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## CUSTOMS BROKERAGE AND RELATED SERVICES

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### REQUEST FOR PROPOSALS NUMBER 2022-407

**Request for Proposals Issued On:** October 26, 2022

**Proponent's Information & OTP Demonstration Session:** 2:00 pm on November 1, 2022

**Proponent's Deadline to Submit Questions:** 5:00 pm on November 4, 2022

**Proponent's Deadline to Submit Questions Related to  
Addenda & Question and Answer Documents:** 5:00 pm on November 14, 2022

**Closing Date:** 2:00:00 pm on November 28, 2022 local time in Toronto, Ontario, Canada

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

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

## TABLE OF CONTENTS

<b>PART 1 – INTRODUCTION</b>	<b>5</b>
1.1 Objective of this RFP	5
1.2 Supplier Qualification	5
1.3 Project Background	6
1.4 Project Advisory Committee	6
1.5 Overview of OECM	6
1.6 OECM Customers	6
1.7 Use of OECM Master Agreements	7
1.8 The Ontario Broader Public Sector Procurement Directive	7
1.9 Trade Agreements	7
1.10 Rules of Interpretation	7
<b>PART 2 – THE DELIVERABLES</b>	<b>9</b>
2.1 Description of Deliverables	9
2.2 Canadian Customs Brokerage Services	9
2.2.1 Base Canadian Customs Brokerage Services	9
2.2.2 Additional Canadian Customs Brokerage Services	9
2.3 U.S. Customs Brokerage Services	10
2.3.1 Base U.S. Customs Brokerage Services	10
2.3.2 Additional U.S. Customs Brokerage Services	10
2.4 Professional Services	11
2.5 Other Services	11
2.6 Order Management	11
2.6.1 Electronic Commerce	12
2.7 Invoicing	12
2.7.1 Payment Terms and Methods	12
2.7.2 Electronic Fund Transfer	12
2.8 Support to Customers	13
2.9 Environmental and Sustainability Considerations	13
2.10 Social Procurement	13
2.11 Disaster Recovery and Business Continuity	13
2.12 Licences, Right to Use and Approvals	13
<b>PART 3 – EVALUATION OF PROPOSALS</b>	<b>15</b>
3.1 Stages of Proposal Evaluation	15
3.2 Stage I – Review of Qualification Responses (Pass/Fail)	15
3.3 Stage II – Technical Response	15
3.4 Stage III – Commercial Response	16
3.5 Stage IV – Cumulative Score	17
3.6 Stage V – Tie Break Process	17
3.7 Stage VI – Negotiations	17
3.8 Stage VII – Master Agreement Finalization	18
<b>PART 4 – MASTER AGREEMENT STRUCTURE AND MANAGEMENT</b>	<b>19</b>
4.1 Master Agreement Structure	19
4.1.1 No Contract until Execution of Written Master Agreement	19
4.1.2 Customer’s Usage of Master Agreements	19
4.2 No Guarantee of Volume of Work or Exclusivity of Master Agreement	20
4.3 Rates	20
4.4 Optional Rate Refresh	21
4.5 Optional Process to Add Other Services	21
4.6 OECM Cost Recovery Fee	21
4.7 Financial Administration Act Section 28	22
4.8 Saving Calculation	23
4.9 Supplier Management Support to OECM	23
4.9.1 Master Agreement Award and Launch	23
4.9.2 Promoting OECM Master Agreements	24
4.9.3 Supplier’s Performance Management Scorecard	24
4.9.4 OECM’s Supplier Recognition Program	24
4.9.5 Reporting to OECM	25
<b>PART 5 – TERMS AND CONDITIONS OF THE RFP PROCESS</b>	<b>26</b>

