELIVERABLES	8
2.1 Services	8
2.1.1 PCI Compliance.....	8
2.1.2 Security and Fraud Prevention	8
2.1.3 Secure Payment Profiles	9
2.1.4 Payment Processing Gateways	9
2.1.5 Merchant Category Codes.....	10
2.1.6 Settlement Accounts.....	10
2.1.7 Credit Card Updating Services	10
2.1.8 Record Retention.....	10
2.1.9 Processing Services	11
2.1.9.1 Batch Payment Processing Services	11
2.1.9.2 Chargeback Processing Services	11
2.1.9.3 E-commerce Payment Processing Services.....	11
2.1.9.4 E-wallet Payment Processing Services.....	12
2.1.9.5 Pre-authorization Payment Processing Services	12
2.2 Point-of-Sale Devices	12
2.2.1 Device Functions	13
2.2.2 Electrical Requirements.....	13
2.2.3 Delivery.....	13
2.2.3.1 Delivery Lead Times	14
2.2.3.2 Back Orders.....	14
2.2.3.3 Damaged or Defective Shipments	14
2.2.3.4 Returns	14
2.2.3.5 Recalls.....	14
2.2.3.6 Discontinued Devices	14
2.2.3.7 Upgrade Devices	14
2.3 Order Management.....	15
2.3.1 Minimum Order.....	15
2.3.2 Order Acknowledgement	15
2.3.3 Order Changes and/or Cancellation	15
2.3.4 Electronic Commerce.....	15
2.4 Invoicing.....	15
2.4.1 Payment Terms and Methods.....	16
2.4.2 Electronic Fund Transfer.....	16
2.5 Support to Customers	16
2.5.1 Technical Support.....	16
2.5.2 Transition	17
2.5.3 Implementation Services.....	17
2.5.4 Training.....	17
2.5.5 Reporting	18
2.6 Environmental Considerations	18
2.7 Social Procurement	18
2.8 Disaster Recovery and Business Continuity	18
2.9 Licences, Right to Use and Approvals	18
PART 3 – EVALUATION OF PROPOSALS	19

3.1	Stages of Proposal Evaluation.....	19
3.2	Stage I – Review of Qualification Responses (Pass/Fail)	19
3.3	Stage II – Technical Response	19
3.4	Stage III – Commercial Response	20
3.5	Stage IV – Cumulative Score.....	21
3.6	Stage V – Tie Break Process.....	21
3.7	Stage VI – Negotiations	21
3.8	Stage VII – Master Agreement Finalization.....	22
PART 4 – MASTER AGREEMENT STRUCTURE AND MANAGEMENT.....		23
4.1	Master Agreement Structure.....	23
4.1.1	No Contract until Execution of Written Master Agreement.....	23
4.1.2	Customer’s Usage of Master Agreements	23
4.1.3	No Guarantee of Volume of Work or Exclusivity of Master Agreement.....	24
4.2	Rates	24
4.2.1	Interchange Rates	24
4.2.2	Optional Rate Refresh	24
4.2.3	Optional Process to Add Other Devices and/or Services.....	25
4.2.4	OECM Cost Recovery Fee	25
4.2.5	Financial Administration Act (“the FAA”) Section 28.....	26
4.2.6	Saving Calculation	27
4.3	Master Agreement Management Support to OECM	27
4.3.1	Master Agreement Launch.....	27
4.3.2	Promoting OECM Master Agreements.....	28
4.3.3	Supplier’s Performance Management Scorecard	28
4.3.4	OECM’s Supplier Recognition Program.....	28
4.3.5	Reporting to OECM.....	29
PART 5 – TERMS AND CONDITIONS OF THE RFP PROCESS.....		30
5.1	General Information and Instructions.....	30
5.1.1	RFP Timetable.....	30
5.1.2	Proponent’s Information and OTP Demonstration Session.....	30
5.1.3	Proponent to Follow Instructions.....	31
5.1.4	OECM’s Information in RFP Only an Estimate	31
5.1.5	Proponent’s Costs	31
5.2	Communication after RFP Issuance	31
5.2.1	Communication with OECM.....	31
5.2.2	Proponent to Review RFP	32
5.2.3	Proponent to Notify	32
5.2.4	All New Information to Proponents by way of Addenda	32
5.3	Proposal Submission Requirements.....	33
5.3.1	General.....	33
5.3.2	Proposal in English	33
5.3.3	Proposal Submission Requirements.....	33
5.3.4	Other Proposal Considerations.....	34
5.3.5	Proposal Receipt by OECM.....	34
5.3.6	Withdrawal of Proposal.....	34
5.3.7	Amendment of Proposal on OTP	34
5.3.8	Completeness of Proposal.....	34
5.3.9	Proposals Retained by OECM.....	34
5.3.10	Acceptance of RFP.....	34
5.3.11	Amendments to RFP.....	34
5.3.12	Proposals will not be Opened Publicly	35
5.3.13	Clarification of Proposals	35
5.3.14	Verification of Information	35
5.3.15	Proposal Acceptance.....	35
5.3.16	RFP Incorporated into Proposal.....	35
5.3.17	Exclusivity of Contract.....	35
5.3.18	Substantial Compliance	35
5.3.19	No Publicity or Promotion	35
5.4	Negotiations, Timelines, Notification and Debriefing.....	36
5.4.1	Negotiations with Preferred Proponent.....	36

5.4.2	Failure to Execute a Master Agreement.....	36
5.4.3	Master Agreement	36
5.4.4	Notification to Other Proponents.....	36
5.4.5	Debriefing	37
5.4.6	Bid Dispute Resolution.....	37
5.5	Prohibited Communications, and Confidential Information	37
5.5.1	Confidential Information of OECM	37
5.5.2	Confidential Information of the Proponent.....	37
5.5.3	Proponent’s Submission	38
5.5.4	Personal Information.....	38
5.5.5	Non-Disclosure Agreement.....	38
5.5.6	Freedom of Information and Protection of Privacy Act.....	38
5.5.7	Intellectual Property	38
5.6	Reserved Rights and Governing Law of OECM.....	38
5.6.1	General.....	38
5.6.2	Rights of OECM – Proponent	40
5.6.3	No Liability	40
5.6.4	Assignment.....	41
5.6.5	Entire RFP	41
5.6.6	Priority of Documents.....	41
5.6.7	Disqualification for Misrepresentation	41
5.6.8	References and Past Performance	41
5.6.9	Cancellation	41
5.6.10	Competition Act	41
5.6.11	Trade Agreements	41
5.6.12	Governing Law.....	42
 APPENDIX A – DEFINITIONS.....		43
APPENDIX B – FORM OF MASTER AGREEMENT		48
APPENDIX C – COMMERCIAL RESPONSE.....		49
APPENDIX D – REPORTING REQUIREMENTS		50
APPENDIX E – PERFORMANCE MANAGEMENT SCORECARD		51
APPENDIX F – CODE OF CONDUCT		53

PART 1 – INTRODUCTION

This non-binding Request for Proposals (“RFP”) is an invitation to obtain Proposals from qualified Proponents for Credit and Debit Card Processing Devices and Services as described in Part 2 – The Deliverables and in Part 4 – Master Agreement Structure and Management.

OECM intends to award up to four (4) Master Agreements, with an initial Term of the Master Agreement (“Term”) of three (3) years with an option in favour of OECM to extend the Term on the same terms and conditions for two (2) additional term of up to three (3) years. Refer to the details contained within the RFP for a full description of the requirements.

1.1 Background and Historical Data

In 2012, OECM issued a request for proposals for Credit and Debit Card Processing Services and awarded one (1) supplier in August 2013. This agreement expires on August 5, 2020. There are currently thirty-one (31) unique Customers using this existing OECM Credit and Debit Card Processing Services agreement:

- (a) Ten (10) School Boards;
- (b) Seven (7) Colleges;
- (c) Four (4) Universities; and,
- (d) Ten (10) other organizations.

Approximate Transaction volume through the existing agreement from October 2013 to October 2019 are one-point-six-billion dollars (\$1.6 Billion) and the number of Transaction are approximately twelve million (12 Million).

Customers using the current OECM agreement are **not**, in any way, obligated to participate in any Master Agreement resulting from this RFP.

1.2 Objective of this RFP

The objective of this RFP is to provide OECM Customers Credit and Debit Card Processing Devices and Services to satisfy their requirements and to reduce the costs of competitive procurement processes associated with the Devices and/or Services on an ongoing basis.

The purpose of this RFP process is to select Suppliers that will:

- (a) Be compliant with all Payment Card Industry (“PCI”) Data Security Standards;
- (b) Be capable of providing innovative e-solutions for credit and debit card processing (e.g. e-commerce payment processing, e-wallet payment processing);
- (c) Be capable of providing quality Devices and/or Services in a timely manner, demonstrating value for money;
- (d) Provide Customers with professional and responsive Customer support and account management;
- (e) Work in a cooperative manner with Customers, are flexible, and innovative in providing quality Devices and/or Services; and,
- (f) Provide volume discount and predictable Rates.

