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## DENTAL SUPPLIES, SMALL EQUIPMENT AND RELATED SERVICES

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### REQUEST FOR TENDERS NUMBER 2020-356

**Request for Tenders Issued On:** August 18, 2020

**Supplier's Information & OTP Demonstration Session:** 2:00 pm on August 20, 2020

**Supplier's Deadline to Submit Questions:** 5:00 pm on August 25, 2020

**Closing Date:** 2:00:00 pm on September 4, 2020 local time in Toronto, Ontario, Canada

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

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

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## PART 1 – INTRODUCTION

This non-binding Request for Tenders (“RFT”) is an invitation to obtain Tenders from qualified Suppliers for dental supplies small equipment (“Products”) and related Services (“Services”) as described in Part 2 – The Deliverables and Part 4 – Master Agreement Structure and Management.

OECM intends to award upto three (3) Master Agreements for all Categories as listed in Part 2 – Deliverables, with an initial Term of the Master Agreement (“Term”) of there (3) years with an option in favour of OECM to extend the Term on the same terms and conditions for up to two (2) years.

This RFT is issued by OECM.

### 1.1 Objective of this RFT

The objective of this RFT includes, but is not limited to:

- (a) Provide OECM Customers the ability to purchase Products and/or Services to satisfy their requirements;
- (b) Reduce the costs of associated competitive procurement processes on an ongoing basis (i.e. fewer competitive procurement documents issued by Customers);
- (c) Provide Customers with Products which are new and unused;
- (d) Be capable of providing quality Products and/or Services in a timely manner, demonstrating value for money;
- (e) Provide Customers with professional and responsive Customer support and account management; and,
- (f) Work in a cooperative manner with Customers, providing quality Products and/or Services.

### 1.2 Historical Spend

OECM currently has a dental supplies agreement in place with one (1) Supplier for all Categories that expire on October 25, 2020. There are presently ten (10) unique Customers using the existing OECM dental supplies agreement:

- (a) Five (5) Colleges; and,
- (b) Five (5) other organizations.

Approximate purchases through the existing agreements from December 2015 to May 2020 are approximately one million five hundred thousand dollars (\$1,500,000) based on two (2) out of three (3) suppliers who were awarded in the previous request for proposal issued.

Customers using OECM’s current agreement are not, in any way, obligated to participate in any Master Agreement resulting from this RFT.

### 1.3 Overview of OECM

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

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

- (a) Actively sourcing products and services in an open, fair, transparent and competitive manner, compliant with BPS Procurement Directive and applicable trade agreements;
- (b) Establishing, promoting and managing product and service agreements used throughout its Customer community;

- (c) Supporting Customers' access and use of OEM 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 OEM'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 OEM and its Customers resulting in continuous, long-term success; and,
- (f) Supporting supplier partners through a Supplier Recognition Program.

#### **1.4 Use of OEM Master Agreements**

As of June 2020, nine hundred and forty (940) Customers were using one (1) or more OEM agreements. Since 2009, the cumulative spend from our Customers is approximately one-point-nine billion (\$1.9B).

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

#### **1.5 The Ontario Broader Public Sector Procurement Directive**

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

#### **1.6 Trade Agreements**

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

#### **1.7 Rules of Interpretation**

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

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender;
- (b) Words in the RFT shall bear their natural meaning;
- (c) References containing terms such as "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";
- (d) In construing the RFT, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (e) Unless otherwise indicated, time periods will be strictly applied; and,
- (f) The following terminology applies in the RFT:
  - i. The terms "must" and "shall" relate to a requirement the Supplier will be obligated to fulfil. Whenever the terms "must" or "shall" are used in relation to OEM or the Supplier, such terms shall be construed and interpreted as synonymous and shall be construed to read "OEM shall" or the "Supplier shall", as the case may be;
  - ii. The term "should" relates to a requirement that OEM would like the Supplier to fulfil; and,

- iii. The term “will” describes a procedure that is intended to be followed.

[End of Part 1]

## PART 2 – THE DELIVERABLES

This Part of the RFT describes the dental supplies, small equipment (“Products”) and related Services (“Services”) Deliverables which will be incorporated into the final Master Agreement.

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

The Supplier shall provide all RFT requirements for all Categories across all Zones.

### 2.1 Categories of Products

The Supplier shall submit a bid for all Categories and provide new and unused Products under the following ten (10) Categories in this RFT:

- (a) Category A – Endodontics (e.g. drills and reamers, evacuation Products, forceps, irrigation and obturation devices, sealers and cements);
- (b) Category B – Handpieces (e.g. Air motor, electric, fibre optic, high speed, laboratory, low speed, maintenance units and replacement parts);
- (c) Category C – Instruments (e.g. Diagnostic, hand file, hygiene, instrument cassettes, laboratory, operative, periodontal, rotary and surgical);
- (d) Category D – Laboratory (e.g. Abrasives, acrylics, brushes and buffs, casting, chemicals, composites, impression materials and wax);
- (e) Category E – Orthodontics (e.g. Archwire, bands, brackets, buccal tubes, elastomerics, headgear and retainer);
- (f) Category F – Preventive (e.g. Anesthesia, fluoride, mouth guard, prophylaxis, oral health aid, sealant, tooth whitening, ultrasonic scaling, x-ray and accessories);
- (g) Category G – Prosthetics (e.g. CAD, CAM, fixed alloys, fixed ceramics, implant, removable denture base/teeth and temporary abutments);
- (h) Category H – Restorative (e.g. Adhesives, alloys, articulating, bonding agents, cements–liners–bases, crown and bridge);
- (i) Category I – Disposables and Others (e.g. Infection control and disposables such as cotton rolls, pellets, cups, lids, garments, bibs, towels, safety eye wear, face masks and gloves); and
- (j) Category J – Small Equipment (e.g. Amalgamators, articulators, CAD/CAM system, cameras, compressors and vacuums, diagnostic equipment, digital sensors, lasers, lights, matrix systems, sterilizers, chairs and accessories).

The Supplier shall propose an exact or equivalent products in Appendix C – Commercial Response . When bidding for an equivalent Product, the Supplier should propose an identical match to the Product listed, or propose an item that meets or exceeds the listed Product information.

### 2.2 Related Services

The Supplier should be capable of providing Customers with manufacturer-authorized equipment Services on a wide-range of Products, brands and OEMs, for all Categories of Products being offered and available under the Agreement as follows, but not limited to:

- (a) Technical Support (e.g. providing Customers support such as training on care, usage and training on safety) ;
- (b) Repairs and parts (e.g. post warranty maintenance) ;
- (c) Preventative maintenance (e.g. providing maintenance services quarterly, bi annually or annually) ; and
- (d) Extended warranty Service (e.g. post the warranty period).

Customers may require such Services in addition to existing Product warranty (e.g. preventative maintenance on a Product under warranty), or as post-warranty support.



As Service requirements will vary by Customers, details on Services and other related Services will be mutually agreed upon between the Customers and the Supplier and set out in the Customer-Supplier Agreement.

### **2.3 OEM and Reseller/Dealer Status**

The Supplier must be an Original Equipment Manufacturer (“OEM”) or an authorized reseller/dealer for proposed OEM Products.

