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**HVAC COMMISSIONING, RECOMMISSIONING/RETROCOMMISSIONING AND RELATED SERVICES**

**REQUEST FOR SUPPLIER QUALIFICATIONS #2023-428**

<b>Request for Proposals Timetable</b>	
<b>Event</b>	<b>Time/Date</b>
OECEM's Issue Date of Request for Proposals:	August 17, 2023
Proponent's Information and Ontario Tenders Portal Jaggaer Demonstration Session:	2:00 pm on August 23, 2023
Proponent's Deadline to Submit Questions:	5:00 pm on August 29, 2023
OECEM's Deadline for Issuing Answers:	September 1, 2023
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	5:00 pm on September 6, 2023
OECEM's Deadline for Issuing Final Documents:	September 11, 2023
Proponent's Intent to Submit a Proposal:	September 14, 2023
Closing Date:	2:00:00 pm on September 19, 2023
Anticipated Master Agreement Start Date:	December, 2023

All times specified in this timetable are local times in Toronto, Ontario, Canada

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

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## PART 1 – INTRODUCTION

This non-binding Request for Supplier Qualification (“RFSQ”) is an invitation to obtain Proposals from qualified Proponents for the provision of Heating, Ventilation, and Air Conditioning (“HVAC”) Commissioning, Recommissioning/Retrocommissioning and Related Services (“Services”) for the purpose of pre-qualifying prospective Suppliers and establishing Master Agreements for OEMC Customers, as defined in Part 1A.2 Definitions, to use on an as-and-when-required basis.

Refer to Part 2 – The Deliverables in the following two (2) Categories:

- (a) Category A – HVAC Commissioning and Related Services for new buildings; and,
- (b) Category B – HVAC Recommissioning/Retrocommissioning and Related Services for existing buildings.

The Proponent may submit a Proposal for one (1) or both Categories.

Master Agreements will not be awarded by a particular geographical area. The Proponents will, however, identify the Ontario Region, County, District, or Single-Tier location (refer to Appendix E) where it is able to provide HVAC Commissioning, Recommissioning/Retrocommissioning and Related Services. This information will be shared with Customers, post award, to support their Second Stage Selection Process (“Second Stage”).

This RFSQ does not require the Proponent to submit pricing. During the Second Stage, the Customer will further define their requirements, and specifications and request pricing accordingly. Only Suppliers who are awarded Master Agreements resulting from this RFSQ will be eligible to participate in any such Second Stage. The Second Stage, further outlined in Section 1.5.3, provides opportunities for Suppliers who have the capacity and relevant experience.

This RFSQ is issued by OEMC.

### 1.1 Objective of this RFSQ

The objective of this RFSQ is to:

- (a) Establish a list of pre-qualified, quality Suppliers able to provide a wide range of HVAC Commissioning, Recommissioning/Retrocommissioning and Related Services to OEMC Customers;
- (b) Attract and award local qualified Suppliers across the province;
- (c) Inform Suppliers of the Customer’s Second Stage process;
- (d) Provide Customers with professional and responsive customer support; and,
- (e) Reduce the costs of associated competitive procurement processes on an ongoing basis (i.e., fewer of the same, competitive procurement documents issued by Customers).

### 1.2 Supplier Experience and Qualifications

The Supplier shall possess appropriate experience, qualifications, and demonstrated knowledge relative to the requirements in this RFSQ including, but not limited to:

- (a) Possessing applicable professional qualifications/certifications to provide Services; and,
- (b) Providing knowledgeable and professional personnel ensuring Customers needs are met.

### 1.3 Project Background

OEMC currently has HVAC commissioning services agreements in place with four (4) suppliers that expire in February 2024. Approximate purchases through these existing agreements from August 2019 to December 2022 was approximately one million, two hundred thousand dollars (\$1.2M).

### 1.4 Customer Engagement

A variety of Customers were engaged with the development of the Deliverables set out in this RFSQ.

## 1.5 Award Strategy

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

The Term is intended to be for four (4) years, with an option in favour of OECM to extend the Term on the same terms and conditions for up to three (3) additional years. Performance as set out in Appendix C – Supplier Performance Management Scorecard and, if applicable, Supplier Recognition Program evaluation results will be considered when contemplating a Master Agreement extension.

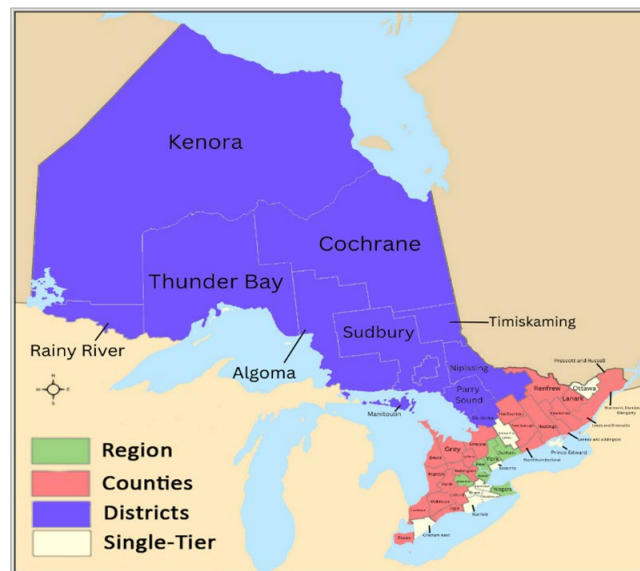
OECM will refresh this RFSQ, according to applicable trade agreements, by providing other suppliers an opportunity for inclusion annually. The refresh process requirements will be aligned with this RFSQ. Should additional suppliers be added during a refresh process, all Master Agreements will be co-terminus.

Customers participating in the Master Agreements will execute a Customer-Supplier Agreement (“CSA”) with a Supplier as attached in Appendix A – Form of Master Agreement. Prior to executing a CSA, the Customer will negotiate their unique Service requirements and further negotiate with the Supplier and mutually agree to additional terms and conditions (e.g., reporting, Rates specific to the Customer’s requirements and volumes) ensuring the additional terms and conditions are not in any way inconsistent with the Master Agreement agreed to by OECM and the Supplier.

The Supplier must provide a copy of every CSA to OECM within thirty (30) days of execution.

### 1.5.1 OECM Geographical Zones

OECM Customers, in Ontario, are located in Region, County, District, or Single-Tier locations.