1.3 Supplier Expertise and Capabilities

The Supplier shall deliver the Services to meet the requirements set out in this RFP during the Term and should possess at a minimum:

- (a) Ability to provide secure, accurate PCI compliant Payment Instrument Transactions;
- (b) Ability to provide point-of-sale Devices (e.g. hardware and software), while the Supplier retains ownership;

- (c) Ability to implement risk-assessment process and identify critical assets, threats, and vulnerabilities;
- (d) Ability to protect Payment Instrument Information;
- (e) Expertise on implementation, training and, if necessary, integration;
- (f) Capability to provide a recorded process for change requests and system improvements; and,
- (g) Capability to ensure professional and timely customer support (e.g. technical and administrative).

PCI Data Security Standard Certificate of Compliance and risk-assessment reports are subject to verification by the Customer during the Term.

1.4 Project Advisory Committee

The following Customers were involved with the development of the requirements set out in this RFP:

- (a) Carleton University;
- (b) Conestoga College;
- (c) Halton Healthcare;
- (d) Laurentian University;
- (e) Queen's University;
- (f) Saint Vincent Hospital, Bruyere Continuing Care; and,
- (g) Seneca College.

The above Customers are **not**, in any way, committed to participating in the Master Agreement resulting from this RFP.

1.5 Use of OECM Master Agreements

As of October 2019, seven hundred and forty-three (743) Customers were using one (1) or more OECM agreements with a cumulative spend of more than one billion dollars over the last ten (10) years. The annual spend for 2018 increased by thirty-eight percent (38%) when compared to 2017.

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

1.6 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.

1.7 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>.

1.8 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 RFP. For more information, refer to the Section 5.6.11.

1.9 Rules of Interpretation

This RFP 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 RFP 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 RFP, 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 RFP:
 - 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 OECM or the Supplier, such terms shall be construed and interpreted as synonymous and shall be construed to read "OECM shall" or the "Supplier shall", as the case may be;
 - ii. The term "should" relates to a requirement that OECM 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 RFP describes the Credit and Debit Card Processing Devices and Services (“Services”) Deliverables which will be incorporated into the final Master Agreements.

The Supplier shall provide all RFP requirements.

2.1 Services

The Supplier shall provide credit and debit card processing Services including, but not limited to:

2.1.1 PCI Compliance

The Supplier shall provide, at no charge to the Customers, expertise and guidance for the Customer to achieve PCI compliance, if required, including:

- (a) Assessment of the Customer’s PCI compliance status and providing recommendations for improvement;
- (b) Support Customer’s with fraud protection and prevention;
- (c) Assisting Customers in drafting an overall plan to achieve and maintain PCI compliance;
- (d) Participating in PCI-related meetings and conference calls; and,
- (e) Offering a range of PCI compliant solutions designed for Customer’s many business streams (e.g. donations (mobile and cell centres), hospitality).

If the Customer’s payment processing environment or infrastructure is cloud-based the Supplier shall be compliant with all PCI Data Security Standards as established by the PCI Standards Council and the Supplier shall provide a valid PCI Data Security Standard Certificate of Compliance to the Customers upon request.

If the Customer’s payment processing environment or infrastructure is housed on-premise using Customer’s servers or data centres, the responsibilities for compliance lies with the Customers. However, the Supplier should offer the managed compliance and security Services to the Customers fined for non-compliance and provide recommendations for improvement at a cost mutually agreed upon between the Customer and Supplier.

PCI Data Security Standards are technical and operational requirements set by the PCI Standards Council <https://www.pcisecuritystandards.org/> to protect cardholder data.

2.1.2 Security and Fraud Prevention

The Supplier shall adhere to the following security and fraud prevention programs, in each case as they may be amended from time to time.

- (a) Visa’s Account Information Security program;
- (b) Discover’s Information Security & Compliance program;
- (c) American Express’s Data Security Operating Policy;
- (d) MasterCard’s Site Data Protection Program;
- (e) MasterCard’s POS Terminal Security program;
- (f) Payment Card Industry Data Security Standards;
- (g) Payment Card Industry’s Payment Application Data Security Standard; and,
- (h) the Payment Card Industry PIN Transaction Security program.

The Supplier shall ensure the Devices and/or Services provided meet required security standards, including all rules, regulations, standards, or guidelines adopted or required by the Card Brands

and/or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, storage, processing, transmission, and handling of Payment Instrument Information.

The Supplier shall convey to Customers, all rules, regulations, standards, and guidelines required to meet the Card Brand and Payment Card Industry security standards.

The Supplier shall provide software updates and hardware patches to address any of the security threats in the timely manner and shall notify the Customers in advance of any updates.

The Supplier shall possess fraud protection tools to ensure the prevention of fraudulent unauthorized Transactions.

The Supplier shall be responsible for the loss of any Payment Instrument Information, and shall once aware, notify Customers immediately.

2.1.3 Secure Payment Profiles

The Supplier shall implement tokenisation and encryption to replace any sensitive data with a non-sensitive data that has no extrinsic or exploitable meaning or value. These shall follow the guideline of the PCI Data Security Standard as set out by the PCI Standards Council.

The tokenisation should be combined with point-to-point encryption (P2PE), Visa Tokenisation Best Practices, EMVCO LLC and/or FF1/FF2 standardized by NIST.

2.1.4 Payment Processing Gateways

The Supplier shall initiate or relay Transactions via secure means in accordance with PCI Data Security Standards for security, speed, and encryption.

The Supplier ~~should~~ **shall** accept transaction Data from various Customer gateways and/or applications, including but not limited to:

- (a) Authorize.net;
- (b) Bambora;
- (c) Banner;
- (d) Bookware;
- (e) Cale Pay & Display;
- (f) CLASS by Active Network Inc.;
- (g) Credit Call;
- (h) Orbus;
- (i) Skipjack;
- (j) Sparks;
- (k) Touchnet; and,
- (l) TransActive Ecommerce Solutions Inc.

2.1.4.1 User-based Access

The Supplier shall provide Customers the following capabilities at a minimum:

- (a) Extensive hierarchy of user roles with a wide range of access privileges and ability to tailor them to each Customer's specific requirements;
- (b) Multi-Factor Authentication for gateway;

- (c) Restricted remote access, remote access pre-set to reading rights only for all roles to prevent processing Transactions from non-secured locations for virtual terminal environment;
- (d) Ability to monitor and lock down fraudulent IPs based on suspicious activities (e.g. high volume of repeated attempts, sometimes testing different card numbers, at short time intervals for the same amount from same IP); gateway should be designed to shut the IP down and alert customer;
- (e) Gateway's test environment shall be set up to accept test credit card numbers only, decline real credit cards, and send a notification to the customer; and,
- (f) Transaction shall be traceable to the application responsible for a particular Transaction.

2.1.5 Merchant Category Codes

The Supplier shall ensure Customers are assigned the correct merchant category code ("MCC") to receive the lowest possible Service fees structure.

School Boards, Colleges, and Universities ("SCU's"), for instance, should be set up with one (1) of the following three (3) MCC's:

- (a) 8211 – Elementary and Secondary Schools;
- (b) 8220 – Colleges, Universities, Professional Schools, Junior Colleges; and,
- (c) 8351 – Child Care Services.

Non-educational Customers (e.g. Other BPS organizations) should also be appropriately set up to ensure the MCC used for Customers results in the lowest possible Service fee structure, such as:

- (d) 7011 – Lodging - hotels, motels, resorts, and central reservation services (not elsewhere classified).

2.1.6 Settlement Accounts

The Supplier shall accept and process Transactions and credit or debit the funds in or out of the Customer's financial institution Settlement Account within ~~two (2)~~ **one (1)** Business Days.

If the Customer possess more than two (2) Settlement Accounts (e.g. one (1) in Canadian dollar and the other in foreign currency such as United States dollar), the Supplier shall provide Customers the option to choose how to process the Transactions. Either all Transactions will maintain the foreign currency, or all Transaction will be converted into Canadian dollars.

The Supplier shall accept and process Transactions in foreign currency and convert the Transactions through interbank exchange rate.

Customers shall not maintain a reserve or holdback account as part of the Services.

2.1.7 Credit Card Updating Services

The Supplier shall provide Services to provide a Payee's card number and expiration date updates to the Customer who maintain card-on-file ("COF") account information to process recurring member payments. (e.g. Visa Account Updater ("VAU"), MasterCard Automatic Billing Updater ("MABU") and/or Automatic Billing Updater ("ABU")).