5.1	General Information and Instructions .....	26
5.1.1	RFP Timetable .....	26
5.1.2	Proponent's Information and OTP Demonstration Session .....	27
5.1.3	Proponent to Follow Instructions .....	27
5.1.4	OECM's Information in RFP Only an Estimate .....	27
5.1.5	Proponent's Costs .....	27
5.2	Communication after RFP Issuance .....	27
5.2.1	Communication with OECM .....	27
5.2.2	Proponent to Review RFP .....	28
5.2.3	Proponent to Notify .....	28
5.2.4	All New Information to Proponents by way of Addenda .....	28
5.3	Proposal Submission Requirements .....	29
5.3.1	General .....	29
5.3.2	Proposal in English .....	29
5.3.3	Proposal Submission Requirements .....	29
5.3.4	Other Proposal Considerations .....	30
5.3.5	Proposal Receipt by OECM .....	30
5.3.6	Withdrawal of Proposal .....	30
5.3.7	Amendment of Proposal on OTP .....	30
5.3.8	Completeness of Proposal .....	30
5.3.9	Proposals Retained by OECM .....	30
5.3.10	Acceptance of RFP .....	30
5.3.11	Amendments to RFP .....	31
5.3.12	Proposals will not be Opened Publicly .....	31
5.3.13	Clarification of Proposals .....	31
5.3.14	Verification of Information .....	31
5.3.15	Proposal Acceptance .....	31
5.3.16	RFP Incorporated into Proposal .....	31
5.3.17	Exclusivity of Contract .....	31
5.3.18	Substantial Compliance .....	32
5.3.19	No Publicity or Promotion .....	32
5.4	Negotiations, Timelines, Notification and Debriefing .....	32
5.4.1	Negotiations with Preferred Proponent .....	32
5.4.2	Failure to Execute a Master Agreement .....	32
5.4.3	Master Agreement .....	32
5.4.4	Notification to Other Proponents .....	33
5.4.5	Debriefing .....	33
5.4.6	Bid Dispute Resolution .....	33
5.5	Prohibited Communications, and Confidential Information .....	33
5.5.1	Confidential Information of OECM .....	33
5.5.2	Confidential Information of the Proponent .....	33
5.5.3	Proponent's Submission .....	34
5.5.4	Personal Information .....	34
5.5.5	Non-Disclosure Agreement .....	34
5.5.6	Freedom of Information and Protection of Privacy Act .....	34
5.5.7	Intellectual Property .....	34
5.6	Reserved Rights and Governing Law of OECM .....	34
5.6.1	General .....	34
5.6.2	Rights of OECM – Proponent .....	36
5.6.3	No Liability .....	36
5.6.4	Assignment .....	37
5.6.5	Entire RFP .....	37
5.6.6	Priority of Documents .....	37
5.6.7	Disqualification for Misrepresentation .....	37
5.6.8	References and Past Performance .....	37
5.6.9	Cancellation .....	37
5.6.10	Competition Act .....	37
5.6.11	Trade Agreements .....	37
5.6.12	Governing Law .....	38
	<b>APPENDIX A – DEFINITIONS .....</b>	<b>39</b>
	<b>APPENDIX B – FORM OF MASTER AGREEMENT .....</b>	<b>42</b>
	<b>APPENDIX C – COMMERCIAL RESPONSE .....</b>	<b>43</b>

**APPENDIX D – REPORTING REQUIREMENTS ..... 44**  
**APPENDIX E – PERFORMANCE MANAGEMENT SCORECARD ..... 45**  
**APPENDIX F – CODE OF CONDUCT ..... 47**

## PART 1 – INTRODUCTION

This non-binding Request for Proposals (“RFP”) is an invitation to obtain Proposals from qualified Proponents for Customs Brokerage and Related Services (“Services”) as described in Part 2 – The Deliverables and Part 4 – Master Agreement Structure and Management for OECM customers to use on an as-and-when required basis.

OECM intends to award one (1) or more Master Agreements, with an initial Term of the Master Agreement (“Term”) of three (3) years with an option in favour of OECM to extend the Term on the same terms and conditions for up to two (2) additional years. Refer to the details contained within the RFP for a full description of the requirements.

This RFP is issued by OECM.

### 1.1 Objective of this RFP

The objective of this RFP is to provide OECM Customers with Services from qualified Suppliers for customs brokerage and related services while reducing the costs associated with brokerage services on an ongoing basis.

Qualified Suppliers should be capable of providing quality Services to OECM Customers and have the ability to:

- (a) Handle all customs clearance formalities in compliance with Canada Border Services Agency (“CBSA”) and the United States Customs and Border Protection (“U.S. CBP”) regulations;
- (b) Facilitate the movement of cargo to and from Canada through Canadian and U.S. customs;
- (c) Provide quality Services in a timely manner, demonstrating value for money;
- (d) Provide customers with cost-effective and efficient cargo release processes;
- (e) Provide Customers with professional and responsive customer support and account management;
- (f) Work in a cooperative manner with Customers, in a flexible, and innovative way while providing quality Services;
- (g) Reduce the costs of competitive procurement processes associated with the Services on an ongoing basis (i.e. fewer competitive procurement documents issued by Customers).
- (h) Ensure compliance with government and industry regulations related to customs brokerage Services;
- (i) Provide customized reporting as per Customer requirements; and,
- (j) Ensure applicable certification requirements to perform services are met.

### 1.2 Supplier Qualification

The Supplier shall, at minimum, possess the following expertise and capabilities:

- (a) Be fully cognizant of and have the demonstrated customs brokerage knowledge as it relates to the educational sector;
- (b) Be capable of filing entries with CBSA electronically via Electronic Data Interchange (“EDI”), including remote location and out-port filings;
- (c) Be capable of submitting Remote Location Filings (“RLF”) to U.S Customs and Border Protection (“U.S. CBP”) via EDI;
- (d) Import cargo trace and tracking capabilities;
- (e) Be knowledgeable of all applicable trade agreements; and,
- (f) Provide knowledgeable and professional personnel ensuring Customers’ needs are met.

### 1.3 Project Background

In 2017, OECM issued a Request for Proposals (“RFP”) for Customs Brokerage Services resulting in awarding one (1) Supplier. The agreement expires on April 09, 2023.