During the Term, if the Supplier is an authorized reseller, it must maintain OEM authorized reseller/dealer status and provide proof of its status upon OEM's request. The Supplier must advise OEM of any changes to its reseller status within thirty (30) days of such change.

### **2.4 Delivery**

All Products shall be Delivered Duty Paid (“DDP”) to inside the door or the dock of the Customer’s location as requested by the Customer.

The Supplier shall deliver orders with correct Products and quantities within the lead time.

The Customer and Supplier may agree to other delivery terms (e.g. in order for the Supplier to reduce its environmental footprint, or to satisfy the Clients schedule) which are mutually beneficial.

Cusotomers may have more than one (1) location within their organization (e.g. three (3) campuses) and may have more than one (1) delivery location within one (1) delivery address (e.g. two (2) locations in one (1) campus). The Supplier and Customer will set out this arrangement when completing a CSA.

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

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

#### **2.4.1 Delivery Lead Times**

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

- (a) By next Business Day or within forty-eight (48) hours, understanding that there may be extenuating circumstances (e.g. a longer delivery lead-time when purchasing special Products, a high volume of Products for student kits);
- (b) Custom Products will be delivered within four (4) to eight (8) weeks or as mutually agreed upon between the Supplier and Customer; and,
- (c) The Supplier and Customers may mutually agree upon other lead times which are beneficial to both parties. These terms may include blanket purchase orders with scheduled release dates, bulk or large orders or special delivery requirements (e.g. specific hours) and are to be included in the Customer-Supplier Agreement.

The Supplier shall co-ordinate directly with the Customer regarding the status of orders, and delivery and is also expected to provide rush delivery upon Customer’s request, where available, the details for which are to be mutually agreed and included in the Customer-Supplier Agreement.

#### **2.4.2 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 accept the back orders.

#### **2.4.3 Product Substitution**

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

#### **2.4.4 Damaged or Defective Shipment**

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

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

The Supplier shall be responsible for all shipping costs related to the return and replacement (e.g. immediately if required by Customer for an imminently scheduled event) of any damaged or defective Products from the Customer's location. Customers will not be responsible for any additional costs (e.g. re-stocking fees) due to damaged or defective Products received upon delivery of up to ten (10) Business Days of receipt.

#### **2.4.5 Returns**

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

#### **2.4.6 Recalls**

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

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

#### **2.4.7 Discontinued Products**

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

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

### **2.5 Product Samples**

During the Term of the Agreement, Customers may request Product samples for testing and evaluation to ensure Products meet Customers' requirements and are suitable for their purpose. Product samples may also be required when evaluating new Products, substitutions or alternatives.

These Product samples shall be provided to Customers at no cost. At the end of the evaluation, Customers are under no obligation to purchase these samples. Customers may, however, choose to purchase the samples at discounted Rates or the samples will be returned at the Supplier's cost. In an event of a request for a high value Product sample, the Customer and the Supplier may mutually agree upon arrangement and details.

From time to time, Customers may be required to test one (1) or more Product before a purchase (e.g. substitution or alternates) or prior to signing a Customer-Supplier Agreement. The Supplier and the Customer should work together and coordinate a mutually agreed upon arrangement.

### **2.6 Product Warranty**

The Supplier shall warrant purchased Products from the date of receipt at Customer's location for a minimum of one (1) year against, but not limited to the following conditions:

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

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

## **2.7 Order Management**

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

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

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.

### **2.7.1 Product Catalogue**

The Supplier is expected to provide the following Product lists with Product details and images to Customers as required:

- (a) An electronic list of Products within awarded categories, in its published standard catalogue (i.e. online); and
- (b) Standard printed published catalogue.

French Product list and/or catalogue should be provided upon request by the Customers or OEMC on behalf of a Customer.

### **2.7.2 Minimum Order**

The minimum order value for this agreement shall be three hundred dollars (\$300.00) for each single order. If the minimum order threshold of \$300.00 are not met, there shall be a surcharge levied as mutually agreed between the Supplier and the Customer at the signing of the CSA .

### **2.7.3 Order Acknowledgement**

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

### **2.7.4 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.

### **2.7.5 Coordinating Bulk Purchases**

The Supplier shall support coordinated bulk purchases initiated by OEMC and/or Customers for several Customers during the Term. If this occurs, OEMC or the Customer may negotiate a lower Rate with the Supplier for bulk purchases. Lead time for bulk purchases may differ from that set out in Section 2.4.1. OEMC or the Customer will ensure reasonable lead times for bulk purchases are requested.

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

#### **2.7.6 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.

#### **2.7.7 Promotional Discounts**

Suppliers may offer to Customers special promotions to kick off new Product lines, sell-off discontinued inventory, and/or end-of-line Products.

### **2.8 Invoicing**

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

The Supplier shall, for Customers using Jaggaer, support cXML and/or portal invoicing functionality.

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

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

#### **2.8.1 Payment Terms and Methods**

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

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

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

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

#### **2.8.2 Electronic Fund Transfer**

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

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

### **2.9 Support to Customers**

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

- (a) Providing a responsive account executive (with applicable back-up) assigned to the Customer to support their needs by providing day-to-day and ongoing administrative support, and operational support;
- (b) Managing issue resolution in a timely manner;
- (c) Complying with agreed upon escalation processes as per Appendix J to resolve outstanding issues;
- (a) Responding to Customer's inquiries (e.g. to day-to-day activities) within one (1) Business Day;
- (b) Ensuring minimal disruption to the Customer;
- (c) Providing easy access to the Supplier (e.g. online, toll free telephone number, email, voicemail, chat or fax);
- (d) Providing training/demonstrations, knowledge transfer, and no-cost educational events (e.g. webinars), if available;
- (e) Establishing an ongoing communications program with the Customer (e.g. new initiatives, innovation, sustainability);
- (f) Adhering to the Customer's confidentiality and privacy policies (e.g. related to student's private information);
- (g) Providing written notice to Customers on any scheduled shut down that would impact services (e.g. inventory count, relocation of warehouse, website maintenance);
- (h) Provide Customer reporting; and,
- (i) Attending meetings with Customers, as requested.

#### **2.9.1 Transition**

The Supplier should, at no additional cost, provide Customers transition support (e.g. setting up a Supplier's account from the Customer's current agreement/purchasing arrangement) with minimal service disruption.

#### **2.9.2 Incentive to Customers**

Where feasible, the Supplier should offer incentives to Customers to promote additional cost savings resulting from better operational efficiencies that may including, but not limited to:

- (a) Increased online ordering including electronic commerce;
- (b) Use of Purchasing Card ("P-Card") for immediate payment;
- (c) Early payment discount for Customers;
- (d) Trade in of old equipment;
- (e) Higher volumes; and,
- (f) Overall growth.

In consultation with OEM, the Customer may negotiate specific details related to one (1) or more incentive.

The incentives the Supplier and Customer agree to shall be incorporated into the CSA and reviewed and adjusted (e.g. annually) as required and reported to OEM as part of the sales reporting.

The incentive to Customers can be reviewed and adjusted annually as required.