2.1.8 Record Retention

Customers shall be able to easily retrieve historical Transaction Data from the Supplier. The Supplier shall provide Services including, but not limited to:

- (a) Maintain payment Transaction Data online for a minimum of eighteen (18) months from the date when the Transaction occurred;

- (b) Support the Customers to access the historical Transaction Data before closing their account with Supplier by providing a written notice thirty (30) days to the Supplier prior to closing their account with the Supplier;
- (c) Secure deletion of cardholder data when no longer needed for legal, regulatory, or business reasons;
- (d) Provide proof of data disposal to the Customer on quarterly basis; and,
- (e) Implement a quarterly process for identifying and securely deleting stored data that exceeds defined retention requirements.

2.1.9 Processing Services

The Supplier shall provide processing Services including, but not limited to:

2.1.9.1 Batch Payment Processing Services

Batch payment processing Services is processing all of the Customer's Transactions the day after the close of business or at a time mutually agreed upon between the Customer and the Supplier.

The Supplier shall provide written notice to the Customer of at least one hundred and twenty (120) days if requesting a time change.

2.1.9.2 Chargeback Processing Services

Chargeback processing Services is the withdrawal (i.e. debit) from the Customer's Settlement Account, of an amount that had previously been deposited (i.e. credited) to the Settlement Account, together with the applicable processing Rate due to a dispute by the Payee of a Transaction.

The Supplier shall notify the Customer of a Chargeback by:

- (a) Facsimile; and,
- (b) Email with a link to its online tool containing the detail information about the Chargeback. Details of the Chargeback cannot be contained in the email itself.

Chargeback notices shall include the following, at a minimum:

- (a) Customer name;
- (b) Payee account number;
- (c) Documentation from the Payee substantiating the claim;
- (d) POS Device identification number;
- (e) Rate for Chargeback;
- (f) Reason for the Chargeback;
- (g) Supplier provided Customer account number;
- (h) Transaction date;
- (i) Transaction number; and,
- (j) Value of Transaction.

If a Chargeback has occurred in error, the Customer shall recover all Chargeback Rates and any other applicable costs associated with that Transaction.

2.1.9.3 E-commerce Payment Processing Services

The Supplier shall provide e-commerce payment processing Services including, but not limited to:

- (a) Accept online credit cards payments;
- (b) Fraud and encryption tools to protect the Payee and Customers' sensitive data; and,
- (c) Capability to display convenience fee as a separate charge on the online credit card payment receipt, and the card holder's credit card statement.

2.1.9.4 E-wallet Payment Processing Services

The Supplier shall provide e-wallet processing Services to accept at a minimum:

- (a) Apple Pay;
- (b) Google Pay;
- (c) WeChat Pay; and,
- (d) Union Pay.

The Supplier shall continue to provide new and innovation e-wallet payment processing Services to Customers during the Term.

2.1.9.5 Pre-authorization Payment Processing Services

The Supplier shall provide pre-authorization payment processing Services including but not limited to:

- (a) Pre-authorization process to verify that the Payee's credit card has the available funds for the purchase; and,
- (b) Training and training material how to set-up and cancel these type of payment requests at no additional cost.

The duration of pre-authorization process depends on the MCC and should be specified by Supplier when executing Agreement.

2.2 Point-of-Sale Devices

Point of Sale ("POS") functionality facilitates the Transaction processing between the Payee, Customer and the Supplier.

The Supplier shall provide monthly rental of new and unused PCI Compliant POS Devices inclusive of terminals and pin pads that are ready-to-use (e.g. everything required in order for the Device to be used shall be included in the box – such as, but not limited to device cables, power cords, paper and ink ribbon) to process all major credit and debit cards (e.g. Visa, MasterCard, Discover, American Express.) including, but not limited to:

- (a) Wired Devices;
- (b) Wireless Devices; and,
- (c) Devices with signature capture.

The supplier should provide monthly rental of new and unused following PCI Compliant POS Devices:

- (a) Wireless WIFI Devices;
- (b) Wireless Mobile Devices; and,
- (c) Virtual POS functionality (i.e. virtual terminals).

All wireless Devices shall meet minimum technical requirements in accordance with the provisions of the Radio Communications Act and departmental standards. More information is available here https://www.ic.gc.ca/eic/site/ceb-bhst.nsf/eng/h_tt00102.html.

All POS Devices shall have a technological life span of at least twelve (12) months at time of rental and remain the property of the Supplier and shall be returned to the Supplier at no cost to the Customer once the merchant contract ends or terminates.

The Supplier shall support the Customers to set up the terminals and wireless Devices.

2.2.1 Device Functions

The Devices shall possess functions including but not limited to:

- (a) Reading the Payment Instrument's magnetic strip or chip;
- (b) Accepting contactless payments and mobile wallets;
- (c) Providing a printed copy of the Transaction to the Payee and the Customer;
- (d) Connecting to the Supplier's system;
- (e) Integrating with Customer's cash register and applications;
- (f) Accessible for Ontarians with Disabilities Act, 2005 (AODA) compliant;
- (g) Accepting transaction data from various Customer Gateways and/or applications merchant category codes; and,
- (h) Identifying and managing various type of Transactions (e.g. credential on file, MOTO Transactions, recurring and installment payments, delayed charge Transaction, no-show Transaction, incremental and deferred authorization request).

The Supplier should for a Customer's critical business requirement during or after implementation, provide a spare POS Device or access to other POS functionals to ensure the Customer has continuous access to Services at no cost to the Customer.

2.2.2 Electrical Requirements

The Supplier shall ensure electrical Devices shall be authorized or approved by the Customer and in accordance with the Ontario Electrical Safety Code or by a certification organization accredited with the *Standards Council of Canada Act* (Canada), 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 electrical Devices at Customer's facilities.

2.2.3 Delivery

POS Devices and related supplies shall be Delivered Duty Paid ("DDP") to inside the door or the dock of the Customer's location as requested by the Customer. Delivery charges, of any kind, will not be accepted. Customers may have more than one (1) FOB location within their organization.

The Supplier should deliver orders with correct Devices and quantities within the lead time.

Devices will be packaged appropriately to ensure safe delivery. All deliveries shall include a packing slip specifying the Customer's required information (e.g. name of the employee who placed the order, purchase order number, Devices 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.

Installation, of POS Devices, may be required at time of delivery.

The Supplier should provide a prepaid return waybill for each delivery.

2.2.3.1 Delivery Lead Times

The Supplier shall deliver Devices according to the following delivery lead times:

- (a) Devices with one (1) Business Day; and,
- (b) Custom Devices within four (4) to eight (8) weeks or as mutually agreed upon between the Supplier and Customer.

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

2.2.3.2 Back Orders

Back orders should be confirmed at the time of the order acknowledgement with an estimated delivery date, Customers will have an option to cancel or keep the back orders.

2.2.3.3 Damaged or Defective Shipments

Suppliers shall ensure shipments meet the Customer's specified quality levels and specifications. Shipments may not be accepted if:

- (a) Damaged (or the packaging is damaged);
- (b) Not delivered as agreed; or,
- (c) Substituted without prior approval of the Customer.

Any damaged and or defective POS Devices received at Customer's location shall be replaced, by the Supplier, within the agreed upon time. Alternatively, the Supplier should provide a loaner POS Device or temporary access to other POS functionals for immediate use, until the damaged or defective POS Device is replaced at no cost to the Customer.

2.2.3.4 Returns

The Supplier shall accept all Devices 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 replace non-functioning Devices within the agreed upon time at no cost to the Customers.

2.2.3.5 Recalls

The Supplier shall ensure that Devices meet current safety standards and regulations and shall advise OEM and Customers of any changes with regulatory agencies related to the Devices, which may impact the future availability of Devices, accessories, or Service support of the Devices.

The Supplier shall immediately report recalled Devices to OEM and Customers with thirty (30) days advising applicable details (e.g. model number, serial number). Supplier shall comply with the requirements of any Applicable Law in respect to recalled Devices and repair or replace the Device at no additional cost to Customer.

2.2.3.6 Discontinued Devices

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

2.2.3.7 Upgrade Devices

The Supplier shall upgrade POS Devices, at no cost to the Customer, in the event the Customer wants to use the Devices for a long period of time. The Supplier shall provide written notice to OEM and the Customer of at least one hundred and twenty (120) days prior to requesting a Device upgrading.

2.3 Order Management

The Supplier shall provide a variety of ways for Customers to order Devices and/or Services including, but not limited to the following:

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

Where applicable, Customers may need to perform integration testing on the Supplier's online ordering system to ensure it is compatible with the Customers' systems, policies and procedures.

2.3.1 Minimum Order

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

2.3.2 Order Acknowledgement

The Supplier shall acknowledge the receipt of an order by Customer immediately or within one (1) Business Day. The Supplier shall include in this acknowledgement, any Device and/or 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 Devices and cancel any backorders; and/or,
- (c) Agree to an alternative delivery schedule based on anticipated Device and/or Service availability.