Also refer to Appendix E for more information about these geographical locations.

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

This RFSQ 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, Section 3.4 of this RFSQ.

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

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

### 1.5.3 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 RFSQ, 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) Select a Supplier, obtain Rates and sign a CSA; or,
- (b) Seek Rates and other relevant Service information specific to a Customer's organization (e.g., by issuing a non-binding request via a Second Stage tool (e.g., Request for Services ("RFS"), or Customer's process (e.g., directly or via an online e-tendering platform)) from the Supplier for their specific Service requirements (e.g., site visits, scheduling, onsite testing, Environmental, Social and Governance considerations (e.g., the Supplier's program/policies, codes of conduct, or procedures as it relates to environmental responsibility, social impact, sustainability and climate change) reporting, Rates, invoicing)]. 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.

For example, a Customer may issue a Second Stage that requires the following:

- i. Commissioning Services for a facility that is serviced by seven (7) existing roof-top HVAC units. Services would include:
  - a. A thorough review of the condition of each unit;
  - b. A review of the sequence of operations for each unit;
  - c. A review of the overall heating, cooling and ventilation provided by the units as a whole;
  - d. A report which will include both phases of the recommissioning;
    - i. The Investigation Phase will identify all the work required to recommission the building, including estimated budgetary costs, with consideration for short (less than one (1) year), medium (one (1) to five (5) years) and long term (over five (5) years); and;
    - ii. The Implementation Phase which will include the work required to be completed within a one (1) year period, planned for the intermediate period (one (1) to five (5) years) and long term period (over five (5) years); and,
  - e. Managing Minor Repairs During Service Provision, (e.g., field fixes that can be addressed immediately by the Supplier).
- ii. The Supplier shall provide:
  - a. Support in identifying any incentive funding programs available to the Customer;
  - b. General Liability insurance
  - c. minimum of \$2,000,000;
  - d. The recommended number of site visits for the investigation phase;
  - e. Experienced commissioning agents assigned to the project, with resumes illustrating their experience, familiarity, and experience with the types of commissioning services and systems being considered; and,
  - f. Maximum Rates, excluding Harmonized Sales Tax ("HST").

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 (e.g., site visits, scheduling, reporting, Rates, invoicing) with the Supplier and mutually agree to additional terms and conditions ensuring the additional terms and conditions are not in any way inconsistent with the Master Agreement.

The Suppliers responding to a Second Stage request shall, at a minimum, set out the following:

- (a) Proposed Services and details (e.g., Investigation and Implementation Phases, workplan); and,
- (a) Final, net Rates.

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

The volume information contained in this RFSQ 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 RFSQ is intended to relieve the Proponent from forming its own opinions and conclusions with respect to the matters addressed in this RFSQ. 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 RFSQ.

### **1.6 About OECM**

OECM is a trusted not-for-profit partner for 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), health and social service entities, hydro, the Legislative Assembly, Municipalities and related Service Organizations, not-for-profit organizations, Ontario Electricity Financial Corporation, Ontario Power Authority, provincially funded organizations ("PFO"), shared service organizations, utilities and local boards, and any other Ontario Broader Public Sector ("BPS") agency, Ontario Public Service ("OPS") ministry, agency, board or commission, Crown corporations, First Nations federal agencies, Indigenous Organizations and Communities, and other provincial, territorial and federal public sector entities/agencies or similar entities not mentioned here;

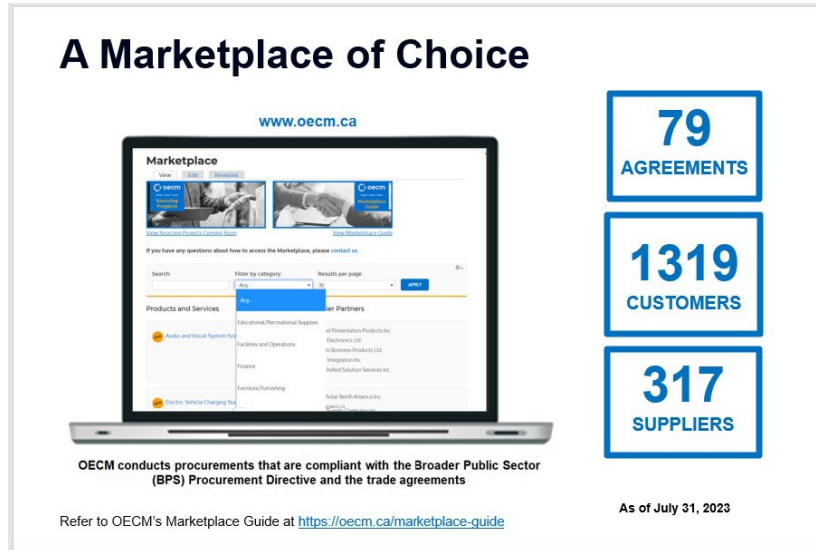
OECM contracts with innovative, reputable Suppliers to offer a comprehensive choice of collaboratively sourced and competitively priced products and services through its Marketplace, the goal of which is to generate significant value and savings, quality of choice and consistent service for its Customers. In addition to the Marketplace, OECM offers contract management services, procurement advisory services, business analytics, and opportunities for knowledge sharing.

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 of collaboration, responsiveness, integrity, innovation, and respect, 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,

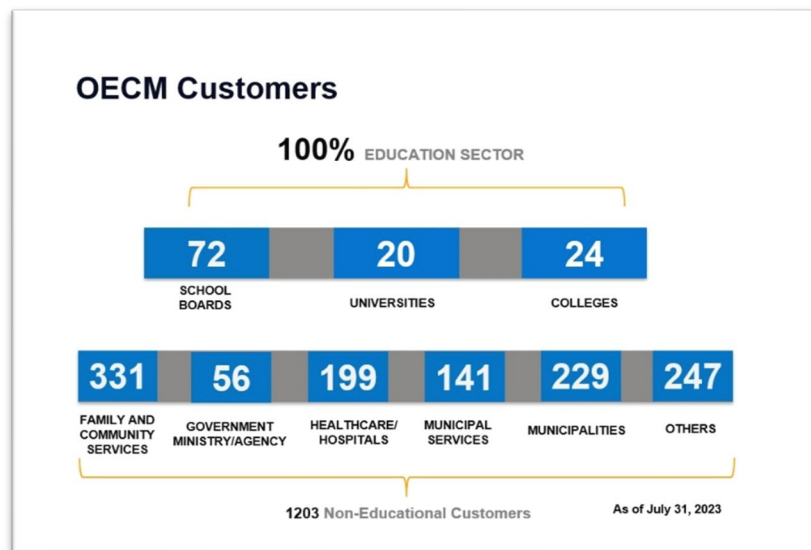


- (f) Supporting supplier partners through a Supplier Recognition Program that aims to drive long-term performance by recognizing and motivating Suppliers to deliver continued savings, value, choice, and service to Customers.