#### **2.10 Environmental and Sustainability Considerations**

OEM and its Customers are committed to reducing their carbon footprint. The Supplier should keep Customers informed about any environmentally friendly processes, Products, new technologies and/or green

initiatives. The Supplier should, in consultation with OECM, make any environmentally friendly processes, Products, new technologies and/or green initiatives, related to the RFT Deliverables, available to Customers as required.

#### **2.11 Social Procurement**

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

#### **2.12 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 Product and Service availability critical to Customers.

#### **2.13 Licences, Right to Use and Approvals**

The Supplier shall obtain all licences, right to use and approvals required in connection with the supply of the Products and/or Services and provide them at Customer and OECM request such as:

- (a) Medical Device License; and
- (b) Medical Device Establishment License.

The costs of obtaining such licences, right to use and approvals shall be the responsibility of, and shall be paid for by, the Supplier.

Where a Supplier is required by Applicable Law to hold or obtain any such licence, right to use and approval to carry on an activity contemplated in its Tender or in the Master Agreement, neither acceptance of the Tender nor execution of the Master Agreement by OECM shall be considered an approval by OECM for the Supplier to carry on such activity without the requisite licence, right to use or approval.

#### **2.14 Workplace Hazardous Material Information System**

The Supplier shall ensure Workplace Hazardous Materials Information System ("WHMIS") Safety Data Sheets ("SDS") are onsite as required. Additionally, the Supplier should provide the Customer's personnel WHMIS training, as it relates to the Products and equipment, in accordance with the *Ontario Occupational Health and Safety Act*.

The Supplier shall provide the Customer with online access to SDSs. If there are any changes or updates to the SDS, the Supplier shall update the documents within twenty-four (24) hours and provide notification to the Customer that the SDS has been updated.

#### **2.15 Electrical Requirements**

The Supplier shall ensure electrical Products are 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 Products at Customer's facilities.

[End of Part 2]

## PART 3 – EVALUATION OF TENDERS

### 3.1 Stages of Tender Evaluation

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

| Stage     | Type of Evaluation            | Refer to RFT Section | Scoring Methodology and Maximum Points (if applicable) | Minimum Threshold Requirement (if any) |
|-----------|-------------------------------|----------------------|--|--|
| Stage I   | Qualification Response        | 3.2                  | Pass/Fail  | Pass                                   |
| Stage II  | Commercial Response           | 3.3                  | 1050   | Not Applicable                         |
| Stage III | Tie Break Process             | 3.4                  | No Point Allocation                                    | Not Applicable                         |
| Stage IV  | Negotiations                  | 3.5                  | No Point Allocation                                    | Not Applicable                         |
| Stage V   | Master Agreement Finalization | 3.6                  | No Point Allocation                                    | Not Applicable                         |

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

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

The Supplier **must** complete the following forms in 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 |
| OEM Authorization Letter                             | Qualification |
| Commercial Response (in Microsoft Excel format only) | Commercial    |

If the Supplier 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 Suppliers satisfying the identified deficiencies within allotted time will proceed to Stage II.

### 3.3 Stage II – Commercial Response

The Supplier **must** complete and upload Appendix C – Commercial Response for all Categories, in Microsoft Excel format only, into the OTP Commercial Envelope for this stage of evaluation.

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

Point allocations for the Commercial Response sections are as follows:

| Commercial Response Sections | Available Points |
|------------------------------|------------------|
| 1. Category A - Endodontics  | 100              |
| 2. Category B - Handpieces   | 100              |
| 3. Category C - Instruments  | 100              |
| 4. Category D - Labatory     | 100              |
| 5. Category E - Orthodontics | 100              |

| Commercial Response Sections                        | Available Points |
|---|------------------|
| 6. Category F - Preventive                          | 100              |
| 7. Category G - Prosthetics                         | 100              |
| 8. Category H - Restorative                         | 100              |
| 9. Category I - Disposables and others              | 100              |
| 10. Category J - Small Equipment                    | 100              |
| 11. Related Services (Applicable to all Categories) | 50               |
| 12. Miscellaneous Products                          | Not Evaluated    |
| 13. Catalogue of Products                           | Not Evaluated    |
|   | <b>1050</b>      |

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:

| <b>EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR SECTION 3.3</b>   |  |                  |
|--|--|------------------|
| Proposed Rates   | Calculation                                  | Resulting Points |
| If Supplier 1 proposes the lowest Rate of \$100.00, it would receive 100% of the points allocated.       | $\$100 \div \$100 \times 100 \text{ Points}$ | 100              |
| If Supplier 2 proposes the second lowest Rate of \$200.00, it would receive 50% of the points allocated. | $\$100 \div \$200 \times 100 \text{ Points}$ | 50               |
| If Supplier 3 proposes the third lowest Rate of \$400.00, it would receive 25% of the points allocated.  | $\$100 \div \$400 \times 100 \text{ Points}$ | 25               |

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

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

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



### **3.4 Stage III – Tie Break Process**

At this stage, where two (2) or more of the highest scoring Eligible Tenders, achieve a tie score on completion of the Stage II, OECM may invite all Suppliers to negotiations or break the tie by selecting the Tender with the highest overall score Catgor A of the Commercial Response.

### **3.5 Stage IV – Negotiations**

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

The negotiations may include:

- (a) Products and/or Services;
- (b) Master Agreement terms and conditions;
- (c) Additional references, if required;
- (d) Rates; and,
- (e) Best and Final Offer.

OECM may also request supplementary information from a Preferred Supplier to verify, clarify or supplement the information provided in its Tender 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 Supplier fail to reach an agreement within the aforementioned timeframe, OECM may (a) request the Preferred Supplier to submit its Best and Final Offer; (b) terminate negotiations with that particular Preferred Supplier; (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 Suppliers would be added to OECM's website at a later date.

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

### **3.6 Stage V – Master Agreement Finalization**

The Preferred Supplier 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

This Part of the RFT describes the Supplier's management requirements and will be incorporated into the final Master Agreement.

### 4.1 Master Agreement Structure

OECM may, through this RFT process, enter into Master Agreements with up to three (3) Suppliers bidding for all Categories for the provision of the Products and/or Services.

The Term is intended to be for three (3) years, with an option in favour of OECM to extend the Term on the same terms and conditions for up to two (2) additional years. Performance as set out in Appendix G – Performance Management Scorecard and, if applicable, Supplier Recognition Program evaluation results and others (i.e. Customer uptake, satisfaction, performance, quality, Service provision, response time, reporting, marketing efforts and any commitments made in the Supplier's Tender) will be considered when contemplating an Agreement extension and supplier refresh, if necessary.

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

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

#### 4.1.1 No Contract until Execution of Written Master Agreement

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

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

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

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

When a Second Stage request is issued, which does not constitute a contract A, contract B situation, it will identify the required Products and/or Services or it may request the Supplier to propose appropriate Products 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 Products and/or Services;
- (b) Lead times for Products, and/or Timelines for Services)); and,
- (c) Final, net Rates. The Rates should be valid for a period of not less than ninety (90) days. Limited time offer Rates and/or promotional Rates must be specified by the Supplier, if applicable to the specific Second Stage request.

Customers are not obligated to sign a CSA to obtain specific Services Rates. However, a CSA must be signed before the provision of any Services commences.