There are presently fifty-three (53) unique customers using the existing OECM Customs Brokerage and Related Services agreement. Reported Customer purchases through these agreements, between April 2018 to April 2022, was approximately One million and four hundred thousand dollars (\$1,400,000). Customers using OECM’s current agreement are **not**, in any way, obligated to participate in any Master Agreement resulting from this RFP.

### 1.4 Project Advisory Committee

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

- (a) Western University;
- (b) York University; and,
- (c) York Region District School Board.

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

### 1.5 Overview of OECM

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

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

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

### 1.6 OECM Customers

OECM Customers are:

- (a) 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);
- (b) Crown corporations;
- (c) First Nations federal agencies;
- (d) Health and social service entities;

- (e) Municipalities;
- (f) Not-for-profit organizations
- (g) Provincially funded organizations (“PFO”);
- (h) Shared service organizations;
- (i) Utilities and local boards; and,
- (j) Any other Ontario Public Sector (“OPS”) and Broader Public Sector agencies, boards or commissions or similar entities not mentioned here.

### **1.7 Use of OECM Master Agreements**

As of July 31, 2022 one thousand, two hundred and nine (1,209) Customers were using one (1) or more OECM agreements with a cumulative spend of more than three (3) billion dollars over the last twelve (12) years.

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

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

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

### **1.9 Trade Agreements**

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

### **1.10 Rules of Interpretation**

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

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

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

[End of Part 1]



## PART 2 – THE DELIVERABLES

This Part of the RFP describes the Customs Brokerage and Related Services Deliverables which will be incorporated into the final Master Agreement.

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

The Supplier shall provide **all** RFP requirements.

### 2.1 Description of Deliverables

The Supplier shall facilitate the movement of cargo to and from Canada through Canadian and U.S. customs including customs clearances and the requirements of other governmental departments in compliance with the applicable laws and the regulations of Canada and the United States of America.

The Supplier shall provide customs brokerage and related Services for Customer’s shipments, which may contain perishable goods, live animals, hazardous materials, laboratory supplies, laboratory equipment and/or other time sensitive goods including, but not limited to:

- (a) Canadian customs brokerage Services;
- (b) U.S. customs brokerage Services;
- (c) Professional Services; and,
- (d) Other Services.

### 2.2 Canadian Customs Brokerage Services

#### 2.2.1 Base Canadian Customs Brokerage Services

The Supplier shall provide Canadian customs brokerage Services for Customers’ shipment including, but not limited to:

- (a) Timely release of low and high value shipments with appropriate documentation;
- (b) Assistance with tariff classification and valuation;
- (c) Filing of entries with CBSA electronically;
- (d) Accounting and payment of applicable duties and taxes to CBSA and/or third party fees; and,
- (e) Processing remote location or out-port filings.

#### 2.2.2 Additional Canadian Customs Brokerage Services

The Supplier shall provide additional Canadian customs brokerage Services for Customers’ shipment, as required, including, but not limited to:

- (a) Processing other governmental departments clearances;
- (b) Single Window Initiative – Integrated Import Declaration, Customs Brokers to use Service Option 911 to provide an electronic Integrated Import Declaration (IID) to the CBSA for the nine Participating Government Departments and Agencies (PGAs). The IID can be for both non-regulated and regulated commodities.
- (c) Classify goods, estimate duties track the progress of ruling electronically, make payments and view posted transactions through the CBSA Assessment and Revenue Management (CARM)
- (d) Handling amendments, refunds and entry corrections including detailed adjustment statement (“DAS”) requests;

- (e) Periodic review of Customer's import transactions for duty and tax recovery;
- (f) Securing missing documentation;
- (g) Paying third party fees on behalf of Customers (e.g. Border Security fees, terminal charges);
- (h) Assisting with duty and tax recovery;
- (i) Processing emergency after-hours release and ensure terminal attendance;
- (j) Processing drawback claims;
- (k) Performing post entry review of filings;
- (l) Managing disputes including appeals, penalty petitions, protests and duty recovery;
- (m) Filing applications for permits and licenses;
- (n) Managing of bonds on behalf of Customers;
- (o) Assisting Customers with customs compliance verification;
- (p) Preparing export documentation;
- (q) Export reporting;
- (r) Airport clearance – Hand carried commercial goods;
- (s) Assisting with temporary importation;
- (t) Handling carnets on behalf of Customers; and,
- (u) Handling any other matters necessary for the provision of the customs brokerage Services.

## **2.3 U.S. Customs Brokerage Services**

### **2.3.1 Base U.S. Customs Brokerage Services**

The Supplier shall provide customs brokerage Services for Customers' shipment, related to import or export of goods to or from the United States of America, including but not limited to:

- (a) Customs clearance for all modes of transportation, both formal and informal entries;
- (b) Expedited release notifications, as required;
- (c) Tariff classification assistance;
- (d) Preparation of customs documentation;
- (e) Filing of entries with U.S. CBP electronically;
- (f) Accounting and payment of applicable duties and taxes to U.S. CBP and/or third party fees; and,
- (g) Remote location filings.