### 1.6.1 Use of OECM Master Agreements

As of July 2023, over thirteen hundred (1,300) Customers were using one (1) or more OECM agreements with a cumulative spend of over \$4 billion dollars. Over twelve hundred (1200) Customers are from the non-educational sector (e.g. Healthcare, Municipalities, Not-For-Profits and Other Publicly Funded organizations).



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

### 1.6.2 The Ontario Broader Public Sector Procurement Directive

OECM, and the BPS 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: [Broader Public Sector Procurement Directive \(gov.on.ca\)](http://www.gov.on.ca).

### **1.6.3 Trade Agreements**

OEEM 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 RFSQ. For more information, refer to the Section 4.6.11.

[End of Part 1]

## PART 1A – RULES OF INTERPRETATION AND DEFINITIONS

### 1A.1 Rules of Interpretation

This RFSQ 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 RFSQ 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 RFSQ, 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 RFSQ:
  - i. The terms “must” and “shall” relate to a requirement the Supplier will be obligated to fulfil. Whenever the terms “must” or “shall” are used in relation to OEMC or the Supplier, such terms shall be construed and interpreted as synonymous and shall be construed to read “OEMC shall” or the “Supplier shall”, as the case may be;
  - ii. The term “should” relates to a requirement that OEMC would like the Supplier to fulfil; and,
  - iii. The term “will” describes a procedure that is intended to be followed.

### 1A.2 Definitions

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

“**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;

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

- (a) every hospital (i.e., public hospital, private hospital that received public funds in the previous fiscal year of the Government of Ontario, a community health facility within the meaning of the Oversight of Health Facilities and Devices Act that was formerly licensed under the Private Hospitals Act and that received public funds in the previous fiscal year of the Government of Ontario, and the University of Ottawa Heart Institute);
- (b) every school board,
- (c) every university in Ontario;
- (d) every college of applied arts and technology and post-secondary institution;
- (e) every agency designated as a children’s aid society under subsection 34 (1) of Part III of the *Child, Youth and Family Services Act, 2017*;
- (f) every corporation controlled by one (1) or more designated Broader Public Sector organizations that exists solely or primarily for the purpose of purchasing goods or services for the designated Broader Public Sector organizations;

(g) every publicly funded organization that received public funds of 10 million dollars or more in the previous fiscal year of the Government of Ontario; and,

(h) every organization that is prescribed for the purposes of this definition;

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

See <https://www.ontario.ca/page/find-school-board-or-school-authority>; and,

See <https://www.ontario.ca/page/go-college-or-university-ontario>;

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

**“Closing Date”** means the Proposal submission date and time as set out in OTP and in Section 4.1.1 and may be amended from time to time in accordance with the terms of this RFSQ;

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

(a) Include:(i) all new information derived at any time from any such Confidential Information whether created by OECM, the Customer, the Proponent or any third-party; (ii) all information (including Personal Information) that OECM or the Customer is obliged, or has the discretion, not to disclose under provincial or federal legislation; and, (iii) pricing under this RFSQ;

(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 RFSQ 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 OECM and not available to other respondents; (ii) communicating with any person with a view to influencing preferred treatment in the RFSQ process; or (iii) engaging in conduct that compromises or could reasonably be seen to compromise the integrity of the open and competitive RFSQ process and render that process non-competitive and unfair; or,

(b) in relation to the performance of its contractual obligations in an OECM contract, the 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 RFSQ. 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 OECM’s operating costs as a not-for-profit/non share capital corporation, which is based on the before tax amount invoiced by the Supplier to Customers for Deliverables acquired through OECM’s competitively sourced

agreements. Once Customer-Supplier Agreements have been executed, this fee is remitted by the Supplier to OECM on a quarterly basis;

**“Customer”** means an organization such as educational entities (e.g., school boards or authorities, Provincial and Demonstration Schools Branch with the Ontario Ministry of Education, colleges, and universities, and may also include Private Schools and Private Career Colleges), health and social service entities, hydro, the Legislative Assembly, Municipalities and related Service Organizations, not-for-profit organizations, Ontario Electricity Financial Corporation, Ontario Power Authority, provincially funded organizations (“PFO”), shared service organizations, utilities and local boards, and any other Ontario Broader Public Sector (“BPS”) agency, Ontario Public Service (“OPS”) ministry, agency, board or commission, Crown corporations, First Nations federal agencies, Indigenous Organizations and Communities, and other provincial, territorial and federal public sector entities/agencies or similar entities not mentioned here;

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

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

**“Municipalities”** means municipalities in Ontario under the *Municipal Act*, the *City of Toronto Act* (for the City of Toronto), *District Municipality of Muskoka Act* (for the District of Muskoka), *Regional Municipalities Act* (for the regional municipalities of Durham, Halton, Niagara, Peel, Waterloo and York), every local board in Ontario as defined in the *Municipal Affairs Act and the Municipal Act*. See [List of Ontario municipalities | Ontario.ca](#);

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

**“OECM’s Deadline for Issuing Final Addenda”** means the date and time as set out in Section 4.1.1 of this RFSQ and may be amended from time to time in accordance with the terms of this RFSQ;

**“Ontario Public Service”** or **“OPS”** means Ontario Public Service entities, the ministries and other administrative units of Ontario over which ministers of Ontario preside (including their agencies, boards, commissions, and Crown corporations);

**“Ontario Tenders Portal Jaggaer”** 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;

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

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

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

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

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

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

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

**“Qualification Response”** means the information the Proponent is required to submit within OTP as part of the Qualification Envelope;

**“Request for Supplier Qualifications”** or **“RFSQ”** means this Request for Supplier Qualifications #2023-428 issued by OECM, including all appendices and addenda thereto;

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

**“Service”** means all Deliverables 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 OECM and has assumed full liability and responsibility for the provision of Deliverables pursuant to the Master Agreement either as a single Supplier or a lead Supplier engaging other suppliers or Subcontractors;

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

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

**“Term”** has the meaning set out in Section 1.5 of this RFSQ; and,

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

[End of Part 1A]

## PART 2 – THE DELIVERABLES

This Part of the RFSQ describes the HVAC Commissioning, Recommissioning/Retrocommissioning and Related Services (“Services”) Deliverables, per Category, which will be incorporated into the final Master Agreement.