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

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

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

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

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

## **4.2 Rates**

The proposed Product and/or Service Rates shall be firm Rates for all Products for the first year of the Master Agreement and shall be:

- (a) Maximum Net Rates per Category and Related Services;
- (b) Minimum percentage discount off Supplier's list price for Miscellaneous Products and Catalogue of Products, applicable to all Customers;
- (c) In Canadian funds and shall include all applicable costs, including, but not limited to overhead, materials, fuel, fuel surcharge, duties, tariffs, travel, delivery, office support, profit, permits, licences, labour, insurance, and Workplace Safety Insurance Board costs; and,
- (d) Exclusive of the HST, or other similar taxes.

The Supplier may, however, lower its Rates and/or increase the minimum percentage discount off Suppliers list price for specific Products 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 Products 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 Products 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 Travel Expenses**

The Supplier must obtain prior approval from the Customer for costs incurred as a result of accommodation or travel associated with a particular Assignment. These costs must be charged in accordance with the Customer's travel policy, as may be amended from time to time. Suppliers may obtain applicable rates from the Customer. All such pre-approved costs, where applicable, must be itemized separately on invoices.

Customers shall not be responsible for any meal, hospitality, or incidental expenses incurred by the Supplier, whether incurred while travelling or otherwise including,

- (a) Meals, snacks and beverages;
- (b) Gratuities;
- (c) Laundry or dry cleaning;
- (d) Valet services;
- (e) Dependent care;
- (f) Home management; and,
- (g) Personal telephone calls.

#### **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 on the anniversary date of the Master Agreement (e.g. in September 2021) and every anniversary thereafter.

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

As part of any review OECM will consider Rate adjustments that reflect changes in operation, adjustments due to new or changed municipal, provincial, or federal regulations, by-laws, and fluctuations in foreign exchange rates as published by the Bank of Canada, tariffs, or ordinances. Any Rate refresh request from a Supplier must be accompanied by supporting documentation (e.g. detailed calculations and individual Customer impact analysis) to support any Rate adjustment. OECM may use a third-party index (e.g. Consumer Price Index) in its Rates review. OECM will not consider any fixed costs or overhead adjustments in its review.

Rate adjustments from a substantial fluctuation between the Canadian dollar ("CAD") and United States dollar ("USD") exchange rate may be considered where the average USD-to-CAD exchange rate has a variance of a plus or a minus five percent (+/- 5%) or greater to the baseline rate established by OECM.

A substantial exchange rate fluctuation between the Canadian dollar ("CAD") and the United States dollar ("USD") will be based on the following:

- (a) A baseline rate will be established by using the applicable six (6) month average USD-to-CAD exchange rate. For example, the six (6) month average for the period October 2019 – March 2020 was one-point-three-three-two-one-one-seven (1.332117);
- (b) Where the applicable six (6) month average USD-to-CAD exchange rate has a variance of a plus or a minus five percent (+/- 5%) or greater to the baseline rate, a downward or upward adjustment in Rates may be considered; and,
- (c) The applicable six (6) month average USD-to-CAD exchange rate used will be as published by the Bank of Canada.

Any such request from the Supplier must be accompanied by supporting evidence that the fluctuation in the exchange rate had a direct impact on the Rates of the System.

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 Products 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 thirty (30) days' 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 Products 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.

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 Products and/or Services**

During the Term, if mutually agreed by OEMC and the Supplier, other Products, Categories and/or Services (e.g. newly available Products for all Categories evaluated under Part 3. 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 sixty (60) days if requesting a Product and/or Service refresh.

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

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

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

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

#### **4.2.4 OEMC Geographical Zones**

OEMC Customers are located in five (5) geographical Zones (as set out below and detailed in Appendix D – OEMC Geographical Zones) throughout the Province of Ontario.

- (h) Central Zone;
- (i) East Zone;
- (j) North East Zone;
- (k) North West Zone; and,
- (l) West Zone.

Also refer to Appendix E – OEMC School Board, University and College Customers in Ontario illustrating OEMC's educational Customers by Zone.

#### 4.2.5 OECD Cost Recovery Fee

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

The Supplier shall pay to OECD a CRF of **two point five percent (2.5%)** on all Products and/or Services invoiced by the Supplier to the Customers throughout the Term.

CRF will be calculated as follows:

| <b>EXAMPLE OF HOW CRF WILL BE CALCULATED FOR THE SECOND CALENDAR QUARTER WITH A CRF = 2.95%</b> |                                 |                    |                    |  |
|---|---------------------------------|--------------------|--------------------|--|
| <b>Sales per Month</b>  | <b>Calculation</b>              | <b>CRF (in \$)</b> | <b>HST (in \$)</b> | <b>Total CRF Payment to OECD (in \$)</b> |
| If Supplier has \$100,000 total sales in the fourth quarter of 2020 (e.g. December 2020)        | $\$100,000 \times 2.5\%$<br>CRF | \$2550             | \$325              | \$2825                                   |
| If Supplier has \$200,000 total sales in the first quarter of 2021 (e.g. March 2021)            | $\$200,000 \times 2.5\%$<br>CRF | \$5000             | \$650              | \$5650                                   |
| If Supplier has \$50,000 total sales in the second quarter of 2021 (e.g. June 2021)             | $\$50,000 \times 2.5\%$ CRF     | \$1250             | \$163              | \$1413                                   |

The CRF shall be paid to OECD, 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:

| <b>CRF Payments</b>   | <b>Payment Date</b> |
|---|---------------------|
| The first CRF, including any Customer purchases made between the Master Agreement execution date and December 31 2020 shall be paid to OECD by: | January 14, 2021    |
| The next CRF, including any Customer purchases made between January 1, 2021 to March 31, 2021, shall be paid to OECD by:                        | April 14, 2021      |
| The next CRF, including any Customer purchases made between April 1, 2021 to June 30, 2021, shall be paid to OECD by:                           | July 14, 2021       |
| The next CRF, including any Customer purchases made between July 1, 2021 to September 30, shall be paid to OECD by:                             | October 14, 2021    |

HST is applicable to the CRF payments made to OECD.

The CRF will be reviewed (e.g. annually) and may, at OECD'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 4.08 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.

#### **4.2.6 Financial Administration Act Section 28**

In accordance with the requirements of the *Financial Administration Act* ("FAA"), notwithstanding anything else in the CSA, or in any other agreement between the Customer and the Supplier executed to carry out the Services provided for herein, the remedies, recourse or rights of the Supplier shall be limited to the Customer and to the right, title and interest owned by the Customer in and to all of its real or personal property, whether now existing or hereinafter arising or acquired from time to time. The Supplier unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of the CSA, and agrees that it shall have no remedies, recourse or rights in respect of the CSA against the Crown in right of Ontario, any Ontario Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against the Customer and its assets.

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

#### **4.2.7 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 (e.g. Master Agreement Rate versus Rate invoiced to Customer, and/or other savings).