### **2.3.2 Additional U.S. Customs Brokerage Services**

The Supplier shall provide additional customs brokerage Services for Customers' shipment, as required, related to import or export of goods to or from the United States of America, including but not limited to:

- (a) Allow Customers to use Supplier's bond;
- (b) Advise on Other Government Agency ("OGA") clearances;
- (c) Preparation of export documentation;

- (d) Export reporting;
- (e) Post entry adjustments;
- (f) Assist Customers with protest filings;
- (g) Managing temporary or continuous CBP bonds on behalf of Customers;
- (h) Securing missing documentation;
- (i) Periodic review of Customer's import transactions for duty and tax recovery, as required;
- (j) Application for Customers' bond;
- (k) Emergency after-hours releases;
- (l) Manage disputes including appeals, penalty petitions, protests and duty recovery;
- (m) Process Importer Security Filings ("ISF", "10+2");
- (n) Process Automated Commercial Environment ("ACE") filings;
- (o) Airport clearance – Hand carried commercial goods.
- (p) Handling carnets on behalf of Customers;
- (q) Obtaining cargo insurance on behalf of Customers; and,
- (r) Any other matters necessary for the provision of the customs brokerage Services.

#### **2.4 Professional Services**

The Supplier should provide the following professional services including, but not limited to:

- (a) Tariff classification services of Customer's inventory;
- (b) Assistance with CBSA audits for Customers;
- (c) Collection and maintenance of free trade certificates such as United States-Mexico-Canada Agreement ("USMCA") certificates;
- (d) Ruling management services;
- (e) Analysis of Customers supply chain requirements;
- (f) USMCA and other free trade agreements origin reviews;
- (g) Harmonized sales tax ("HST") consultation;
- (h) Support customs self-assessment processes, as required; and,
- (i) Secure access to a web-based application for tracking, reporting and downloading related documents.

#### **2.5 Other Services**

During the Term of the Agreement, if mutually agreed by OEMC and the Supplier, other Services may be added to the Agreement to align with Customers' needs. Agreements will be amended accordingly.

#### **2.6 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.

### **2.6.1 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 Invoicing**

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

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

- (a) Customer name and location;
- (b) Customer purchase order number (if applicable) and order date;
- (c) Description of Services provided, quantities and Rates;
- (d) HST and total cost;
- (e) Other reference numbers (e.g. speed code, work order number, customer reference number);
- (f) Dimensional weight (if applicable); and,
- (g) Quantity (if applicable).

### **2.7.1 Payment Terms and Methods**

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

The Supplier shall accept payment from Customers by cheque or Electronic Funds Transfer ("EFT") at no additional cost to the Customer.

The Supplier shall accept payment from Customers by Purchasing Card, Visa Payables Automation (via ghost card) at an additional financial institution's charges to the customer.

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

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

### **2.7.2 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.

## **2.8 Support to Customers**

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

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

## **2.9 Environmental and Sustainability Considerations**

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

## **2.10 Social Procurement**

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

## **2.11 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.

## **2.12 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 Services and provide them at Customer and OECM request. The costs of obtaining such licences, right to use and approvals shall be the responsibility of, and shall be paid for by, the Supplier.

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

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

[End of Part 2]

## PART 3 – EVALUATION OF PROPOSALS

### 3.1 Stages of Proposal Evaluation

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

Stage	Type of Evaluation	Refer to RFP Section	Scoring Methodology and Maximum Points (if applicable)	Minimum Threshold Requirement (if any)
Stage I	Qualification Response	3.2	Pass/Fail	Pass
Stage II	Technical Response	3.3	130	50%
Stage III	Commercial Response	3.4	70	Not Applicable
Stage IV	Cumulative Score	3.5	200	Not Applicable
Stage V	Tie Break Process	3.6	No Point Allocation	Not Applicable
Stage VI	Negotiations	3.7	No Point Allocation	Not Applicable
Stage VII	Master Agreement Finalization	3.8	No Point Allocation	Not Applicable

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

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

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

Title	OTP Envelope
Form of Offer	Qualification
Compliance with Form of Master Agreement	Qualification
Commercial Response (in Microsoft Excel format only)	Commercial

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

### 3.3 Stage II – Technical Response

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

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

Only Proposals that meet or exceed the minimum thresholds will receive a **pass** in this stage and proceed to Stage III of the evaluation process. While the overall threshold for the Technical Response is fifty percent (50%), two (2) Technical Response sections - Proponent's Qualification and Proponent's Capabilities also have a minimum threshold of fifty percent (50%).