OECM requires that the Proponent has a clear and comprehensive understanding of the RFSQ requirements (i.e., Part 2 – The Deliverables). The Proponent will be required to indicate their agreement accordingly in the Form of Offer in the Qualification Envelope on OTP.

The Supplier shall provide the RFSQ Deliverables in the Category awarded.

### 2.1 Service Categories

This RFSQ has two (2) Categories of Services:

- (a) Category A – HVAC Commissioning and Related Services for new buildings; and,
- (b) Category B – HVAC Recommissioning/Retrocommissioning and Related Services for existing buildings.

Deliverables applicable to each specific Category are set out in the RFSQ sections as per the table below.

Category	Section Number
Category A	2.4
Category B	2.5

Deliverables in Section 2.6 to 2.17 are applicable to both Categories.

The Proponent may submit a Proposal for one (1), or both Categories. Each Category will be evaluated, scored and awarded independently. Refer to Part 3 – Evaluation of Proposals for more information.

### 2.2 Qualifications

The Supplier should possess at least one (1) or a combination of the following certifications, and/or licenses:

- (a) American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”);
- (b) Professional Engineers Ontario (“PEO”);
- (c) Certified Commissioning Professional (“CCP”);
- (d) Commissioning Process Management Professionals;
- (e) Certified Building Commissioning Professional (“CBCP”); and/or,
- (f) Association of Energy Engineers (“AEE”).

### 2.3 HVAC Building Systems

The Supplier shall provide the Services to HVAC building systems including, but not limited to:

- (a) Building automation systems;
- (b) Cooling systems (e.g., chilling systems and cooling tower systems);
- (c) Heating systems (e.g., steam and hot water); and,
- (d) Ventilation systems.

## 2.4 Category A – HVAC Commissioning and Related Services

The Supplier shall provide HVAC Commissioning and Related Services include quality assurance processes, for new buildings, that spans the period from concept, design, construction, and start-up (e.g., including the first year of operation) to ensure the building's operation, energy, water, and indoor environmental quality meets requirements.

The Supplier shall ensure the Services are led by a commissioning authority who verifies the building meets the Customers requirements at each stage of the commissioning process. Requirements may vary, between Customers, based on different needs.

The Supplier shall deliver the following results at the completion of the Commissioning Services for new buildings including, but not limited to:

- (a) Energy savings (e.g., Integrated Design Process, Net Zero Building, High Performance Building, Low Energy Building, Green Building and Leadership in Energy and Environmental Design (“LEED”) Canada);
- (b) Fewer system deficiencies at building turnover;
- (c) Improved coordination among design, construction and occupancy; and,
- (d) Improved indoor environmental quality.

### 2.4.1 Commissioning Service Phases

The Supplier shall ensure Services are carried out in the following phases:

- (a) Concept design phase;
- (b) Design phase;
- (c) Construction phase; and,
- (d) Occupancy and operations phase.

### 2.4.2 Services to Support Concept Design Phase

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

- (a) Developing Customer's (also known as owner) project requirements (“OPR”) document;
- (b) Developing basis of design (“BOD”) document; and,
- (c) Creating commissioning plan.

### 2.4.3 Services to Support Design Phase

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

- (a) Providing regular progress reports;
- (b) Reviewing OPR and BOD;
  - i. Developing design phase issues logs;
  - ii. Updating commissioning plan; and,
  - iii. Verifying checklists, and test procedures.

### 2.4.4 Services to Support Construction Phase

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



- (a) Reviewing and follow-up OPR and BOD;
- (b) Reviewing commissioning plan with construction schedule;
- (c) Reviewing contractor submittals;
- (d) Completing verification checklists and functional performance test results;
- (e) Reporting completed training;
- (f) Recording and providing minutes/issues log from commissioning meetings;
- (g) Providing periodic commissioning progress reports;
- (h) Providing input in the development and resolutions of deficiency list; and,
- (i) Draft commissioning report.

#### **2.4.5 Services to Support Occupancy and Operations Phase**

The Supplier shall provide occupancy and operations Services including, but not limited to:

- (a) Performing seasonal testing;
- (b) Performing system warranty review;
- (c) Providing as-built sequence of operations;
- (d) Preparing final issues log;
- (e) Providing final commissioning report; and,
- (f) If required, assist with planning for recommissioning Services.

#### **2.5 Category B – HVAC Recommissioning/Retrocommissioning and Related Services**

The Supplier shall provide both Recommissioning/Retrocommissioning and Related Services:

- (a) Recommissioning Services include re-optimization processes for existing buildings that have either been commissioned or retrocommissioned in the past. It looks at how and why building systems are integrated, operated, and maintained as they are, and then identify issues to be addressed and ways to improve the overall building performance. Recommissioning may be adapted to meet the specific needs of various Customers; and,
- (b) Retrocommissioning Services include buildings that have never been commissioned and include collaborative processes that look at how and why building systems are operated and maintained as they are, and then identify issues to be addressed and ways to improve overall building performance. Retrocommissioning adapts to meet the specific needs of each owner. Since occupant comfort complaints and high energy use can often go hand-in-hand, Retrocommissioning can help to correct both.

The Supplier shall deliver the following results at the completion of Recommissioning and/or Retrocommissioning Services for existing buildings including, but not limited to:

- (a) Reduced energy costs;
- (b) Improved system operation and equipment performance;
- (c) Enhanced preventative maintenance program;
- (d) Enhanced property values;

- (e) Protection against future liability;
- (f) Reduced repair and replacement costs; and,
- (g) Increased building performance efficiency.

#### **2.5.1 Recommissioning and Retrocommissioning Service Phases**

The Supplier shall ensure Services are carried out in the following phases:

- (a) Planning phase;
- (b) Investigation phase;
- (c) Implementation phase; and,
- (d) Handoff phase.

#### **2.5.2 Services to Support Planning Phase**

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

- (a) Define goals and objectives for the Services;
- (b) Assemble the team that will see the Services through to completion; and,
- (c) Develop a recommissioning plan including Service costs and associated savings.