2.3.3 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.

2.3.4 Electronic Commerce

Customers currently use a variety of ERP, e-Procurement or financial systems (e.g. PeopleSoft, Jaggaer) for processing orders and payments. To support these processes, the Supplier will provide reasonable technology and implementation support, at any time during the Term, at no additional cost to the Customer.

2.4 Invoicing

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

Invoicing shall be specific to Devices and Services provided and the type of Rates (e.g. processor Rate, chargeback Rate, e-commerce Rate, refund Rate, POS Devices Rate).

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 Services and/or Devices provided, and Rates break down; and,
- (d) HST and total cost.

2.4.1 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 extra cost to the Customer. Or the Supplier shall withdraw (i.e. debit) its Rates from the Customer's Settlement Account on the first business Day of the following month based on the Services that occurred during the previous month.

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.

2.4.2 Electronic Fund Transfer

The Supplier shall provide the Customer with the necessary banking information to enable EFT, at no extra 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.

2.5 Support to Customers

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

2.5.1 Technical Support

The Supplier shall provide technical 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) Providing a dedicated technical team with continued knowledge of the Customers' operational structure and specifics;
- (c) Providing easy access to the Supplier (e.g. online, toll free telephone number, email, voicemail, chat or fax);
- (d) Responding to Customer's inquiries (e.g. to day-to-day activities) within one (1) Business Day;
- (e) Complying with agreed upon escalation processes to resolve outstanding issues;
- (f) Resolving service outage in less within four (4) hours;
- (g) Resolving routine tasks such as re-programming POS Devices in a timely manner;
- (h) Be able to trouble shoot and resolving transmission errors quickly;
- (i) Providing training/demonstrations, knowledge transfer, and no-cost educational events (e.g. webinars), if available;
- (j) Maintaining library of resources (e.g. articles, video recording) pertinent to Canada;
- (k) Establishing an ongoing communications program with the Customer (e.g. new initiatives, innovation, sustainability);

- (l) Establishing an ongoing communication about upcoming industry changes and deadlines, providing thorough explanation of impact and instructions to be followed;
- (m) Recommending the best practices for Fraud prevention and risk management (e.g. application of filters);
- (n) Adhering to the Customer's confidentiality and privacy policies (e.g. related to student's private information);
- (o) Provide online reporting tool with different user groups and security roles (e.g. admin, manager, report viewer.);
- (p) Attending meetings with Customers, as requested; and,
- (q) Additional project specific requirements.

2.5.2 Transition

The Supplier shall, at no additional cost, provide Customers support to ensure seamless transition to and/or from a different vendor (e.g. setting up a Supplier's accounts from the Customer's current agreement) with no service interruption.

The Supplier shall provide flexibility to the Customers and allow transition of recurring accounts from the existing gateway to the Supplier's secure vault.

2.5.3 Implementation Services

The Supplier shall assess the Customer's Service requirements and provide implementation Services when on-boarding a Customer, including a project plan setting out at a minimum:

- (a) Develop and recommend implementation plan;
- (b) Timelines and milestones;
- (c) POS Device recommendations;
- (d) Reporting;
- (e) Risk identification and risk mitigation strategies;
- (f) Identify Customer's responsibilities; and,
- (g) Training timelines and material.

The Customer's implementation plan shall be updated and maintained, by the Supplier, throughout the implementation period.

2.5.4 Training

The Supplier shall provide the Customers with the required training and training material including, but not limited to:

- (a) POS functionality;
- (b) Installation and ongoing use of POS Devices;
- (c) Using of the Supplier's gateway (e.g. test environment, level of access, available security features);
- (d) Online reporting and creating reports/statements online;
- (e) PCI compliance;
- (f) Fraud preventive and protection;
- (g) Efficiency enhancement;

- (h) Pre-authorization payment process; and,
- (i) Refund payment process.

2.5.5 Reporting

The Supplier's online reports shall be at a minimum:

- (a) Accessible by multiple Customers user groups and security roles;
- (b) Able to capture Customer unique reference fields as part of the data elements;
- (c) Able to generate the individual Customer reports in a cross-referenced manner from e-commerce pages in the backend of the system; and,
- (d) Available in real time.

The Customer may require the Supplier's assistance in the creation of customized reports from time to time. Newly developed customized report, upon completion, should be made available to all Customers.

2.6 Environmental Considerations

OECM and its Customers are committed to reducing their carbon footprint. The Supplier should keep Customers informed about any environmentally friendly processes, Devices, new technologies and/or green initiatives. The Supplier should, in consultation with OECM, make any environmentally friendly processes, Devices, new technologies and/or green initiatives, related to the RFP Deliverables, available to Customers as required.

2.7 Social Procurement

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

2.8 Disaster Recovery and Business Continuity

The Supplier shall possess and provide to OECM 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 Device and Service availability critical to Customers.

2.9 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 Devices and/or Services and provide them at Customer and OECM 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 Proposal or in the Master Agreement, neither acceptance of the Proposal 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 PROPOSALS

3.1 Stages of Proposal Evaluation

OECM will conduct the evaluation of Proposals in the following stages:

Stage	Type of Evaluation	Refer to RFP Section	Scoring Methodology and Maximum Points (if applicable)	Minimum Threshold Requirement (if any)
Stage I	Qualification Response	3.2	Pass/Fail	Pass
Stage II	Technical Response	3.3	400	200
Stage III	Commercial Response	3.4	600	Not Applicable
Stage IV	Cumulative Score	3.5	1000	Not Applicable
Stage V	Tie Break Process	3.6	No Point Allocation	Not Applicable
Stage VI	Negotiations	3.7	No Point Allocation	Not Applicable
Stage VII	Master Agreement Finalization	3.8	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 Proposals comply with all qualification requirements.

The Proponent **must** complete the following forms in (“Ontario’s Tenders Portal (“OTP”) to qualify and proceed to the next stage of evaluation.

Title	OTP Envelope
Form of Offer	Qualification
Compliance with Form of Master Agreement	Qualification
Commercial Response	Commercial

If the Proponent 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 PropONENTS satisfying the identified deficiencies within allotted time will proceed to Stage II.

3.3 Stage II – Technical Response

Stage II will consist of an evaluation and scoring of the Technical Response of each Eligible Proposal.

The Technical Response includes a series of questions the Proponent is required to respond to in order to demonstrate the Proponent’s ability to fulfill the RFP Deliverables. Only information contained within the Technical Response will be evaluated in Stage II.

Only Proposals that meet or exceed the minimum thresholds will receive a **pass** in this stage and proceed to Stage III of the evaluation process. The overall threshold for the Technical Response is fifty percent (50%) or two hundred (200). There is one (1) individual section with minimum threshold of fifty percent (50%).

Point allocations for the Technical Response sections are as follows:

Technical Response Sections	Available Points	Minimum Threshold, if any
- Proponent Overview	20	Not Applicable
- Services	180	90
- Processing Services	60	Not Applicable
- Point of Sale Devices	30	Not Applicable
- Support to Customers	110	Not applicable
TOTAL POINTS:	400	200

Detailed sub-point allocations are set out in the Technical Response on OTP.

In the case that contradictory information or information that contains conditional statements is provided, OECM will, in its sole and absolute discretion, determine whether the response complies with the requirements, and may seek clarification from the Proponent.

A Proposal that does not respond to a particular question (e.g. is left blank) or contains a response of N/A or not applicable will receive a zero (0) score.

Stage II resulting scores per Proposal will be used when determining the cumulative score as described below in Section 3.5.

3.4 Stage III – Commercial Response

The Proponent **must** complete and upload Appendix C – Commercial Response into the OTP Commercial Envelope for this stage of evaluation.

Upon the completion of Stage II of the evaluation, the Commercial Response will be opened for all Eligible Proposals.

Point allocations for the Commercial Response sections are as follows:

Commercial Response Sections	Available Points
- Credit Card	280
- Debit Card	160
- POS Devices	60
- Processing Services	100
TOTAL POINTS:	600

Detailed sub-point allocations are set out in the Appendix C – Commercial Response on OTP.