Point allocations for the Technical Response sections are as follows:

Technical Response Sections	Available Points	Minimum Threshold, if any
- Proponent's Qualification	44	50%

Technical Response Sections	Available Points	Minimum Threshold, if any
- Proponent's Capabilities	61	50%
- Customer Support and Account Management	25	Not Applicable
<b>TOTAL POINTS:</b>	<b>130</b>	<b>50%</b>

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

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

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

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

### 3.4 Stage III – Commercial Response

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

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

Point allocations for the Commercial Response sections are as follows:

Commercial Response Sections	Available Points
- Canadian Customs Brokerage Services	50
- U.S Customs Brokerage Services	14
- Professional Services	6
<b>TOTAL POINTS:</b>	<b>70</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 BASE CANADIAN BROKERAGE SERVICES</b>		
Proposed Rates	Calculation	Resulting Points
If Proponent 1 proposes the lowest Rate of \$100.00 for Base Canadian Customs Brokerage Services, it would receive 100% of the points allocated.	$\$100 \div \$100 \times 10$ Points	10
If Proponent 2 proposes the second lowest Rate of \$200.00 for Base Canadian Customs Brokerage Services, it would receive 50% of the points allocated.	$\$100 \div \$200 \times 10$ Points	5
If Proponent 3 proposes the third lowest Rate of \$400.00 for Base Canadian Customs Brokerage Services, it would receive 25% of the points allocated.	$\$100 \div \$400 \times 10$ Points	2.5

Where \$0.00 is entered in any Rate cell, it is deemed to mean that the particular Product/Service **will be provided to Customers at no additional cost**. Therefore, when evaluating and scoring the Rates, a Proposal specifying \$0.00 in a Rate cell in the Commercial Response shall receive the maximum point allocation for



that particular Service. The remaining Proposals will be evaluated using a relative formula based on the remaining percentage of available points regardless of the Proposals of \$0.00 Rate as per below example.

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

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

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

### 3.5 Stage IV – Cumulative Score

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

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

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

### 3.6 Stage V – Tie Break Process

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

### 3.7 Stage VI – Negotiations

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

The negotiations may include:

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

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

OECM intends to complete negotiations within fifteen (15) calendar days after notification. If, for any reason, OECM and a Preferred Proponent fail to reach an agreement within the aforementioned timeframe, OECM may:

- (a) Request the Preferred Proponent to submit its Best and Final Offer;
- (b) Terminate negotiations with that particular Preferred Proponent;
- (c) Extend the negotiation timeline; or,
- (d) Publish one (1) or some of the Suppliers, who have executed Master Agreements, within our promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Proponents would be added to OECM's website at a later date.

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

### **3.8 Stage VII – Master Agreement Finalization**

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

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

[End of Part 3]

## PART 4 – MASTER AGREEMENT STRUCTURE AND MANAGEMENT

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

### 4.1 Master Agreement Structure

OECM may, through this RFP process, enter into Master Agreements with one (1) or more Suppliers for the provision of the Customs Brokerage and Related Services on as and when basis for OECM Customers.

The Term is intended to be for three (3) years, with an option in favour of OECM to extend the Term on the same terms and conditions for up to two (2) additional years.

Performance as set out in Appendix E – Performance Management Scorecard and, if applicable, Supplier Recognition Program evaluation results will be considered when contemplating a Master Agreement extension and Supplier refresh, if necessary. Should additional suppliers be added during a refresh process, all Master Agreement will be co-terminus.

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 RFP process is intended to identify Proponents for the purpose of negotiation of potential Master Agreements. The negotiation process is further described in Part 3 – Evaluation of Proposals, and in Section 3.7 of this RFP.

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

#### 4.1.2 Customer's Usage of Master Agreements

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

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

**Part Two**, the Second Stage Selection Process ("Second Stage") is managed by the Customer or by OECM on the Customer's behalf and is focused on the Customer's specific needs. Depending on the Customer's internal policies, and potential dollar value of the Services a Customer may:

- (a) **Sign a CSA with a Supplier** and then immediately obtain services based on the Master Agreement terms and conditions; and,
- (b) **Obtain Services Rates through the optional Second Stage process** ("Second Stage") from the specific to the Customer, which is managed by the Customer.

The Second Stage process is a request (e.g. by issuing a non-binding request via a Second Stage tool (e.g. Request for Services ("RFS"), or Customer's process (e.g. directly or via an online e.tendering platform)) to the Supplier from the Customer for their specific Services requirements.

If selected by the Customer, the Supplier shall provide the Services in accordance with the specifications stated in the Master Agreement and in the Customer's CSA.

When a Second Stage request is issued, which does not constitute a contract A, contract B situation, it will identify the required Services or it may request the Supplier to propose appropriate 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 Services;
- (b) 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 information. However, a CSA must be signed before the provision of any Service commences.

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

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

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

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

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

#### **4.3 Rates**

The proposed Service Rates shall be firm Rates for the first year of the Master Agreement and shall be:

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

The Supplier may, however, lower its Rates for specific 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 affecting the provision of 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 Services in this Master Agreement. OECM will not consider any fixed costs or overhead adjustments in its review of the Supplier's documentation.

#### **4.4 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 (i.e. in April 2023) and every anniversary thereafter.

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

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

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

#### **4.5 Optional Process to Add Other Services**

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

The Supplier shall provide written notice to OECM of at least one hundred and twenty (120) days if requesting a Service refresh.