#### **2.5.3 Services to Support Investigation Phase**

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

- (a) Understanding how and why building systems are currently operated and maintained to identify issues and potential improvements;
- (b) Prioritize measures and recommend the most cost-effective improvements for short (e.g., within one (1) year), medium (e.g., within five (5) years; and long term (e.g., within ten (10) years) implementation;
- (c) Interviewing Customer's personnel;
- (d) Reviewing existing drawings, specifications, existing service contracts and available technical information related to the existing HVAC system;
- (e) Evaluating trend data and equipment sequence of controls;
- (f) Inspecting the building and its sub-systems and equipment components;
- (g) Spot testing equipment and controls;
- (h) Gathering and analyzing applicable data; and,
- (i) Developing an investigation report that also includes competitive quotes (if required) that lists recommended system improvements and associated estimated costs and savings for short (e.g., within one (1) year), medium (e.g., within five (5) years; and long term (e.g., within ten (10) years).

#### **2.5.4 Services to Support Implementation Phase**

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

- (a) Implementing selected measures;
- (b) Updating energy savings calculations, as necessary;
- (c) Verifying that measures have been implemented correctly; and,
- (d) Monitoring results through metering, utility bills and trending log review.

### **2.5.5 Services to Support Handover Phase**

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

- (a) Completing final report summarizing each improvement, findings and recommendations, including sequence of operation and operating intent as developed from the previous phase short (e.g., within one (1) year), medium (e.g., within five (5) years; and long term (e.g., within ten (10) years);
- (b) Conducting Customer facility staff training, as required;
- (c) Holding a hand-off meeting;
- (d) Generating a post-recommissioning energy performance rating; and,
- (e) Developing persistence strategies, including the next recommissioning plan or an ongoing commissioning plan as may be required.

### **2.6 Other Optional Services**

The Supplier should provide various other option Services, if required by the Customer, such as:

- (a) Project Management Services for the HVAC Commissioning suggested repairs; and,
- (b) Incentive support (e.g., preparation and filing of application(s), providing milestone reports as required, and filing final documentation to receive incentive/funding).

### **2.7 General Liability Insurance**

The Supplier shall carry a minimum of two million dollars (\$2,000,000) of General Liability Insurance. It is understood that this minimum could be increased as mutually agreed upon between the Supplier and the Customer during a Second Stage, as noted in Section 1.5.3 of this RFSQ and/or when executing a CSA.

Refer to Article 7 in the Form of the Master Agreement for more information about insurance requirements.

### **2.8 Building Standards**

The Supplier shall comply with all Applicable Law, building codes, by-laws, regulations, directives and ordinances having jurisdiction as set forth and mandated by Federal, Provincial and Municipal Authorities in effect and applicable to the Services required including, but not limited to:

- (a) Ontario Building Code;
- (b) Ontario Electrical Code;
- (c) Canadian Standards Association ("CSA Group");
- (d) Ontario Plumbing Code;
- (e) Ontario Gas Code;
- (f) Ontario Fire Code;
- (g) National Building Code of Canada;
- (h) National Fire Protection Association; and,

- (i) Underwriters Laboratories Canada (“ULC”).

## **2.9 Electrical Requirements**

The Supplier shall ensure electrical products are authorized or approved by the Customer and in accordance with the Ontario Electrical Safety Code, the Canadian Standards Association Group (“CSA Group”), Underwriters Laboratories of Canada (“ULC”), a certification organization accredited with the *Standards Council of Canada Act* (Canada), and shall bear the certification organization’s mark identifying the goods certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the electrical products at Customer’s facilities.

## **2.10 Disaster Recovery and Business Continuity**

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

## **2.11 Licences, Permits, Right to Use and Approvals**

The Supplier shall obtain all licences, permits, right to use and approvals required in connection with the supply of the Services and provide them at Customer and OEMC request. The costs of obtaining such licences, permits, 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, permit, 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 OEMC shall be considered an approval by OEMC for the Supplier to carry on such activity without the requisite licence, right to use or approval.

## **2.12 Environmental, Social, and Governance**

The Supplier shall have and provide information, if requested by OEMC or the Customer, of a robust Environmental, Social and Governance (“ESG”) business framework.

The Supplier shall collaborate and support the Customer to align with their ESG framework as it relates to currently available ESG processes, products/equipment, technologies and/or sustainable initiatives.

Wherever practical and without compromising quality, Suppliers are to promote:

- (a) Environmental design principles as required by the Customer (e.g., environmental sustainability, data security and privacy, lean construction practices, waste management, decarbonization, indoor air quality, comfort);
- (b) Sustainable social design principles as required by the Customer (e.g., social equity and equality, diversity, inclusive, accessibility, economic, and cultural impacts that achieve overarching Customer goals that helps shape healthy, diverse and inclusive environments); and,
- (c) Governance practices to enhance positive impact to the Customer (e.g., corporate oversight, risk management, staff retention and management, and leadership).

The Supplier should keep OEMC and Customers informed about social procurement processes.

Throughout the Term, OEMC and/or the Customer may consult with the Supplier to assess ESG commitments.

## **2.13 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.

## **2.14 Order Management**

The Supplier shall provide a variety of ordering methods for Customers including, but not limited to:

- (a) Via purchase order (e.g., which may be through the Customer's system);
- (b) Electronic Data Interchange ("EDI"); and/or,
- (c) Email.

## **2.15 Invoicing**

The requirements of the *Construction Act* and Applicable Law shall prevail for all aspects of 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; and,
- (d) HST and total cost.

### **2.15.1 Payment Terms and Methods**

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

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

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

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

## **2.16 Rates**

The Service Rates shall be:

- (a) Mutually agreed upon between the Customer and Supplier for the specific Service requirements which may be the result of a Second Stage;
- (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 Customer and Supplier will mutually agree on Rates and the process and timing for refreshing those Rates based on the Customer's Service needs.

**2.16.1 Travel Expenses**

Travel expenses should be included in the Service Rates. However, in extenuating circumstances, the Customer may agree to reimburse the Supplier for travel expenses. The Supplier must obtain prior approval from the Customer for costs incurred as a result of accommodation or travel associated with a particular Assignment. These costs must be charged in accordance with the Customer’s travel policy, as may be amended from time to time. Suppliers may obtain applicable rates from the Customer. All such pre-approved costs, where applicable, must be itemized separately on invoices.