Rates will be evaluated using a relative formula. See example below:

EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR DEBIT CARD – MASTERCARD DEBIT CARD		
Proposed Rates	Calculation	Resulting Points
If Proponent 1 proposes the lowest Total Processor Rate of \$0.0900 for MasterCard Debit Card based on a \$100 Transaction, it would receive 100% of the points allocated.	$\$0.0900 \div \$0.0900 \times 20 \text{Points}$	20
If Proponent 2 proposes the second lowest Total Processor Rate of \$0.0980 for MasterCard Debit Card based on a \$100 Transaction, it would receive 96% of the points allocated.	$\$0.0900 \div \$0.0980 \times 20 \text{Points}$	18.36

EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR DEBIT CARD – MASTERCARD DEBIT CARD		
Proposed Rates	Calculation	Resulting Points
If Proponent 3 proposes the third lowest Total Processor Rate of \$0.1000 for MasterCard Debit Card based on a \$100 Transaction, it would receive 90% of the points allocated.	$\$0.0900 \div \0.1000×20 Points	18

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

EXAMPLE – WHERE FIVE (5) PROPOSALS WERE RECEIVED WITH \$0.00 RATE PROPOSED		
Number of Proposals with a proposed Rate of \$0.00 for a particular Device and/or Service	The number of remaining Proposals	The percentage (%) of the sub-point allocation for the remaining Proposals 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 Device and/or Service, it is deemed to mean that the particular Devices and/or Service will **not be provided** to Customers. Therefore, when evaluating and scoring the Rates, a Proposal 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.

Stage III resulting scores per Proposal will be used when determining the cumulative score as described below in Section 3.5.

3.5 Stage IV – Cumulative Score

At this stage, the scores from Stages II and III will be combined for each Proposal.

Subject to the express and implied rights of OECM; the Proponents with the highest scoring Proposals or all Proponents may become the Preferred Proponents, and be invited to negotiations, as further described below.

Reference checks will be performed to confirm or clarify information provided within the Proposal. The reference checks themselves will not be scored, however, OECM may adjust Technical Response scores related to the information obtained during the reference check.

3.6 Stage V – Tie Break Process

At this stage, where two (2) or more of the highest scoring Proposals achieve a tie score on completion of the Stage IV, OECM may invite all Proponents to negotiations or break the tie by selecting the Proposal with the highest score in Stage III – Commercial Response.

3.7 Stage VI – Negotiations

Concurrent negotiations, with the Preferred Proponents, will be based on the RFP requirements, and the Proposals, understanding that OECM is seeking the best overall solution and value for money for Customers.

The negotiations may include:

- (a) Devices and/or Services;

- (b) Master Agreement management (e.g. performance, KPIs, reporting);
- (c) Master Agreement terms and conditions;
- (d) Additional references, if required;
- (e) Rates; and,
- (f) Best and Final Offer.

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

OECM intends to complete negotiations within fifteen (15) calendar days after notification. If, for any reason, OECM and a Preferred Proponent fail to reach an agreement within the aforementioned timeframe, OECM may at its sole and absolute discretion (a) request the Preferred Proponent to submit its Best and Final Offer; (b) terminate negotiations with that particular Preferred Proponent; (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 Proponents would be added to OECM's website at a later date.

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

3.8 Stage VII – Master Agreement Finalization

The Preferred Proponent will be given five (5) Business Days to execute the Master Agreement, unless otherwise specified by OECM. Once the Master Agreement has been executed, Customers may execute a CSA.

OECM 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 RFP process, enter into Master Agreements with up to four (4) Suppliers for the provision of the Devices and/or Services to provide a choice for the Customers.

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 two (2) additional term of up to three (3) years. Performance as set out in Appendix E – Performance Management Scorecard and/or 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 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 RFP process is intended to identify Proponents for the purpose of negotiation of potential Master Agreements. The negotiation process is further described in Part 3 – Evaluation of Proposals, and in Section 3.7 of this RFP.

No legal relationship or obligation regarding the procurement of any Devices and/or Services shall be created between the Proponent and OECM by this RFP process until the successful completion of negotiation and execution of a written Master Agreement for the provision of the Devices and/or 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 RFP, the evaluation of Proposals submitted in response to it and the negotiation and execution of the Master Agreement.

Part Two, the Second Stage Selection Process ("Second Stage") is managed by the Customer or by OECM on the Customer's behalf and is focused on the Customer's specific needs. Depending on the Customer's internal policies, and potential dollar value of the Devices and/or Services a Customer may select a Supplier, or seek Rates and other relevant Devices and/or Services information specific to a Customer's organization (e.g. by issuing a non-binding request via a Second Stage tool (e.g. Request for Services ("RFS"), Quick Quote ("QQ"), or Customer's process (e.g. directly or via an online e.tendering platform)) from the Supplier for their specific Devices and/or Services requirements. If selected by the Customer, the Supplier shall provide the Devices and/or Services in accordance with the specifications stated in the Master Agreement and in the Customer's CSA.

When a Second Stage request is issued, which does not constitute a contract A, contract B situation, it will identify the required Devices and/or Services, or it may request the Supplier to propose appropriate Devices and/or Services 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 Devices and/or Services;
- (b) Timelines for Devices and/or Services; and,
- (c) Final, net Rates based on commitment and/or volume requirements. 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 Devices and/or Services Rates. However, a CSA must be signed before the provision of any Devices and/or Services commences.

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

The volume information contained in this RFP constitutes an estimate and is supplied solely as a guideline to the Proponent. Such information is not guaranteed, represented, or warranted to be accurate, nor is it necessarily comprehensive or exhaustive.

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

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 RFP.

4.2 Rates

The proposed Device and/or Service Rates shall be firm maximum Rates for the three (3) years of the Master Agreement and shall be:

- (a) Maximum Rates;
- (b) In Canadian funds and shall include all applicable costs, including, but not limited to overhead, materials, fuel, fuel surcharge, duties, tariffs, 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 specific Devices and/or Services when the Customer and Supplier mutually agree without affecting the Rates in the Master Agreement.

In extenuating circumstances, OECM may consider a Rate adjustment substantially effecting the provision of Devices and/or 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 Devices 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 Interchange Rates

Interchange Rates shall be passed on to the Customers as a flow-through, without a mark-up. Interchange Rates shall not increase unless the Card Brand increase it. The incremental increase shall be passed on to the Customers. The Supplier shall notify OECM and the Customer of any change in the Interchange Rates in writing ninety (90) days in advance. A letter from the Card Brand organization shall support any change in the Interchange Rates. Decreases to the Interchange Rates shall be accepted and effective according to the Card Brand organization.

4.2.2 Optional Rate Refresh

OECM's goal is to keep Rates as low as possible for Customers. However, the Supplier may request a Rate refresh for Processor Rates, POS Devices Rates and/or Processing Services Rates by providing a written notice to OECM twelve (12) months prior to the initiation of the extension period. If a Rate refresh is not requested, the Rates from the initial Term of the Master Agreement shall remain in effect until the final expiry of the Agreement, including any extension period that is exercised.

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. OEMC may use a third-party index (e.g. Consumer Price Index) in its Rates review. OEMC 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 OEMC and the Supplier, the new Rates would only be applicable to Devices and/or Services ordered after the effective date of the new Rates. The effective date of the Rate change must allow Customers a minimum of six (6) months' prior notice from OEMC. If, however, a proposed Rate increase is not accepted by OEMC 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 Devices and/or 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.

The Supplier should offer, at any time during the Term of the Master Agreement, lower Rates based on overall Customer volumes or potential net new volumes. Decreases to the Rates shall be accepted at any time during the Term.

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

4.2.3 Optional Process to Add Other Devices and/or Services

During the Term, if mutually agreed by OEMC and the Supplier, other Devices and/or Services (e.g. newly available POS Devices and functionality, new technology and/or Services) may be added to the Master Agreement to align with Customer needs.

The Supplier shall provide written notice to OEMC of at least one-hundred and twenty (120) days prior to requesting a Device and/or Service refresh.

Additional Device and Service requests from the Supplier must be accompanied by appropriate documentation (e.g. Device and/or 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 Devices, and Services. In the event the Supplier's performance is poor and/or unacceptable, OEMC may not agree to the Supplier's Device and/or Service refresh request. All other Devices and/or Services shall remain unchanged.

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

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

4.2.4 OEMC Cost Recovery Fee

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

The Supplier shall pay to OEMC a CRF through the Term, as set out below:

Item	Applicable CRF
Total Net Transactions (\$) (e.g. gross sales minus refunds) through resulting Master Agreement	0.018%

Item	Applicable CRF
Devices and/or Processing Services (e.g. administration, terminal setup) invoiced by the Supplier to the Customers	2.95%

CRF should be calculated as per below example:

Item	Amount (\$)	Applicable CRF	Total CRF (\$)
Net Transactions (\$) (e.g. gross sales minus refunds)	1,000,000.00	0.018%	180.00
Devices and Processing Services Rates (e.g. administration, Devices)	4,500.00	2.95%	132.75
Total CRF			312.75

The CRF shall be paid to OECM, 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 September 30, 2020 shall be paid to OECM by:	October 15, 2020
The next CRF, including any Customer purchases made between October 1, 2020 to December 31, 2020, shall be paid to OECM by:	January 15, 2021
The next CRF, including any Customer purchases made between January 1, 2021 to March 31, 2021, shall be paid to OECM by:	April 16, 2021

HST is applicable to the CRF payments made to OECM.