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

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

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

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

#### **4.6 OECM Cost Recovery Fee**

As a not-for-profit/non-share capital corporation, OECM recovers its operating costs from its agreements through a Cost Recovery Fee ("CRF").

CRFs from the resulting Master Agreement from this RFP and other OECM agreements are structured to support OECM's financial model, while providing savings to Customers.

The Supplier shall pay to OECM a two-point-five percent (2.5%) CRF on all Services invoiced, excluding HST, 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 = 2.5%</b>				
<b>Sales per Month</b>	<b>Calculation</b>	<b>CRF</b>	<b>HST</b>	<b>Quarterly CRF Payment to OECM</b>
If Supplier has \$100,000 total sales between Master Agreement execution date to June 30, 2023	\$100,000 x 2.5% CRF	\$2,500	13%	\$2,825
If Supplier has \$200,000 total sales from July 1, 2023 – September 30, 2023	\$200,000 x 2.5% CRF	\$5,000	13%	\$5,650
If Supplier has \$500,000 total sales from October 1, 2023 – December 31, 2023	\$500,000 x 2.5% CRF	\$10,000	13%	\$11,300

The CRF shall be paid to OECM, via EFT, on a quarterly basis by May 15, August 15, November 15 and February 15 annually, as follows:

<b>Calendar Quarter</b>	<b>Including Months</b>	<b>Annual Cost Recovery Fee Payment Due Dates</b>
Q1	January, February, March	May 15
Q2	April, May, June	August 15
Q3	July, August, September	November 15
Q4	October, November, December	February 15

HST is applicable to the CRF payments made to OECM.

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

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

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

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

#### **4.7 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.

#### **4.8 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).

#### **4.9 Supplier Management Support to OECM**

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

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

##### **4.9.1 Master Agreement Award and Launch**

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

- (a) Supplier 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.

#### **4.9.2 Promoting OEMC Master Agreements**

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

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

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

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

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

#### **4.9.3 Supplier's Performance Management Scorecard**

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

#### **4.9.4 OEMC's Supplier Recognition Program**

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

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

- (a) Supplier performance;
- (b) Master Agreement performance (see Section 4.9.3 and Appendix E - Performance Management Scorecard);
- (c) Generated savings and value; and,
- (d) Technical Response scores from the Supplier's Proposal for this RFP.

Further details will be provided to the Suppliers.



#### **4.9.5 Reporting to OECM**

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

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

[End of Part 4]

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

### 5.1 General Information and Instructions

#### Procurement Process Non-Binding

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

- (a) This RFP shall not give rise to any contract A – based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and,
- (b) Neither the Proponent nor 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 RFP.

#### Non-Binding Rates

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

#### 5.1.1 RFP Timetable

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

RFP Timetable	
Event	Time/Date
OECM's Issue Date of RFP:	October 26, 2022
Proponent's Information and OTP Demonstration Session:	2:00 pm on November 1, 2022
Proponent's Deadline to Submit Questions:	5:00 pm on November 4, 2022
OECM's Deadline for Issuing Answers:	November 9, 2022
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	5:00 pm on November 14, 2022
OECM's Deadline for Issuing Final Documents:	November 17, 2022
Closing Date:	2:00:00 pm on November 28, 2022
Anticipated Master Agreement Start Date:	January 2023

Note – all times specified in this RFP 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 Proponent may thereafter be subject to the extended timeline.

### **5.1.2 Proponent's Information and OTP Demonstration Session**

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

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

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

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

Information provided during this session will be posted on OTP.

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

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

### **5.1.3 Proponent to Follow Instructions**

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

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

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

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

### **5.1.5 Proponent's Costs**

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

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

## **5.2 Communication after RFP Issuance**

### **5.2.1 Communication with OECM**

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

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

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

### **5.2.2 Proponent to Review RFP**

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

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

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

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

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

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

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

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

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

### **5.2.3 Proponent to Notify**

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

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

The Proponent shall not:

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

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

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

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

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

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

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

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

### 5.3 Proposal Submission Requirements

#### 5.3.1 General

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

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

- (a) Email at [etenderhelp\\_CA@jaggaer.com](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 RFP process, a Proposal must be submitted and received **before** the Closing Date as set out in Section 5.1.1 and on OTP.

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

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

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

#### 5.3.2 Proposal in English

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

#### 5.3.3 Proposal Submission Requirements

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

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

Appendix/Form Title	OTP Envelope	Complete Form within OTP	Complete Appendix and Upload to OTP
Form of Offer	Qualification	√	
Compliance with Form of Master Agreement	Qualification	√	
Technical Response	Technical	√	
Appendix C – Commercial Response (in Microsoft Excel format only)	Commercial		√

#### 5.3.4 Other Proposal Considerations

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

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

#### 5.3.5 Proposal Receipt by OECM

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

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

#### 5.3.6 Withdrawal of Proposal

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

#### 5.3.7 Amendment of Proposal on OTP

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

#### 5.3.8 Completeness of Proposal

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

#### 5.3.9 Proposals Retained by OECM

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

#### 5.3.10 Acceptance of RFP

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

#### **5.3.11 Amendments to RFP**

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

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

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

#### **5.3.13 Clarification of Proposals**

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

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

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

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

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

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

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

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

#### **5.3.15 Proposal Acceptance**

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

#### **5.3.16 RFP Incorporated into Proposal**

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

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

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

### **5.3.18 Substantial Compliance**

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

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

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

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

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

### **5.4.1 Negotiations with Preferred Proponent**

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

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

If the Preferred Proponent 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 Proponent to submit its Best and Final Offer, terminate discussions/negotiations with the Preferred Proponent, or publish one (1) or some of the Suppliers, who have executed Master Agreements within OECM's promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Proponents would be added to OECM's website at a later date.