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

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

**2.16.2 OEMC Cost Recovery Fee**

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

The Supplier shall pay to OEMC a maximum CRF of one point nine five percent (1.95%) on all Services invoiced by the Supplier to the Customers throughout the Term, excluding non-marked up expenses (i.e., travel and reimbursements) where mutually agreed upon between the Customer and Supplier and passed onto the Customer.

CRF will be calculated as follows:

<b>EXAMPLE OF HOW CRF WILL BE CALCULATED WITH A CRF = 1.95%</b>				
<b>Sales per Quarter</b>	<b>Calculation</b>	<b>CRF</b>	<b>HST</b>	<b>Total CRF Payment to OEMC</b>
If Supplier has \$100,000 total sales in first quarter	\$100,000 x 1.95% CRF	\$1,950	\$253.50	\$2,203.50
If Supplier has \$200,000 total sales in second quarter	\$200,000 x 1.95% CRF	\$3,900	\$507.00	\$4,407.00
If Supplier has \$50,000 total sales in third quarter	\$50,000 x 1.95% CRF	\$975	\$126.75	\$1,101.75
If Supplier has \$50,000 total sales in fourth quarter	\$50,000 x 1.95% CRF	\$975	\$126.75	\$1,101.75
<b>Total CRF Payment to OEMC for <u>first year of the Master Agreement</u>:</b>				<b>\$8,814.00</b>

The CRF and applicable HST shall be paid to OEMC quarterly, via EFT, by May 15, August 15, November 15 and February 15 throughout the Term as follows:

Calendar Quarter	Months	CRF Payment Due Date
1st Quarter	January, February, March	May 15
2nd Quarter	April, May, June	August 15
3rd Quarter	July, August, September	November 15
4th Quarter	October, November, December	February 15

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

The Supplier shall be responsible for paying interest, as specified in Article 4.08 of the Master Agreement, for late CRF payments.

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

## 2.17 Supplier Management Support to OECEM

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

- (a) Assigning to OECEM 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 OECEM's and Customer's confidentiality by not disclosing Confidential Information without the prior written consent of OECEM and/or the Customer, as the case may be, as further described in Appendix A – Form of Master Agreement;
- (e) Attending business review meetings with OECEM to review such information as:
  - i. CSAs and upcoming opportunities;
  - ii. Review and monitor performance management compliance;
- (f) Complying with Appendix D – OECEM's Supplier Code of Conduct requirements as described on the OECEM website at <https://oecm.ca/wp-content/uploads/2022/01/oecm-supplier-code-of-conduct.pdf>;
- (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 B – Supplier 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 OECEM).

### 2.17.1 Master Agreement Award and Launch

The Supplier will meet with OECEM to discuss an effective launch strategy, and shall provide:

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

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

### **2.17.2 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 RFSQ.

The Supplier will actively promote the Master Agreement to Customers which may include, but not limited to:

- (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 which may include, but not limited to:

- (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.

### **2.17.3 Supplier 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 C – Supplier Performance Management Scorecard.

### **2.17.4 Process to Add Other Services**

During the Term, the Supplier may request adding other Services (e.g., newly available Services) to the Master Agreement to align with Customer needs. OEMC will review and assess the request and may accept or reject based on Services in the current Master Agreement and Customer needs.

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

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

Volumes and Supplier's performance (e.g., as described in Appendix C – Supplier 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, OEMC may not agree to the Supplier's Service refresh request. All other Services shall remain unchanged.



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

#### **2.17.5 OECEM's Supplier Recognition Program**

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

Further details will be provided to the Suppliers.

#### **2.17.6 Reporting to OECEM**

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

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

[End of Part 2]

## PART 3 – EVALUATION OF PROPOSALS

### 3.1 Stages of Proposal Evaluation

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

Stage	Description	Refer to RFSQ 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	100 Points	65 Points
Stage III	Negotiations	3.4	Not Applicable	Not Applicable
Stage IV	Master Agreement Finalization	3.5	Not Applicable	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

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.

Other than inserting the information requested on the qualification submission forms set out above, the Proponent may not make any changes to any of the forms. Any Proposal containing any such changes, whether on the face of the form or elsewhere in the Proposal, may be disqualified.

### 3.3 Stage II – Technical Response per Category

Stage II will consist of an evaluation and scoring of the Technical Response, of each Eligible Proposal for the Category being proposed.

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 RFSQ Deliverables. Only information contained within the Technical Response will be evaluated in Stage II.

Only Proposals that meet or exceed the minimum thresholds will receive a **pass** in this stage and proceed to Stage III of the evaluation process.

If the Proponent is submitting a Proposal for more than one (1) Category, some Technical Response questions only need to be answered once as indicated in OTP.

Point allocations for the Technical Response sections are as follows:

Technical Response Sections	Available Points per Category	Minimum Point Threshold Requirement
<b>Category A and Category B</b>		
Proponent's Profile – Category A & B	30	18
<b>Category A – HVAC Commissioning and Related Services</b>		
Project Methodology	40	24
Project Examples	30	18
<b>Category B – HVAC Recommissioning/Retrocommissioning and Related Services</b>		
Project Methodology	40	24
Project Examples	30	18
<b>TOTAL POINTS PER CATEGORY:</b>	<b>100</b>	<b>65</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., it is left blank) or contains a response of N/A or not applicable will receive a zero (0) score.

An Eligible Proposal that meets or exceeds the Technical Response minimum threshold requirement will proceed to Stage III.

### 3.4 Stage III – Negotiations

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

The negotiations may include:

- (a) RFSQ Deliverables;
- (b) Master Agreement management (e.g., performance, KPIs, penalties, reporting);
- (c) Master Agreement terms and conditions;
- (d) Additional references, if required;

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:

- i. Terminate negotiations with that particular Preferred Proponent;
- ii. Extend the negotiation timeline; or,
- iii. 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.

### **3.5 Stage IV – 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 4.6.

[End of Part 3]

## PART 4 – TERMS AND CONDITIONS OF THE RFSQ PROCESS

### 4.1 General Information and Instructions

#### Procurement Process Non-Binding

This RFSQ 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 RFSQ 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 RFSQ.