### **4.3 Supplier Management Support to OECM**

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

- (a) Assigning to OECM a Supplier Account Executive and team responsible for supporting and overseeing all aspects of the Master Agreement;
- (b) Working and acting in an ethical manner demonstrating integrity, professionalism, accountability, transparency and continuous improvement;
- (c) Promoting the Master Agreement within the Customer community;
- (d) Maintaining OECM's and Customer's confidentiality by not disclosing Confidential Information without the prior written consent of OECM and/or the Customer, as the case may be, as further described in Appendix B – Form of Master Agreement;
- (e) Attending business review meetings with OECM to review such information as:
  - i. CSAs and upcoming opportunities; and,
  - ii. Review and monitor performance management compliance;

- (f) Complying with Appendix H – Code of Conduct requirements as described on the OEM 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 F – 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 OEM).

#### **4.3.1 Master Agreement Award and Launch**

Once the Master Agreement is awarded, the Supplier will meet with OEM 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 OEM Master Agreements**

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

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

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

OEM 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 OEM as described in Appendix G – Performance Management Scorecard.

#### **4.3.4 OEM's Supplier Recognition Program**

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

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

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

Further details will be provided to the Suppliers.

#### **4.3.5 Reporting to OEM**

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

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

[End of Part 4]

## PART 5 – TERMS AND CONDITIONS OF THE RFT PROCESS

### 5.1 General Information and Instructions

#### Procurement Process Non-Binding

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

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

#### Non-Binding Rates

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

#### 5.1.1 RFT Timetable

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

| RFT Timetable   |                                 |
|---|---------------------------------|
| Event   | Time/Date                       |
| OECM's Issue Date of RFT:                             | August 18, 2020                 |
| Supplier's Information and OTP Demonstration Session: | 2:00 pm on August 20, 2020      |
| Supplier's Deadline to Submit Questions:              | 5:00 pm on August 25, 2020      |
| OECM's Deadline for Issuing Answers:                  | August 27, 2020                 |
| Closing Date:   | 2:00:00 pm on September 4, 2020 |
| Anticipated Master Agreement Start Date:              | September 2020                  |

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

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

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

#### 5.1.2 Supplier's Information and OTP Demonstration Session

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

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

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

Any changes to the Supplier'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 Supplier's Information and OTP Demonstration Session and the RFT, the RFT shall prevail.

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

### **5.1.3 Supplier to Follow Instructions**

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

### **5.1.4 OECM's Information in RFT Only an Estimate**

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

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

### **5.1.5 Supplier's Costs**

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

- (a) The preparation, presentation and submission of its Tender;
- (b) The Supplier's attendance at any meeting in relation to the RFT 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 Supplier's own questions; and,
- (e) Any discussion and/or finalization, if any, in respect of the Form of Master Agreement.

## **5.2 Communication after RFT Issuance**

### **5.2.1 Communication with OECM**

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

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

- (a) Any employee or agent of OECM;
- (b) Any member or advisor of the Project Advisory Committee;

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

#### **5.2.2 Supplier to Review RFT**

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

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

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

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

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

To ensure the Supplier clearly understand issued addenda, OECM allows Suppliers 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 Supplier 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 Supplier concerning this RFT or its process.

#### **5.2.3 Supplier to Notify**

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

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

The Supplier shall not:

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

#### **5.2.4 All New Information to Suppliers by way of Addenda**

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

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

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

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

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

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

### 5.3 Tender Submission Requirements

#### 5.3.1 General

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

The Supplier 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](mailto:etenderhelp_CA@jaggaer.com);
- (b) By phone at 866-722-7390; or,
- (c) Accessing website information at [https://ontariotenders.app.jaggaer.com/esop/nac-host/public/attach/eTendering\\_responding\\_to\\_tender\\_guide.pdf](https://ontariotenders.app.jaggaer.com/esop/nac-host/public/attach/eTendering_responding_to_tender_guide.pdf).

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

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

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

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

#### 5.3.2 Tender in English

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

#### 5.3.3 Tender Submission Requirements

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

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

| Appendix/Form Title | OTP Envelope  | Complete Form within OTP | Complete Appendix and Upload to OTP |
|---------------------|---------------|--------------------------|-------------------------------------|
| Form of Offer       | Qualification | √                        |                                     |

|   |               |   |   |
|---|---------------|---|---|
| Compliance with Form of Master Agreement                          | Qualification | √ |   |
| Appendix C – Commercial Response (in Microsoft Excel format only) | Commercial    |   | √ |
| OEM Authorization Letter  | Qualification |   | √ |
| Supplier's Escalation Process and Contact Information             | Qualification |   | √ |

#### 5.3.4 Other Tender Considerations

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

- (a) Information contained in any embedded link will not be considered part of a Tender, and will not be evaluated or scored;
- (b) Information attached as part of the Commercial Envelope in OTP will not be considered as part of the qualification of Stage I Refer to Section 3.3; and,
- (c) The Tender should be complete in all respects. Tender evaluation and scoring applies only to the information contained in the Tender, or accepted clarifications as set out in Section 5.3.13 Clarification of Tenders.

#### 5.3.5 Tender Receipt by OECM

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

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

#### 5.3.6 Withdrawal of Tender

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

#### 5.3.7 Amendment of Tender on OTP

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

#### 5.3.8 Completeness of Tender

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

#### 5.3.9 Tenders Retained by OECM

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

#### 5.3.10 Acceptance of RFT

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

#### 5.3.11 Amendments to RFT

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

#### **5.3.12 Tenders will not be Opened Publicly**

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

#### **5.3.13 Clarification of Tenders**

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

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

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

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

#### **5.3.14 Verification of Information**

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

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

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

#### **5.3.15 Tender Acceptance**

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

#### **5.3.16 RFT Incorporated into Tender**

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

#### **5.3.17 Exclusivity of Contract**

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

#### **5.3.18 Substantial Compliance**

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

#### **5.3.19 No Publicity or Promotion**

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

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

## **5.4 Negotiations, Timelines, Notification and Debriefing**

### **5.4.1 Negotiations with Preferred Supplier**

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

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

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

### **5.4.2 Failure to Execute a Master Agreement**

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

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

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

- (a) Any such Master Agreement will commence upon signature by the duly authorized representatives of OECM and the Preferred Supplier; 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 Suppliers**

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

### **5.4.5 Debriefing**



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

#### **5.4.6 Bid Dispute Resolution**

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

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

#### **5.5.2 Confidential Information of the Supplier**

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

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

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

### **5.5.3 Supplier's Submission**

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

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

### **5.5.4 Personal Information**

Personal Information shall be treated as follows:

- (a) Submission of information – The Supplier should not submit as part of its Tender any information related to the qualifications or experience of persons who will be assigned to provide Products 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 Supplier by OECM shall only be used to select the qualified individuals to undertake the Products and/or Services and to confirm that the work performed is consistent with these qualifications; and,
- (c) Consent – It is the responsibility of the Supplier 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 Supplier 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 Supplier. A Supplier should identify any information in its Tender, or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by OECM and its Customers. The confidentiality of such information will be maintained by OECM, except as otherwise required by law or by order of a court, tribunal, or the Ontario Privacy Commissioner.