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

During the Term, OECM 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.

4.2.5 Financial Administration Act ("the FAA") Section 28

In accordance with the requirements of the 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.

4.2.6 Saving Calculation

OECM tracks, validates, and reports on savings on all of its agreements. Collaborative procurement processes enables several types of savings including direct and indirect savings (e.g. process improvement, lead time reduction, standardization, economies of scale, cost avoidance).

The Supplier shall report Customer savings Master Agreement Rate versus Rate invoiced to Customer).

4.3 Master Agreement 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) 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 Launch

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

- (a) Supplier profile and logo;
- (b) Supplier 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 RFP.

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 Devices and/or 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, where 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, 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 – Supplier’s Performance Management Scorecard and Appendix E – Performance Management Scorecard);
- (c) Generated savings and value; and,
- (d) Technical Response scores from the Supplier’s Proposal for this RFP.

Further details will be provided to the Suppliers.

4.3.5 Reporting to OECM

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 OECM and the Preferred Proponent. Other reports may be added, throughout the Term, if mutually agreed upon between OECM and the Supplier, and/or the Customer and Supplier.

[End of Part 4]

PART 5 – TERMS AND CONDITIONS OF THE RFP PROCESS

5.1 General Information and Instructions

Procurement Process Non-Binding

This RFP 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 RFP 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 Proponent nor OECCM 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 RFP.

Non-Binding Rates

While the Proposal 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 Proposals, as further described in Part 3 – Evaluation of Proposals. 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 RFP Timetable

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

RFP Timetable	
Event	Time/Date
OECCM's Issue Date of RFP:	January 17, 2020
Proponent's Information and OTP Demonstration Session:	10:00 am on January 23, 2020
Proponent's Deadline to Submit Questions:	2:00 pm on January 24, 2020
OECCM's Deadline for Issuing Answers:	January 30, 2020
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	2:00 pm on February 6, 2020
OECCM's Deadline for Issuing Final Documents:	February 11, 2020
Closing Date:	2:00:00 pm on February 19, 2020
Anticipated Master Agreement Start Date:	May 2020

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

OECCM 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 Proponent may thereafter be subject to the extended timeline.

5.1.2 Proponent's Information and OTP Demonstration Session

The Proponent may, but is not required to, participate in the Proponent's Information and OTP Demonstration Session, which will take place at the time set out in Section 5.1.1.

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

The Proponent's Information and OTP Demonstration Session may provide an opportunity for the Proponent to enhance its understanding of this RFP and to learn how to use OTP to submit its Proposal.

Any changes to the Proponent'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 Proponent's Information and OTP Demonstration Session and the RFP, the RFP shall prevail.

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

5.1.3 Proponent to Follow Instructions

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

5.1.4 OECM's Information in RFP Only an Estimate

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

It is the Proponent's responsibility to avail itself of all the necessary information to prepare a Proposal in response to this RFP.

5.1.5 Proponent's Costs

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

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

5.2 Communication after RFP Issuance

5.2.1 Communication with OECM

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

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

- (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 Proponent to Review RFP

The Proponent shall promptly examine this RFP 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 Proponent's Deadline to Submit Questions to OECM.

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

In answering a Proponent's questions, OECM will set out the question, without identifying the Proponent 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 Proponents only once.

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

To ensure the Proponent clearly understand issued addenda, OECM allows Proponents 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 Proponent 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 Proponent concerning this RFP or its process.

5.2.3 Proponent to Notify

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

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

The Proponent shall not:

- (a) After submission of a Proposal, 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 RFP; and,
- (b) Claim that OECM is responsible for any of the circumstances listed in Section 5.2.2 of this RFP.

5.2.4 All New Information to Proponents by way of Addenda

This RFP 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 RFP, such information will be communicated to all Proponents by addenda on OTP. Each addendum shall form an integral part of this RFP.

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

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

The Proponent who intends to respond to this RFP 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 Proponent chooses to cancel the receipt of addenda or amendments, its Proposal may be rejected.

5.3 Proposal Submission Requirements

5.3.1 General

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

The Proponent 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.

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

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

The Proponent will not be able to submit a Proposal after the Closing Date, as OTP will close the access to the RFP on the Closing Date.

A Proposal sent by, email, facsimile, mail and/or any other means other than stated in this RFP 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 RFP may not be validly delivered by way of electronic communication, unless otherwise provided for in this RFP.

5.3.2 Proposal in English

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

5.3.3 Proposal Submission Requirements

The Proponent is solely responsible for submitting its Proposal on OTP prior to the Closing Date.

The Proposal should be submitted in accordance with the instructions set out on OTP and in this RFP 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	√	
Technical Response	Technical	√	
Appendix C – Commercial Response	Commercial		√

5.3.4 Other Proposal Considerations

In preparing its Proposal, the Proponent should adhere to the following:

- (a) Information contained in any embedded link will not be considered part of a Proposal, and will not be evaluated or scored;
- (b) Completely address, on a point-by-point basis, each Technical Response question in Technical Response. Technical Responses left blank and/or unanswered will receive a score of zero (0). Refer to Section 3.3;
- (c) Information attached as part of the Commercial Envelope in OTP will not be considered as part of the evaluation of Stage II - Technical Response. Refer to Section 3.3; and,
- (d) The Proposal should be complete in all respects. Proposal evaluation and scoring applies only to the information contained in the Proposal, or accepted clarifications as set out in Section 5.3.13 Clarification of Proposals.

5.3.5 Proposal Receipt by OECM

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

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

5.3.6 Withdrawal of Proposal

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

5.3.7 Amendment of Proposal on OTP

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

5.3.8 Completeness of Proposal

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

5.3.9 Proposals Retained by OECM

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

5.3.10 Acceptance of RFP

By submitting a Proposal, a Proponent agrees to accept the terms and conditions contained in this RFP, and all representations, terms, and conditions contained in its Proposal.

5.3.11 Amendments to RFP

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

5.3.12 Proposals will not be Opened Publicly

The Proponent is advised that there will not be a public opening of this RFP. OECM will open Proposals at a time subsequent to the Closing Date.

5.3.13 Clarification of Proposals

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

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

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

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

5.3.14 Verification of Information

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

- (a) Verify any Proponent's statement or claim made in its Proposal 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 Proponent statement or claim, if such statement or claim or its Proposal is patently unwarranted or is questionable, which may result in changes to the scores for the Proponent's Technical Response; and,
- (b) Access the Proponent's premises where any part of the work is to be carried out to confirm Proposal information, quality of processes, and to obtain assurances of viability, provided that, prior to providing such access, the Proponent and OECM shall have agreed on access terms including pre-notification, extent of access, security and confidentiality. OECM and the Proponent shall each bear its own costs in connection with access to each other's premises.

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

5.3.15 Proposal Acceptance

The lowest price Proposal or any Proposal 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 RFP Incorporated into Proposal

All provisions of this RFP are deemed to be accepted by each Proponent and incorporated into each Proposal.

5.3.17 Exclusivity of Contract

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

5.3.18 Substantial Compliance

OECM shall be required to reject Proposals, which are not substantially compliant with this RFP.

5.3.19 No Publicity or Promotion

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

In the event that a Proponent, including the Preferred Proponent, 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 RFP, OEMC shall be entitled to take all reasonable steps as may be deemed necessary by OEMC, including disclosing any information about a Proposal, 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 Proponent

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

The Preferred Proponent shall execute the Master Agreement in the form attached to this RFP with negotiated changes, if any, and satisfy any other applicable conditions of this RFP within twenty (20) days of invitation to enter into negotiations. This provision is solely to the benefit of OEMC and may be waived by OEMC at its sole discretion.

If the Preferred Proponent and OEMC cannot execute the Master Agreement within the allotted twenty (20) days, OEMC will, as described in Section 3.7 and 3.8, be at liberty to extend the timeline, request the Preferred Proponent to submit its Best and Final Offer, terminate discussions/negotiations with the Preferred Proponent, or publish one (1) or some of the Suppliers, who have executed Master Agreements within OEMC's promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Proponents would be added to OEMC's website at a later date.

5.4.2 Failure to Execute a Master Agreement

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

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

In accordance with the process rules in this Part 5 – Terms and Conditions of the RFP Process, there will be no legally binding relationship created with any Proponent 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 Proponent as a result of this RFP process:

- (a) Any such Master Agreement will commence upon signature by the duly authorized representatives of OEMC and the Preferred Proponent; 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 Proponents

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

5.4.5 Debriefing

Any Proponent 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 Proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

5.4.6 Bid Dispute Resolution

In the event that the Proponent wishes to review the decision of OECM in respect of any material aspect of the RFP process, and subject to having attended a debriefing, the Proponent 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 Proponent 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 Proponent's arguments and supporting documentation; and,
- (f) The Proponent'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 Proponent in connection with or arising out of this RFP or the acceptance of any Proposal:

- (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 RFP 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 Proponent

Except as provided for otherwise in this RFP, or as may be required by Applicable Laws, OECM shall treat the Proposal 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 RFP process, OECM or any of its representatives or agents shall be under no obligation to execute a confidentiality agreement.