#### 4.1.1 RFSQ Timetable

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

RFSQ Timetable	
Event	Time/Date
OECM's Issue Date of RFSQ:	August 17, 2023
Proponent's Information and Ontario Tenders Portal Jaggaer Demonstration Session:	2:00 pm on August 23, 2023
Proponent's Deadline to Submit Questions:	5:00 pm on August 29, 2023
OECM's Deadline for Issuing Answers:	September 1, 2023
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	5:00 pm on September 6, 2023
OECM's Deadline for Issuing Final Documents:	September 11, 2023
Proponent's Intent to Submit a Proposal:	September 14, 2023
Closing Date:	2:00:00 pm on September 19, 2023
Anticipated Master Agreement Start Date:	December, 2023

Note – all times specified in this RFSQ 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.

#### 4.1.2 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 4.1.1.

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 RFSQ 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 RFSQ, the RFSQ shall prevail.

The Proponent can contact OTP technical support directly for further assistance, using the contact details set out in Section 4.3.1.

#### **4.1.3 Proponent to Follow Instructions**

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

#### **4.1.4 OECM's Information in RFSQ Only an Estimate**

OECM makes no representation, warranty or guarantee as to the accuracy of the information contained in this RFSQ or issued by way of addenda. Any data contained in this RFSQ 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 RFSQ.

#### **4.1.5 Proponent's Costs**

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

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

### **4.2 Communication after RFSQ Issuance**

#### **4.2.1 Communication with OECM**

All communications regarding any aspect of this RFSQ 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 RFSQ 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 RFSQ:

- (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.

#### **4.2.2 Proponent to Review RFSQ**

The Proponent shall promptly examine this RFSQ 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 RFSQ, 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 4.1.1 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 RFSQ or its process.

#### **4.2.3 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 4.2.2 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 4.2.2 were present with respect to the RFSQ; and,
- (b) Claim that OECM is responsible for any of the circumstances listed in Section 4.2.2 of this RFSQ.

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

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

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

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

The Proponent who intends to respond to this RFSQ 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.

### 4.3 Proposal Submission Requirements

#### 4.3.1 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 RFSQ process, a Proposal must be submitted and received **before** the Closing Date as set out in Section 4.1.1 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 RFSQ on the Closing Date.

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

#### 4.3.2 Proposal in English

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

#### 4.3.3 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 RFSQ as set out below.

Description	OTP Envelope	Complete within OTP
Form of Offer	Qualification	√
Compliance with Form of Master Agreement	Qualification	√
Technical Response	Technical	√



#### **4.3.4 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 4.3.13 Clarification of Proposals.

#### **4.3.5 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.

#### **4.3.6 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 RFSQ 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.

#### **4.3.7 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.

#### **4.3.8 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.

#### **4.3.9 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.

#### **4.3.10 Acceptance of RFSQ**

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

#### **4.3.11 Amendments to RFSQ**

Subject to Section 4.1.1 and Section 4.2.4, OECM shall have the right to amend or supplement this RFSQ in writing prior to the Closing Date. No other statement, whether written or oral, shall amend this RFSQ. The Proponent is responsible to ensure it has received all addenda.

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

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

#### **4.3.13 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.

#### **4.3.14 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, 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.

#### **4.3.15 Proposal Acceptance**

Any Proposal shall not necessarily be accepted. Evaluation criteria as set out in Part 3 will form a part of the evaluation process.

#### **4.3.16 RFSQ Incorporated into Proposal**

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

#### **4.3.17 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.

#### **4.3.18 Substantial Compliance**

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

#### **4.3.19 No Publicity or Promotion**

No Proponent, including the Preferred Proponent, shall make any public announcement or distribute any literature regarding this RFSQ or otherwise promote itself in connection with this RFSQ or any arrangement entered into under this RFSQ 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 RFSQ, 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.

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

##### **4.4.1 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 RFSQ with negotiated changes, if any, and satisfy any other applicable conditions of this RFSQ 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 3.4 and 3.5, 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.

##### **4.4.2 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 RFSQ, 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 4 – Terms and Conditions of the RFSQ Process, there will be no legally binding relationship created with any Proponent prior to the execution of a written agreement.

##### **4.4.3 Master Agreement**

If a Master Agreement is subsequently negotiated and awarded to a Preferred Proponent as a result of this RFSQ 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 A – Form of Master Agreement.

##### **4.4.4 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 RFSQ was originally posted of the outcome of the procurement process and the award of the contract.

##### **4.4.5 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.

#### **4.4.6 Bid Dispute Resolution**

In the event that the Proponent wishes to review the decision of OECM in respect of any material aspect of the RFSQ 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.

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

##### **4.5.1 Confidential Information of OECM**

All correspondence, documentation, and information of any kind provided to any Proponent in connection with or arising out of this RFSQ 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 RFSQ and for the fulfillment of any related subsequent agreement; and,
- (d) Must be returned to OECM upon request.

##### **4.5.2 Confidential Information of the Proponent**

Except as provided for otherwise in this RFSQ, 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 RFSQ 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 RFSQ because OECM has refused to execute any such confidentiality agreement, the Proponent shall receive no points for that particular stage of the evaluation process.

##### **4.5.3 Proponent's Submission**

All correspondence, documentation, and information provided in response to or because of this RFSQ 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.

#### **4.5.4 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.

#### **4.5.5 Non-Disclosure Agreement**

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

#### **4.5.6 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 RFSQ, 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.

#### **4.5.7 Municipal Freedom of Information and Protection of Privacy Act**

The *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56* 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 RFSQ, 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.

#### **4.5.8 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.

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

#### **4.6.1 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 RFSQ;
- (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 RFSQ;
- (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 RFSQ 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, 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 RFSQ, 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 RFSQ provided that those changes are issued by way of addenda in the manner set out in this RFSQ;
- (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 OECM;

- (q) Cancel this RFSQ process at any stage and issue a new RFSQ for the same or similar requirements, including where:
  - i. OECM determines it would be in the best interest of OECM not to award a Master Agreement, or,
  - ii. the funding for the acquisition of the proposed Services has been revoked, modified, or has not been approved,
 and where OECM cancels this RFSQ, OECM may do so without providing reasons, and OECM may thereafter issue a new request for proposals, request for qualifications, sole source, or do nothing;
- (r) Discuss with any Proponent different or additional terms to those contained in this RFSQ or in any Proposal;
- (s) Accept any Proposal in whole or in part;
- (t) If OECM receives a Proposal from a Proponent with Rates that are abnormally lower than the Rates in other Proposals, OECM may verify with the Proponent that the Proponent satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against OECM and/or its Customers or is otherwise engaged in a dispute with OECM and/or its Customers;

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

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

#### **4.6.2 Rights of OECM – Proponent**

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

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

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

#### **4.6.3 No Liability**

The Proponent agrees that:

- (a) Any action or proceeding relating to this RFSQ 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 RFSQ 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 RFSQ.