By submitting a Tender, including any Personal Information requested in this RFT, the Supplier 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 Supplier 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 Suppliers;
- (b) Request written clarification or the submission of supplementary written information from any Supplier and incorporate such clarification or supplementary written information, if accepted, into the Tender, at OECM's discretion, provided that any clarification or submission of supplementary

written information shall not be an opportunity for the Supplier to correct errors in its Tender or to change or enhance the Tender in any material manner;

- (c) Waive formalities and accept Tenders that substantially comply with the requirements of this RFT;
- (d) Verify with any Supplier or with a third party any information set out in a Tender;
- (e) Check references other than those provided by Suppliers;
- (f) With supporting evidence, disqualify any Supplier 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 Supplier;
- (g) Disqualify any Supplier whose Tender contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Supplier whose Tender is determined by OECM to be non-compliant with the requirements of this RFT;
- (i) Disqualify a Tender based upon the past performance or on inappropriate conduct in a prior procurement process, or where the Supplier has or the principals of a Supplier have previously breached an agreement with OECM, or has otherwise failed to perform such agreement to the reasonable satisfaction of OECM (i.e. has not submitted required reporting and/or Cost Recovery Fees to OECM);
- (j) Disqualify any Supplier, who, in relation to this RFT or the evaluation and selection process, has engaged directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Supplier.
- (k) Disqualify the Supplier who has been charged or convicted of an offence in respect of an agreement with OECM, or who has, in the opinion of OECM, engaged in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion, unethical conduct, including lobbying as described above or other forms of deceitfulness, or other inappropriate communications offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of OECM, or where the Supplier reveals a Conflict of Interest or Unfair Advantage in its Tender or a Conflict of Interest or evidence of any Unfair Advantage is brought to the attention of OECM;
- (l) Disqualify any Tender of any Supplier who has breached any Applicable Laws or who has engaged in conduct prohibited by this RFT, including where there is any evidence that the Supplier or any of its employees or agents colluded with any other Supplier, its employees or agents in the preparation of the Tender;
- (m) Make changes, including substantial changes, to this RFT provided that those changes are issued by way of addenda in the manner set out in this RFT;
- (n) Accept or reject a Tender if only one (1) Tender is submitted;
- (o) Reject a Subcontractor proposed by a Supplier within a Consortium;
- (p) Select any Supplier other than the Supplier whose Tender reflects the lowest cost to OECM;
- (q) Cancel this RFT process at any stage and issue a new RFT for the same or similar requirements, including where:

- i. OECM determines it would be in the best interest of OECM not to award a Master Agreement,
- ii. the Tender prices exceed the bid prices received by OECM for Products and/or Services acquired of a similar nature and previously done work,
- iii. the Tender 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 Tender prices exceed the funds available for the Products and/or Services, or,
- v. the funding for the acquisition of the proposed Products and/or Services has been revoked, modified, or has not been approved,

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

- (r) Discuss with any Supplier different or additional terms to those contained in this RFT or in any Tender;
- (s) Accept any Tender in whole or in part;
- (t) If OECM receives a Tender from a Supplier with Rates that are abnormally lower than the Rates in other Tenders, OECM may verify with the Supplier that the Supplier satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Tenders in its absolute discretion, including where a Supplier 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 Supplier or any third party resulting from OECM exercising any of its express or implied rights under this RFT.

By submitting a Tender, the Supplier 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 – Supplier**

In the event that the Preferred Supplier 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 Supplier from further consideration and begin discussions with the next highest scoring Supplier without becoming obligated to offer to negotiate with all Suppliers; or,
- (c) Exercise any other applicable right set out in this RFT including, but not limited to, cancelling the RFT and issuing a new RFT for the same or similar Products and/or Services.

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

#### **5.6.3 No Liability**

The Supplier agrees that:

- (a) Any action or proceeding relating to this RFT process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Supplier irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;

- (b) It irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFT process on any jurisdictional basis; and,
- (c) It shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFT.

The Supplier further agrees that if OECM commits a material breach of OECM's obligations pursuant to this RFT, OECM's liability to the Supplier, and the aggregate amount of damages recoverable against OECM for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of OECM, shall be no greater than the Tender preparation costs that the Supplier seeking damages from OECM can demonstrate. In no event shall OECM be liable to the Supplier for any breach of OECM's obligations pursuant to this RFT, which does not constitute a material breach thereof. The Supplier 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 Supplier shall not assign any of its rights or obligations hereunder during this RFT process without the prior written consent of OECM. Any act in derogation of the foregoing shall be null and void.

#### **5.6.5 Entire RFT**

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

#### **5.6.6 Priority of Documents**

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

#### **5.6.7 Disqualification for Misrepresentation**

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

#### **5.6.8 References and Past Performance**

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

#### **5.6.9 Cancellation**

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

#### **5.6.10 Competition Act**

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

#### **5.6.11 Trade Agreements**

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

For more information, refer to the following:

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

#### **5.6.12 Governing Law**

The terms and conditions in this Part 5:

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

[End of Part 5]

## APPENDIX A – DEFINITIONS

### Definitions

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

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

**“Authorized Reseller”** means a Supplier that is authorized by the OEM of the proposed Products to market, advertise, sell and distribute the Products;

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

**“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 p.m. EST , except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario), or as otherwise agreed to by the parties in writing;

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

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

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

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

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

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

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

**“Consortium”** means when more than one (1) business entities (i.e. Consortium members) agree to work together and submit one (1) Tender to satisfy the requirements of the RFT. One (1) of the Consortium members shall identify itself as the Supplier 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 OECM'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 OECM's competitively sourced agreements. Once Customer-Supplier Agreements have been executed, this fee is remitted by the Supplier to OECM on a quarterly basis;

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

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

**“Deliverable”** means all Products 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;



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

**“Master Agreement”** or **“Agreement”** means the agreement to be made between the Preferred Supplier and OEMC 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 OEMC and the Supplier;

**“OEMC”** means the Ontario Education Collaborative Marketplace;

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

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

**“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 Supplier from OEMC or the Customer or created by the Supplier pursuant to the RFT;

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

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

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

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

**“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 and minimum percentage discount off Supplier’s list price, in Canadian funds, for the Products and/or Services as set out in the Supplier’s submitted Appendix C - Commercial Response;

**“Request for Tenders”** or **“RFT”** means this Request for Tenders # 2020-356 issued by OEMC, including all appendices and addenda thereto;

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

**“Service”** means all related Services (e.g. technical Service; repairs and parts, and may include loaner equipment Services, preventative maintenance; and extended warranty Service 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;

**“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 Supplier who has fully executed a Master Agreement with OEMC 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 Supplier would complete Technical Response;

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

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

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

**“Zone”** means the OECM geographical boundaries within the Province of Ontario as identified in Appendix D – OECM Geographical Zones.