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

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

If the Preferred Proponent 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 Proponents 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 RFP Process, there will be no legally binding relationship created with any Proponent prior to the execution of a written agreement.

### **5.4.3 Master Agreement**

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

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



#### **5.4.4 Notification to Other Proponents**

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

#### **5.4.5 Debriefing**

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

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

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

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

A protest in writing should include the following:

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

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

### **5.5 Prohibited Communications, and Confidential Information**

#### **5.5.1 Confidential Information of OECM**

All correspondence, documentation, and information of any kind provided to any Proponent in connection with or arising out of this RFP or the acceptance of any Proposal:

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

#### **5.5.2 Confidential Information of the Proponent**

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

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

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

### **5.5.3 Proponent's Submission**

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

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

### **5.5.4 Personal Information**

Personal Information shall be treated as follows:

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

### **5.5.5 Non-Disclosure Agreement**

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

### **5.5.6 Freedom of Information and Protection of Privacy Act**

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

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

### **5.5.7 Intellectual Property**

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

## **5.6 Reserved Rights and Governing Law of OECM**

### **5.6.1 General**

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

- (a) Make public the names of any or all Proponents;
- (b) Request written clarification or the submission of supplementary written information from any Proponent and incorporate such clarification or supplementary written information, if accepted, into the Proposal, at OECM's discretion, provided that any clarification or submission of supplementary written information shall not be an opportunity for the Proponent to correct errors in its Proposal or to change or enhance the Proposal in any material manner;
- (c) Waive formalities and accept Proposals that substantially comply with the requirements of this RFP;
- (d) Verify with any Proponent or with a third party any information set out in a Proposal;
- (e) Check references other than those provided by Proponents;
- (f) With supporting evidence, disqualify any Proponent on grounds such as:
  - i. Bankruptcy or insolvency;
  - ii. False declarations;
  - iii. Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior agreement or agreements;
  - iv. Final judgments in respect of serious crimes or other serious offence; or,
  - v. Professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Proponent;
- (g) Disqualify any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Proponent whose Proposal is determined by OECM to be non-compliant with the requirements of this RFP;
- (i) Disqualify a Proposal based upon the past performance or on inappropriate conduct in a prior procurement process, or where the Proponent has or the principals of a Proponent have previously breached an agreement with 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 Proponent, who, in relation to this RFP or the evaluation and selection process, has engaged directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Supplier.
- (k) Disqualify the Proponent who has been charged or convicted of an offence in respect of an agreement with 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 Proponent reveals a Conflict of Interest or Unfair Advantage in its Proposal or a Conflict of Interest or evidence of any Unfair Advantage is brought to the attention of OECM;
- (l) Disqualify any Proposal of any Proponent who has breached any Applicable Laws or who has engaged in conduct prohibited by this RFP, including where there is any evidence that the Proponent or any of its employees or agents colluded with any other Proponent, its employees or agents in the preparation of the Proposal;
- (m) Make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- (n) Accept or reject a Proposal if only one (1) Proposal is submitted;
- (o) Reject a Subcontractor proposed by a Proponent within a Consortium;

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

and where OECEM cancels this RFP, OECEM may do so without providing reasons, and OECEM may thereafter issue a new request for proposals, request for qualifications, sole source, or do nothing;
- (r) Discuss with any Proponent different or additional terms to those contained in this RFP or in any Proposal;
- (s) Accept any Proposal in whole or in part;
- (t) If OECEM receives a Proposal from a Proponent with Rates that are abnormally lower than the Rates in other Proposals, OECEM may verify with the Proponent that the Proponent satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against OECEM and/or its Customers or is otherwise engaged in a dispute with OECEM 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 OECEM shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Proponent or any third party resulting from OECEM exercising any of its express or implied rights under this RFP.

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

### **5.6.2 Rights of OECEM – Proponent**

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

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

### **5.6.3 No Liability**

The Proponent agrees that:

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

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

#### **5.6.4 Assignment**

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

#### **5.6.5 Entire RFP**

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

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

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

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

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

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

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

#### **5.6.9 Cancellation**

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

#### **5.6.10 Competition Act**

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

#### **5.6.11 Trade Agreements**

The Proponent should note that procurements coming within the scope of either Chapter 5 of the Canadian Free Trade Agreement, Chapter 19 of the Comprehensive Economic and Trade Agreement

("CETA") or within the scope of the Trade and Cooperation Agreement between Quebec and Ontario are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFP.