The Proponent further agrees that if OECEM commits a material breach of OECEM's obligations pursuant to this RFSQ, OECEM's liability to the Proponent, and the aggregate amount of damages recoverable against OECEM 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 OECEM, shall be no greater than the Proposal preparation costs that the Proponent seeking damages from OECEM can demonstrate. In no event shall OECEM be liable to the Proponent for any breach of OECEM's obligations pursuant to this RFSQ, 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.

#### **4.6.4 Assignment**

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

#### **4.6.5 Entire RFSQ**

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

#### **4.6.6 Priority of Documents**

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

#### **4.6.7 Disqualification for Misrepresentation**

OECEM 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.

#### **4.6.8 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 OECEM and/or its Customers.

#### **4.6.9 Cancellation**

OECEM may cancel or amend the RFSQ process without liability at any time.

#### **4.6.10 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.

#### **4.6.11 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 RFSQ.

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>.



#### **4.6.12 Governing Law**

The terms and conditions in this Part 4:

- (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 4]

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

This Appendix is posted as a separate PDF document.

## APPENDIX B – SUPPLIER 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>Sales Reporting</b>	<b>Frequency</b>	<b>Due Date</b>
Sales reporting including, but not limited to: (a) Customer's name; (b) Invoice number and date; (c) Service provided (or Service Category provided); (d) Quantity invoiced; (e) Rates and total Rate; and, (f) CRF.	Quarterly	8th Business Day following each Calendar Quarter
<b>Performance Reporting</b>	<b>Frequency</b>	<b>Due Date</b>
(a) Key Performance Indicators reporting – as set out in Appendix C – Supplier Performance Management Scorecard; and, (b) Performance results specific to Customer's KPIs.	Quarterly	8th Business Day following each Calendar Quarter
<b>CSA Reporting</b>	<b>Due Date</b>	
(a) Provide a copy of each fully executed CSA	Within thirty (30) days of CSA execution	
<b>Other Reporting</b>		
Other reporting requirements may include: (a) Sales Forecasting Reports; i. By November 15 – for the next calendar year; ii. By March 15 – for April to December, if the forecast in (a) above has changed; and, iii. By July 15 – for August to December, if the forecast in (b) above has changed. (b) Specific Customer Reports, as requested (e.g., purchase orders and invoices) (c) OEMC Ad Hoc Reports - As requested and mutually agreed upon		

Final reporting requirements will be determined during negotiations.

## APPENDIX C – SUPPLIER PERFORMANCE MANAGEMENT SCORECARD

Master Agreement performance means the Supplier aligns with OECM's three (3) pillars of Savings, Choice and Service, supporting the growth of the Master Agreement among Customers, and providing quality products and 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 Services;
- (b) Customer satisfaction;
- (c) On-time Master Agreement activity reporting to OECM;
- (d) On-time CRF remittance; and,
- (e) Continuous improvement.

Reporting, as described in Appendix B – Supplier's 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 B – Supplier 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 of the Supplier's request to add other related Services to the Master Agreement;
- (b) Master Agreement extensions; and,
- (c) 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>
Customer Issues – Number of Customer Complaints	Total Customer complaints annually out of total Customer requests	Less than 2% of total Customer requests
Accurate Invoicing	Number of invoicing errors annually	Less than 2% annually
Customer inquiries response lead time	One (1) Business Day	98% of the time
Customer ratings of Service satisfaction	Quarterly average of Customer surveys results	Average 98 % satisfaction level
Completion of Services	On time completion of Services	98% of the time

<b>OECM Evaluation of Supplier's Performances</b>		
<b>Key Performance Indicator</b>	<b>Performance Measurement</b>	<b>Performance Goal</b>
On time executed CSA submissions	Within 30 days of execution	98% of the time
On time and completed KPI Report submissions	8th Business Day following each Calendar Quarter	98% of the time
On time and completed Sales Report submissions	8th Business Day following each Calendar Quarter	98% of the time
On time CRF Remittance	Within 30 days of invoice, due on May 15, August 15, November 15, February 15	98% of the time
Response Time to OECM Inquiries	One (1) Business Day	98% of the time

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

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

#### **Penalties and Rewards**

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

## APPENDIX D – OECEM'S SUPPLIER 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 of collaboration, responsiveness, integrity, innovation and respect 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 products or services are provided to OECEM Customers. Fair competition is to be practised in accordance with applicable laws. All business activities and commercial decisions that restrict competition or may be deemed to be uncompetitive are to be avoided;
- (b) Not try to gain improper advantage or engage in preferential treatment with OECEM employees and Customers. The Supplier must avoid situations that may adversely influence their business relationship with OECEM or can be directly or indirectly perceived as a conflict of interest and interfere with the provision of the 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 OEMC's SCC;
- (b) Report violations of the SCC or identify any Customer requests that might constitute violations; and,
- (c) Cooperate and collaborate with OEMC and bring about the resolution of SCC compliance issues.

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

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

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

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

For more information, visit OEMC's website at <https://oecm.ca/wp-content/uploads/2022/01/oecm-supplier-code-of-conduct.pdf>

**APPENDIX E – ONTARIO REGIONS, COUNTIES, DISTRICTS AND SINGLE-TIER LOCATIONS**

<b>Ontario Regions, Counties, Districts and Single-Tier Locations</b>			
<b>Regions</b>	<b>Counties</b>	<b>Districts</b>	<b>Single-Tier</b>
Durham	Bruce	Algoma	Brant
Halton	Dufferin	Cochrane	Chatham-Kent
Niagara	Elgin	Kenora	Haldimand
Peel	Essex	Manitoulin	Hamilton
Waterloo	Frontenac	Muskoka	Kawartha Lakes
York	Grey	Nipissing District	Norfolk
	Haliburton	Parry Sound	Ottawa
	Hastings	Rainy River	Prince Edward
	Huron	Sudbury	Toronto
	Lambton	Thunder Bay	
	Lanark	Timiskaming	
	Leeds and Grenville		
	Lennox and Addington		
	Middlesex		
	Northumberland		
	Oxford		
	Perth		
	Peterborough		
	Prescott and Russell, United Counties		
	Renfrew		
	Simcoe		
	Stormont, Dundas and Glengarry		
	Wellington		