## **APPENDIX B – FORM OF MASTER AGREEMENT**

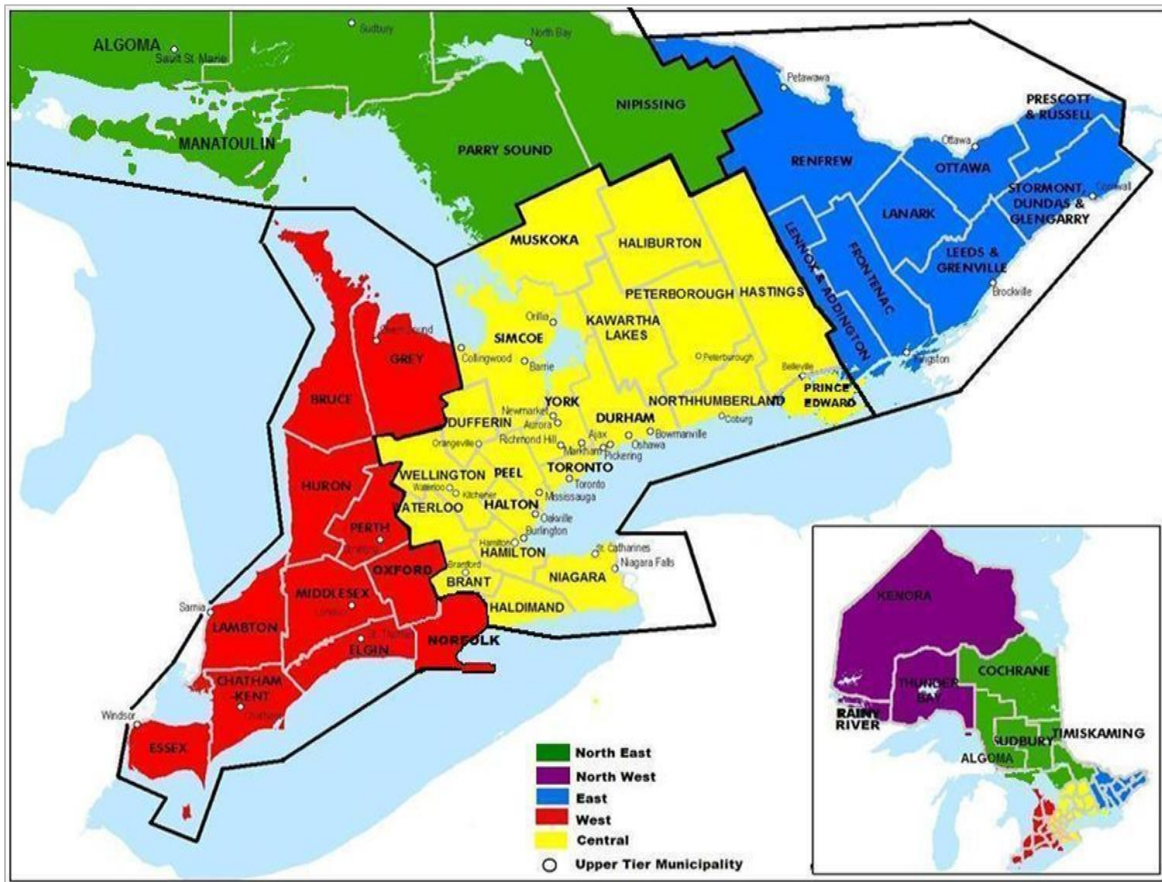
This appendix is posted as a separate PDF document.

## **APPENDIX C – COMMERCIAL RESPONSE**

The Supplier should complete this appendix, posted as a separate Microsoft Excel document, and upload it into OTP.

## APPENDIX D – OECM GEOGRAPHICAL ZONES

OECM Customers are located in one (1) or more of the following five (5) geographical Zones in Ontario.



## APPENDIX E – OECM SCHOOL BOARD, COLLEGE AND UNIVERSITY CUSTOMERS IN ONTARIO

| Zones      | School Board Customers  |  |                         | College Customers   | University Customers                          |
|------------|---|--|-------------------------|---|---|
| Central    | Brant Haldimand Norfolk Catholic District School Board ("CDSB") | Hastings and Prince Edward DSB                                     | Waterloo Region DSB     | Centennial College of Applied Arts and Technology ("CAAT")      | Brock University                              |
|            | Conseil scolaire catholique MonAvenir                           | Kawartha Pine Ridge DSB  | Wellington CDSB         | Conestoga College Institute of Technology and Advanced Learning | McMaster University                           |
|            | Conseil scolaire Viamonde                                       | Niagara CDSB   | York CDSB               | Durham CAAT   | OCAD University                               |
|            | District School Board ("DSB") of Niagara                        | Peel DSB   | York Region DSB         | Fleming CAAT  | Ryerson University                            |
|            | Dufferin-Peel CDSB  | Peterborough Victoria Northumberland and Clarington CDSB           |                         | George Brown CAAT   | Trent University                              |
|            | Durham CDSB   | Simcoe County DSB  |                         | Georgian CAAT   | University of Guelph                          |
|            | Durham DSB  | Simcoe Muskoka CDSB  |                         | Humber College Institute of Technology and Advanced Learning    | University of Ontario Institute of Technology |
|            | Grand Erie DSB  | Toronto CDSB   |                         | Loyalist CAAT   | University of Toronto                         |
|            | Halton CDSB   | Toronto DSB  |                         | Mohawk CAAT   | University of Waterloo                        |
|            | Halton DSB  | Trillium Lakelands DSB   |                         | Niagara CAAT  | University of Western Ontario                 |
|            | Hamilton-Wentworth CDSB   | Upper Grand DSB  |                         | Seneca CAAT   | Wilfrid Laurier University                    |
|            | Hamilton-Wentworth DSB  | Waterloo CDSB  |                         | Sheridan College Institute of Technology and Advanced Learning  | York University                               |
| East       | Algonquin and Lakeshore CDSB                                    | Conseil scolaire de district catholique ("CSDC") de l'Est Ontarien | Renfrew County CDSB     | Algonquin CAAT  | Carleton University                           |
|            | CDSB of Eastern Ontario   | Limestone DSB  | Renfrew County DSB      | Canadore CAAT   | Queen's University                            |
|            | Conseil des écoles catholiques du Centre-Est                    | Ottawa CDSB  | Upper Canada DSB        | La Cité collégiale  | University of Ottawa                          |
|            | Conseil des écoles publiques de l'Est de l'Ontario              | Ottawa-Carleton DSB  |                         | St. Lawrence CAAT   |   |
| North East | Algoma DSB  | Conseil scolaire public du Nord-Est de l'Ontario                   | Northeastern CDSB       | Cambrian CAAT   | Algoma University                             |
|            | Conseil scolaire catholique de district des Grandes Rivières    | DSB Ontario North East   | Rainbow DSB             | Collège Boréal  | Laurentian University                         |
|            | Conseil scolaire catholique du Nouvel-Ontario                   | Huron-Superior CDSB  | Sudbury CDSB            | Northern CAAT   | Nipissing University                          |
|            | Conseil scolaire catholique Franco-Nord                         | Near North DSB   |                         | Sault CAAT  |   |
|            | Conseil scolaire public du Grand Nord de l'Ontario              | Nipissing-Parry Sound CDSB   |                         |   |   |
| North West | CSDC des Aurores Boréales                                       | Lakehead DSB   | Superior North CDSB     | Confederation CAAT  | Lakehead University                           |
|            | Keewatin-Patricia DSB   | Northwest CDSB   | Superior-Greenstone DSB |   |   |
|            | Kenora CDSB   | Rainy River DSB  | Thunder Bay CDSB        |   |   |
| West       | Avon Maitland DSB   | Greater Essex County DSB   | St. Clair CDSB          | Fanshawe CAAT   | University of Windsor                         |
|            | Bluewater DSB   | Huron-Perth CDSB   | Thames Valley DSB       | Lambton CAAT  |   |
|            | Bruce-Grey CDSB   | Lambton Kent DSB   | Windsor-Essex CDSB      | St. Clair CAAT  |   |
|            | Conseil scolaire catholique Providence                          | London District Catholic School Board                              |                         |   |   |