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

5.5.3 Proponent's Submission

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

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

5.5.4 Personal Information

Personal Information shall be treated as follows:

- (a) Submission of information – The Proponent should not submit as part of its Proposal any information related to the qualifications or experience of persons who will be assigned to provide Devices and/or 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 Proponent by OECM shall only be used to select the qualified individuals to undertake the Devices and/or Services and to confirm that the work performed is consistent with these qualifications; and,
- (c) Consent – It is the responsibility of the Proponent 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 Proponent 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 Proponent. A Proponent should identify any information in its Proposal, 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 Proposal, including any Personal Information requested in this RFP, the Proponent 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 Proponent 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 Proponents;
- (b) Request written clarification or the submission of supplementary written information from any Proponent and incorporate such clarification or supplementary written information, if accepted, into the Proposal, at OECM's discretion, provided that any clarification or submission of supplementary written information shall not be an opportunity for the Proponent to correct errors in its Proposal or to change or enhance the Proposal in any material manner;

- (c) Waive formalities and accept Proposals that substantially comply with the requirements of this RFP, in OECEM's sole and absolute discretion;
- (d) Verify with any Proponent or with a third party any information set out in a Proposal;
- (e) Check references other than those provided by Proponents;
- (f) With supporting evidence, disqualify any Proponent 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 Proponent;
- (g) Disqualify any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Proponent whose Proposal is determined by OECEM to be non-compliant with the requirements of this RFP;
- (i) Disqualify a Proposal based upon the past performance or on inappropriate conduct in a prior procurement process, or where the Proponent has or the principals of a Proponent have previously breached an agreement with OECEM, or has otherwise failed to perform such agreement to the reasonable satisfaction of OECEM (i.e. has not submitted required reporting and/or cost recovery fees to OECEM);
- (j) Disqualify any Proponent, who, in relation to this RFP 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 Proponent who has been charged or convicted of an offence in respect of an agreement with OECEM, or who has, in the opinion of OECEM, 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 OECEM, or where the Proponent reveals a Conflict of Interest or Unfair Advantage in its Proposal or a Conflict of Interest or evidence of any Unfair Advantage is brought to the attention of OECEM;
- (l) Disqualify any Proposal of any Proponent who has breached any Applicable Laws or who has engaged in conduct prohibited by this RFP, including where there is any evidence that the Proponent or any of its employees or agents colluded with any other Proponent, its employees or agents in the preparation of the Proposal;
- (m) Make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- (n) Accept or reject a Proposal if only one (1) Proposal is submitted;
- (o) Reject a Subcontractor proposed by a Proponent within a Consortium;
- (p) Select any Proponent other than the Proponent whose Proposal reflects the lowest cost to OECEM;
- (q) Cancel this RFP process at any stage and issue a new RFP for the same or similar requirements, including where:
 - i. OECEM determines it would be in the best interest of OECEM not to award a Master Agreement,

- ii. the Proposal prices exceed the bid prices received by OECM for Devices and/or Services acquired of a similar nature and previously done work,
- iii. the Proposal prices exceed the costs OECM or its Customers would incur by doing the work, or most of the work, with its own resources,
- iv. the Proposal prices exceed the funds available for the Devices and/or Services, or,
- v. the funding for the acquisition of the proposed Devices and/or Services has been revoked, modified, or has not been approved,

and where OECM cancels this RFP, OECM may do so without providing reasons, and OECM may thereafter issue a new request for proposals, request for qualifications, sole source, or do nothing;

- (r) Discuss with any Proponent different or additional terms to those contained in this RFP or in any Proposal;
- (s) Accept any Proposal in whole or in part;
- (t) If OECM receives a Proposal from a Proponent with Rates that are abnormally lower than the Rates in other Proposals, OECM may verify with the Proponent that the Proponent satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against OECM and/or its Customers or is otherwise engaged in a dispute with OECM 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 OECM shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Proponent or any third party resulting from OECM exercising any of its express or implied rights under this RFP.

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

5.6.2 Rights of OECM – Proponent

In the event that the Preferred Proponent fails or refuses to execute the Master Agreement within allotted time from being notified, OECM 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, OECM may, in its sole discretion, terminate the discussions;
- (b) Exclude the Preferred Proponent from further consideration and begin discussions with the next highest scoring Proponent without becoming obligated to offer to negotiate with all Proponents; or,
- (c) Exercise any other applicable right set out in this RFP including, but not limited to, cancelling the RFP and issuing a new RFP for the same or similar Devices and/or Services.

OECM may also cancel this RFP in the event the Preferred Proponent fails to obtain any of the permits, licences, and approvals required pursuant to this RFP.

5.6.3 No Liability

The Proponent agrees that:

- (a) Any action or proceeding relating to this RFP process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent 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 RFP 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 RFP.

The Proponent further agrees that if OECM commits a material breach of OECM's obligations pursuant to this RFP, OECM's liability to the Proponent, 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 Proposal preparation costs that the Proponent seeking damages from OECM can demonstrate. In no event shall OECM be liable to the Proponent for any breach of OECM's obligations pursuant to this RFP, which does not constitute a material breach thereof. The Proponent 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 Proponent shall not assign any of its rights or obligations hereunder during this RFP process without the prior written consent of OECM. Any act in derogation of the foregoing shall be null and void.

5.6.5 Entire RFP

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

5.6.6 Priority of Documents

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

5.6.7 Disqualification for Misrepresentation

OECM may disqualify the Proponent or rescind a Master Agreement subsequently entered if the Proponent's Proposal 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 Proponent's references and may also consider the Proponent's past performance with OECM and/or its Customers.

5.6.9 Cancellation

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

5.6.10 Competition Act

Under Canadian law, a Proposal 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 Proponent 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 RFP.

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/OQTC-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

Definitions

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

“**Accredited College**” means a college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002* or a subsidiary of such a college;]

“**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 Proponent may be invited by OECM to submit a best and final offer on a process or section of the RFP to improve on their original Proposal submission. BAFO cannot be requested by a Proponent;

“**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 9:00 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;

“**Card Brand**” means any payment method provider whose payment method is accepted by Supplier for processing, including, without limitation, MasterCard International Inc., Visa International, Inc., Visa Canada, AMEX, Interac, Discover Network, other credit and debit card providers, debit network providers, and other stored value and loyalty program providers;

“Chargeback” means the withdrawal from the Customer’s Settlement Account of an amount which had been credited to the Settlement Account in connection with a Transaction, together with the applicable chargeback Rate as set out in Appendix C due to a dispute by a Payee of a Transaction made by the Payee with a Payment Instrument;

“Closing Date” means the Proposal 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 RFP;

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

“Commercial Response” means the Rates the Proponent 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 Proponent in the normal course of the RFP) where the confidential information is relevant to the Deliverables required by the RFP, its pricing or the RFP 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 Proponent 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 RFP;
- (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 RFP process, the Proponent 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 Proposal 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 RFP process; or (iii) engaging in conduct that compromises or could reasonably be seen to compromise the integrity of the open and competitive RFP 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 Proponent’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) Proposal to satisfy the requirements of the RFP. One (1) of the Consortium members shall identify itself as the Proponent 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, colleges, and universities), shared service organizations, not-for-profit organizations, municipalities, utilities and local boards, health and social service entities, provincially funded organizations (“PFO”), Crown corporations, and any other Broader Public Sector agencies, boards or commissions or similar entities not specifically 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 RFP;

“Deliverable” means all Devices and/or Services to be provided or 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;

“Devices” means all POS devices (e.g. hardware and software) rentals be provided by the Supplier, under the Master Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Supplier;

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

“Interchange Rate” means the total Rates imposed from time to time by Card Brands in respect of Transactions but do not include the Rates charged by the Supplier in respect of processing a Transaction, or the Rates charged by a Supplier in respect of a Chargeback or for refunding a Transaction;

“Master Agreement” or **“Agreement”** means the agreement to be made between the Preferred Proponent 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 RFP and may be amended from time to time in accordance with the terms of this RFP;

“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 Proponent’s Proposal must be submitted by the Closing Date;

“Payee” means a cardholder. The person or entity to whom a Payment Instrument is issued or who is otherwise authorized to use a Payment Instrument;

“Payment Card Industry Data Security Standard” or **“PCI DSS”** means the technical and operational requirements designed to protect sensitive data elements such as the Primary Account Number (PAN), the Card Holder’s name and the CVC2/CVV2/CID/CAV2, and addresses both the transmission and storage of that data;