For more information, refer to the following:

- (a) Canadian Free Trade Agreement website at <https://www.cfta-alec.ca/>;
- (b) Trade and Cooperation Agreement between Quebec and Ontario at <https://www.cfta-alec.ca/wp-content/uploads/2017/07/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 RFP, capitalized words and phrases have the meaning set out in Appendix B – Form of Master Agreement attached to this RFP.

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

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

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

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

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

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

**“Business Day”** or **“Day”** means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act (Ontario)*, or as otherwise agreed to by the parties in writing;

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

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

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

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

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

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

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

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

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

**“Customer”** is typically an organization such as educational entities (e.g. school boards or authorities, colleges, and universities), shared service organizations, not-for-profit organizations, municipalities, utilities and local boards, health and social service entities, provincially funded organizations (“PFO”), Crown corporations, and any other Broader Public Sector agencies, boards or commissions or similar entities not specifically mentioned here;

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

**“Deliverable”** means all 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 Proposal”** means a Proposal 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 Proponent and OECCM 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 OECCM and the Supplier;

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

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

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

**“PFO”** means a provincially funded organization;

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

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

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

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

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

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

**“Rates”** means the maximum prices, in Canadian funds, for the Services as set out in the Proponent’s submitted Appendix C - Commercial Response;

**“Request for Proposals”** or **“RFP”** means this Request for Proposals #2022-407 issued by OECCM, including all appendices and addenda thereto;

**“Service”** means all Customs Brokerage and Related 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;

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

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

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

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

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

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

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

This appendix is posted as a separate PDF document.

## **APPENDIX C – COMMERCIAL RESPONSE**

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

## APPENDIX D – REPORTING REQUIREMENTS

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

<b>Supplier Reporting Requirements</b>		
<b>Reports</b>	<b>Frequency</b>	<b>Due Date</b>
<b><u>Integrated Reporting Template</u></b>		
<ol style="list-style-type: none"> <li>1. <b>Sales Report</b> including, but not limited to:               <ol style="list-style-type: none"> <li>(a) Customer’s name;</li> <li>(b) Invoice number and date;</li> <li>(c) Service provided;</li> <li>(d) Service description;</li> <li>(e) Quantity purchased;</li> <li>(f) Rate;</li> <li>(g) Total Rate per Service;</li> <li>(h) Savings (i.e. list Rate minus discount, net Rate, savings); and,</li> <li>(i) Cost Recovery Fees.</li> </ol> </li> <li>2. <b>CSA Status Report</b> including, but not limited to:               <ol style="list-style-type: none"> <li>(a) The number of executed CSAs; and,</li> <li>(b) CSAs pending execution.</li> </ol> </li> <li>3. <b>Optional Second Stage Status Report</b> including, but not limited to:               <ol style="list-style-type: none"> <li>(a) Customer’s name;</li> <li>(b) Reference number;</li> <li>(c) Number of requests received and submitted;</li> <li>(d) Service requirement (e.g. type, committed volume);</li> <li>(e) Resulting savings; and,</li> <li>(f) Status (e.g. complete, due date to return to Customer).</li> </ol> </li> </ol>	Monthly	12th Business Day
<b><u>Performance Reporting</u></b>		
<ol style="list-style-type: none"> <li>1. Key Performance Indicators (“KPIs”) Report - As set out in Appendix E – Performance Management Scorecard.</li> <li>2. Performance results specific to Customer’s KPIs.</li> </ol>	Quarterly (calendar)	12th 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 E – PERFORMANCE MANAGEMENT SCORECARD

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

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

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

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

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

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

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

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

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

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

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

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

<b>Supplier Provided Customer Performance Measures</b>		
<b>Key Performance Indicator</b>	<b>Performance Measurement</b>	<b>Performance Goal</b>
Number of Customer Complaints	Total of Customer complaints annually out of total Customer requests	Less than 2% of total Customer requests
Response Time to Customer Inquiries	One (1) Business Day	98% of the time
Accurate Invoicing	Number of invoicing errors annually	98% accuracy
Customer Retention	Total number of customers retained	98% of the customers using the Agreement the previous year are using it in the current year

<b>OECM Evaluation of Supplier's Performances</b>		
<b>Key Performance Indicator</b>	<b>Performance Measurement</b>	<b>Performance Goal</b>
Reporting	(a) On time spend report submissions (b) On time CSA status, Quick Quote, and Performance Management (KPI) reports submissions (c) Executed CSAs receiving within 30 days of execution	98% of the time
Cost Recovery Fee Payment Remittance	Day of	98% of the time
Response Time to OECM Inquiries	(a) Response time to OECM inquiries (b) On time Price/Product refresh submissions	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.

## APPENDIX F – CODE OF CONDUCT

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

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

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

Also, the Supplier shall:

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

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

The Supplier is expected to:

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

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

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

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

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

For more information, visit OECM's website at <https://oecm.ca/suppliers/#code-of-conduct>.