## APPENDIX F – REPORTING REQUIREMENTS

The Supplier must provide the following reports to OEM for the Term irrespective of any spend being generated through the Agreement. Reports shall be submitted via email in Microsoft Excel format according to the frequency set out below.

| Supplier Reporting Requirements   |                      |   |
|---|----------------------|---|
| Reports   | Frequency            | Due Date                                |
| <b><u>Integrated Reporting Template</u></b>   |                      |   |
| 1. <b>Sales Report</b> including, but not limited to:<br>(a) Customer's name;<br>(b) Invoice number and date;<br>(c) Manufacturer's Product number;<br>(d) Supplier's Product number;<br>(e) Product description;<br>(f) Category;<br>(g) Unit of measure (UOM);<br>(h) Quantity in each UOM<br>(i) Quantity shipped per unit of measure;<br>(j) Rate per Unit;<br>(k) Total per Product;<br>(l) Savings (i.e. list Rate minus discount, incentives); and,<br>(m) Cost Recovery Fees. | Monthly              | 8th Business Day                        |
| 2. <b>CSA Status Report</b> including, but not limited to:<br>(a) The number of executed CSAs; and,<br>(b) CSAs pending execution.  |                      |   |
| 3. <b>Optional Second Stage Status Report</b> including, but not limited to:<br>(a) Customer's name;<br>(b) Reference number;<br>(c) Number of requests received and submitted;<br>(d) Product and/or Service requirement (e.g. type, committed volume);<br>(e) Resulting savings; and,<br>(f) Status (e.g. complete, due date to return to Customer).  |                      |   |
| <b><u>Performance Reporting</u></b>   |                      |   |
| 1. Key Performance Indicators ("KPIs") Report - As set out in Appendix G – Performance Management Scorecard.<br><br>2. Performance results specific to Customer's KPIs.   | Quarterly (calendar) | 8th Business Day following each quarter |
| <b><u>Other Reports</u></b>   |                      |   |
| 1. Specific Customer Reports - As requested (e.g. spend, back order, delivery)  | As requested         | As requested                            |
| 2. OEMC Ad Hoc Reports - As requested and mutually agreed upon  | As requested         | As requested                            |

Final reporting requirements will be determined during negotiations.

## APPENDIX G – PERFORMANCE MANAGEMENT SCORECARD

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

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

As part of OEM's efforts to provide greater value to Customers, OEM has implemented a Supplier Recognition Program ("SRP"). Through the SRP, OEM 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 OEM to ensure:

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

Reporting, as described in Appendix F – 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, OEM provides Customers a thorough understanding of the Supplier's performance aiding the adoption of the Master Agreement.

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

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

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

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

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

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



| Supplier Provided Customer Performance Measures |  |   |  |
|---|--|---|--|
| Key Performance Indicator                       | Performance Measurement  | Performance Goal                        | Penalties  |
| Customer Issues – Number of Customer complaints | Total of Customer complaints annually out of total Customer requests | Less than 2% of total Customer requests | Possible non-extension of Master Agreement or refusal of Rate and/or Product refresh |
| On-time deliveries                              | Delivery Date versus lead time agreed upon                           | Better than or equal to 98% of the time | As mutually agreed upon between Customer and Supplier                                |
| Quality of Products                             | Percentage of returns by Customer                                    | Less than 2% of total orders            |  |
| Accurate Invoicing                              | Number of Invoicing errors annually                                  | Less than 2% annually                   |  |

| OECM Evaluation of Supplier's Performances   |   |                  |   |
|--|---|------------------|---|
| Key Performance Indicator  | Performance Measurement   | Performance Goal | Penalties   |
| On time executed CSA submissions   | Within 30 days of execution   | 98% of the time  | As mutually agreed upon between OECM and Supplier |
| Fully Completed on time Integrated Reporting Template Submission including:<br>- Sales Report;<br>- KPI Reports<br>- CSA Status Report; and,<br>- Second Stage Report, if applicable | 8th Business Day of each month  | 98% of the time  |   |
| On time Rate Refresh submissions   | At least sixty (60) days prior to the Master Agreement's anniversary date | 98% of the time  |   |
| Cost Recovery Fee Payment Remittance   | Tenth (10th) Business Day of each calendar quarter                        | 98% of the time  |   |
| Response Time to OECM Inquiries  | One (1) Business Day  | 98% of the time  |   |

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

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

#### Penalties and Rewards

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

## APPENDIX H – CODE OF CONDUCT

The Supplier will take every measure to comply with OECD'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 OECD's Customers as mutually agreed upon between the Customer and Supplier. OECD's core values are in alignment with and entrenched within the key principles of the SCC. The SCC applies to the Supplier's owners, employees, agents, partners and subcontractors who provide Products and/or Services to OECD 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 OECD, and only use this information as part of their business relations with OECD;
- (d) Comply with intellectual property rights relating to the Products and/or Services provided to OECD and its Customers;
- (e) Never place an OECD 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 OECD; and,
- (g) Disclose to OECD any behaviour deemed unethical on the part of an OECD employee.

Also, the Supplier shall:

- (a) Comply with all foreign and domestic applicable federal/provincial/municipal laws and regulations including, but not limited to the environment, health and safety, labour and employment, human rights and Product safety and anti-corruption laws, trade agreements, conventions, standards, and guidelines, where the Products and/or Services are provided to OECD 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 OECD employees and Customers. The Supplier must avoid situations that may adversely influence their business relationship with OECD or can be directly or indirectly perceived as a conflict of interest and interfere with the provision of the Products and/or Services to OECD or its Customers. The Supplier must disclose any actual or potential conflicts of interest promptly to OECD;
- (c) Never offer to OECD 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 OECD's employees' ability to make business decisions in the best interest of OECD and its Customers. If a Supplier is unsure whether a gift or entertainment offer to an OECD employee complies with OECD'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 OECD or its Customers at risk of violating anti-bribery and/or anti-corruption laws. The Supplier must ensure that the requirements of all these applicable laws are met, and not engage in any form of corrupt practices including extortion, fraud or bribery;
- (e) Ensure that any outsourcing and/or subcontracting used to fulfill Products and/or Services are identified and approved by the Customer and monitored to ensure compliance with contractual obligations and adherence to

OECM's SCC. Supplier's employees, subcontractors and other service providers must adhere to the requirements of the SCC, which must be made available as necessary. The Supplier must also ensure that its subcontractors and other service providers are paid properly and promptly to avoid any disruption in the provision of Products and/or Services by the Supplier to OECM 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>.

## **APPENDIX I – OEM AUTHORIZED RESELLER/DEALER LETTER**

The Supplier should upload this document in either .pdf or .doc file it into OTP.

## **APPENDIX J – ESCALATION PROCESS AND CONTACT INFORMATION**

The Supplier should complete this appendix, posted as a separate Microsoft word document, and upload it into OTP.