“Payment Instrument” means an account, or evidence of an account, authorized and established between a Payee and a financial institution or Card Brand, which the Customer accepts from Payees as payment for a good and/or service. Payment Instruments include, but are not limited to, credit and debit cards (including credit and debit cards used through a mobile device or through a radio frequency interface), stored value cards, loyalty cards and electronic gift cards;

“Payment Instrument Information” means information related to a Payee or the Payee’s Payment Instrument, that is obtained by the Customer from the Payee’s Payment Instrument, or from the Payee in connection with his or her use of a Payment Instrument (e.g., a security code, a PIN number, credit limits, account balances, or the Payee’s postal code when provided as part of an address verification system). Without limiting the foregoing, such information may include the Payment Instrument account number and expiration date, the Payee’s name or date of birth, PIN data, security code data (such as CVV2, CVC2 or AMEXCID), and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Instrument Information shall be treated according to their corresponding meanings as “cardholder data” and “sensitive authentication data” as such terms are used in the then current Payment Card Industry Data Security Standards;

“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 Proponent from OECM or the Customer or created by the Proponent pursuant to the RFP;

“Point-of-Sale” or **“POS”** means functionality (i.e. device or virtual process) that initiates a payment Transaction from a Payment Instrument;

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

“Project Advisory Committee” or **“PAC”** means the individuals providing input into the development of this RFP, and may also evaluate Proposals received in response to this RFP;

“Proponent” means an entity that submits a Proposal in response to this RFP and, as the context suggest, refers to a potential Proponent;

“Proposal” means all documentation and information submitted by a Proponent in response to the RFP;

“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, in Canadian funds, for the Devices and/or Services as set out in the Proponent’s submitted Appendix C - Commercial Response;

“Request for Proposals” or **“RFP”** means this Request for Proposals #2019 issued by OECM, including all appendices and addenda thereto;

“Refund” means a credit to a Payment Instrument for goods and/or services that have been returned to the Customer by a Payee;

“Second Stage Selection Process” or **“Second Stage”** means a request from one (1) or more Suppliers via a Second Stage tool (e.g. Request for Services (“RFS”), 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 Devices and/or Services specific to a Customer’s organization;

“Security Standards” means all rules, regulations, standards, or guidelines adopted or required by the Card Brands or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, storage, processing, transmission, and handling of Payment Instrument Information, including, the Payment Card Industry Data Security Standards, Visa’s Account Information Security program, Discover’s Information Security & Compliance Program, American Express’s Data Security Operating Policy, MasterCard’s Site Data Protection Program, MasterCard’s POS Terminal Security Program, the Payment Card Industry’s Payment Application Data Security Standard, MasterCard’s POS Terminal Security Program, and the Payment Card Industry PIN Transaction Security program, in each case as they may be amended from time to time;

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

“Settlement Account” means an account at a financial institution designated by the Customer as the account to be debited and/or credited by the Supplier for Rates (i.e. for Transactions, Chargebacks, Refunds.);

“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 Proponent 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;

“Technical Envelope” means an area in OTP where the Proponent would complete Technical Response;

“Technical Response” means the information, which will be evaluated and scored, the Proponent submits within OTP as part of the Technical Envelope;

“Term” has the meaning set out in Section 4.1 of this RFP;

“Transaction” means a transaction conducted between a Payee and Customer utilizing a Payment Instrument in which consideration is exchanged between the Payee and Customer;

“Transaction Data” means the written or electronic record of a Transaction including, without limitation, an authorization code or settlement record, which is submitted to Supplier; and,

“Unfair Advantage” means any conduct, direct or indirect, by a Proponent that may result in gaining an unfair advantage over other Proponents, including, but not limited to (i) possessing, or having access to, information in the preparation of its Proposal that is confidential to OECM and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFP process,

or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and result in any unfairness.

APPENDIX B – FORM OF MASTER AGREEMENT

This appendix is posted as a separate PDF document.

APPENDIX C – COMMERCIAL RESPONSE

The Proponent should 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 OECM 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>		
<p>1. Sales Report including, but not limited to:</p> <ul style="list-style-type: none"> (a) Customer's name; (b) Invoice number and date; (c) Credit Card Total dollar value of Net Transactions (e.g. gross sales minus refunds); (d) Debit Card Total dollar value; (e) Number of Debit Card Transactions; (f) Rates (e.g. processor, administration, batch payment, chargeback, refund, POS Devices and supplies.); (g) Savings (i.e. list Rate minus discount, net Rate, savings); and, (h) Cost Recovery Fees and HST. <p>2. CSA Status Report including, but not limited to:</p> <ul style="list-style-type: none"> (a) The number of executed CSAs; and, (b) CSAs pending execution. <p>3. Second Stage Report including, but not limited to:</p> <ul style="list-style-type: none"> (a) Customer's name; (b) Reference number; (c) Number of requests received and submitted; (d) Device and/or Service requirement (e.g. type); (e) Resulting savings; and, (f) Status (e.g. complete, due date to return to Customer). 	Monthly	8th Business Day
<u>Performance Reporting</u>		
<p>1. Key Performance Indicators ("KPIs") Report - As set out in Appendix E – Performance Management Scorecard</p>	Quarterly (calendar)	8th Business Day following each quarter
<u>Other Reports:</u>		
Specific Customer Reports - As requested (e.g. Total dollar value of Transactions, number of Transaction per Payment Instrument Type, Pre-Authorization Status, Rates, POS Devices and supplies)	Monthly	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 that the Supplier aligns with OEMC's three (3) pillars of Savings, Choice and Service, supporting the growth of the Master Agreement among Customers, and providing quality Devices and/or Services at competitive Rates.

Supplier performance means that the Supplier meets or exceeds the performance requirements described below or as mutually agreed upon during negotiations and adheres to all the other contractual requirements.

As part of OEMC's efforts to provide greater value to Customers, 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.

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

- (a) On-time delivery of high-quality Devices and/or Services at the Master Agreement Rates or lower;
- (b) Customer satisfaction;
- (c) On-time Master Agreement activity reporting to OEMC;
- (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, OEMC provides Customers a thorough understanding of the Master Agreement aiding the adoption of the Master Agreement.

By providing the reports, OEMC is able to analyze and maintain the integrity of the Master Agreement and ensure that our core principles of Savings, Choice and Service are communicated to the Customer community.

Failure to provide accurate reports by the deadline may be deemed as poor performance and will reflect on the Suppliers Performance Management Scorecard.

During the Term, the Supplier shall collect and report the agreed upon performance measures as requested by OEMC. The Performance Management Scorecard and other performance indicators will be used to measure the Supplier's performance throughout the Term, ensuring Customers receive Devices and/or Services deemed acceptable and delivered on time. The Supplier's performance score will be considered when OEMC 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 Devices and/or Services 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.

The key performance indicators ("KPIs") include but are not limited to the following:

Supplier Provided Customer Performance Measures		
Key Performance Indicator	Performance Measurement	Performance Goal
Fraud Rate	Number of frauds reported for Visa & Mastercard	Less than 1% of all Transactions

Supplier Provided Customer Performance Measures		
Key Performance Indicator	Performance Measurement	Performance Goal
Transaction Success Rate	% of successful Transaction over total Transaction attempted quarterly	99% of the Transactions
Accurate Invoicing	Number of invoicing errors annually	98% Accuracy
Mean Time to Repair POS Device Down	less than 4 hours from service request to repair	98% of the time measured – calendar monthly

OECM Evaluation of Supplier's Performances		
Key Performance Indicator	Performance Measurement	Performance Goal
On Time Spend Report Submissions	On time	98% of the time
Integrated Reporting Template Remittance	On time	98% of the time
Cost Recovery Fee Payment Remittance	Day of	98% of the time
Response Time to OECM Inquiries	24 Hours	98% of the time

During the business review meetings, OECM will review the KPIs and Supplier Recognition Program results with the Supplier.

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

A Customer may, when executing a CSA, seek other KPIs.

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 Devices and/or 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 Devices and/or 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 Devices safety and anti-corruption laws, trade agreements, conventions, standards, and guidelines, where the Devices and/or 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 Devices and/or 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 Devices and/or 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 Devices and/or 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 OECM's SCC;
- (b) Report violations of the SCC or identify any Customer requests that might constitute violations; and,
- (c) Cooperate and collaborate with OECM and bring about the resolution of SCC compliance issues.

Compliance with SCC principles is a criterion that is taken into consideration in OECM'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 OECM at its discretion. The Supplier must provide, upon request, OECM with documents attesting to their compliance with the SCC.

In addition, OECM may elect to visit the Suppliers' facilities if OECM so chooses. Appropriate notice will be provided to the Supplier. Whenever a situation of non-compliance is identified, OECM 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 OECM's SCC may result in termination of this Master Agreement.

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