



Savings | Choice | Service

## **TONER CARTRIDGES AND RELATED SERVICES**

### **REQUEST FOR PROPOSALS # 2023-448**

<b>Request for Proposals Timetable</b>	
<b>Event</b>	<b>Time/Date</b>
OECEM's Issue Date of Request for Proposals:	February 14, 2024
Proponent's Information and Ontario Tenders Portal Jaggaer Demonstration Session:	2:00 pm on February 20, 2024
Proponent's Deadline to Submit Questions:	5:00 pm on February 23, 2024
OECEM's Deadline for Issuing Answers:	February 28, 2024
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	5:00 pm on March 5, 2024
OECEM's Deadline for Issuing Final Documents:	March 7, 2024
Closing Date:	2:00:00 pm on March 18, 2024
Anticipated Master Agreement Start Date:	May, 2024
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 Proposals (“RFP”) is an invitation to obtain Proposals from qualified Proponents for Toner Cartridges (“Products”) and related services as described in Part 2 – The Deliverables.

OECM intends to award one (1) or more Master Agreements, with an initial Term of the Master Agreement (“Term”) of four (4) years with an option in favour of OECM to extend the Term on the same terms and conditions for up to two (2) additional years.

This RFP is issued by OECM.

### 1.1 Objective of this RFP

The objective of this RFP is to:

- (a) Provide OECM Customers the ability to purchase Products from qualified Suppliers to satisfy their requirements;
- (b) Reduce the costs of associated competitive procurement processes on an ongoing basis (i.e., fewer competitive procurement documents issued by Customers);
- (c) Excellent customer service and timely delivery to all customers across Ontario;
- (d) A wide range of quality Products and related services at competitive pricing with a simplified price list;
- (e) Recycling programs that demonstrate the Supplier’s commitment to environmental stewardship;
- (f) Flexible ordering and payment methods for customers; and,
- (g) Detailed, accurate, and punctual sales reports and payment of Cost Recovery Fees (“CRF”) to OECM.

### 1.2 Authorized Reseller

The Proponent shall be the OEM or an Authorized OEM Reseller of the Deliverables, and provide the appropriate resources with associated skills, experience and knowledge to fulfill RFP requirements.

Where components comprising the Deliverables are not provided directly by the Supplier, the OEM of those components shall be deemed to be a Supplier’s Subcontractor and the Supplier shall be responsible for providing those components to the Customer on the terms and conditions of the Contract.

The Supplier’s Authorized OEM Reseller status shall be maintained throughout the Term of the Master Agreement (“Term”), with any changes of status to be communicated to OECM within thirty (30) days of such change.

Authorized Reseller means the OEM has authorized the Supplier to market, advertise, sell and maintain directly to Customers on the OEM’s behalf as a provider.

Each Proposal and Appendix G – OEM Undertaking/OEM Authorized Reseller letter shall represent the OEMs specified within Appendix G.

### 1.3 Project Background

This RFP is the 4th generation with the first (1st) RFP in 2011, second (2nd) in 2015 and third (3rd) in 2020. The current agreement is expiring on July 20, 2024 with no further extensions. Since inception to December 2023, the agreement generated approximately \$32.5 million in spend across one hundred and ninety-six (196) unique customers.

#### 1.3.1 Historical Spend

OECM currently has Toner Cartridges and Related Services agreements in place with four (4) suppliers that expire on July 20, 2024. There are presently one hundred and ninety-six (196) unique Customers using these existing OECM agreements:

- (a) Forty-nine (49) School Boards;
- (b) Two (2) Colleges;
- (c) Eleven (11) Universities; and,
- (d) One hundred and thirty-four (134) other organizations.

Approximate purchases through these existing agreements from July 2020 to December 2023 is approximately five million dollars (\$5,000,000).

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

### **1.3.2 Customer Engagement**

The following Customers were engaged with the development of the Deliverables set out in this RFP:

- (a) FRANCOachat; and,
- (b) Toronto Catholic District School Board.

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

## **1.4 Award Strategy**

OECM may, through this RFP process, enter into Master Agreements with one (1) or more Suppliers for the provision of the Products and related 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 two (2) additional years. Performance as set out in Appendix D – Supplier Performance Management Scorecard and, if applicable, Supplier Recognition Program evaluation results will be considered when contemplating a Master Agreement extension.

Customers participating in the Master Agreements will execute a CSA with a Supplier as attached in Appendix A – Form of Master Agreement. Prior to executing a CSA, the Customer may negotiate their unique 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.

### **1.4.1 No Contract until Execution of Written Master Agreement**

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

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

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

### **1.4.2 Customer's Usage of Master Agreements**

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

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

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

- (a) Select a Supplier and sign a CSA; or,
- (b) Seek Rates and other relevant Product information specific to a Customer’s organization (e.g., by issuing a non-binding request via a Second Stage tool (e.g., Quick Quote (“QQ”), or Customer’s process (e.g., directly or via an online e-tendering platform)) from the Supplier for their specific Product requirements (e.g. reporting, Rates, invoicing). If selected by the Customer, the Supplier shall provide the Products in accordance with the specifications stated in the Master Agreement and in the Customer’s CSA.

When a Second Stage request is issued, which does not constitute a contract A, contract B situation, it will identify the required Products or it may request the Supplier to propose appropriate Products to fulfill the Customer’s requirements and any other applicable information.

The Customer may negotiate their unique requirements (e.g., reporting, Rates, the length of time the Rates remain firm, 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 Supplier must respond to a Second Stage request and, at minimum, the response should set out the following:

- (a) Proposed Products (SKU details);
- (b) Volumes;
- (c) Delivery time and locations;
- (d) Invoicing;
- (e) Reporting; and,
- (f) Final, net Rates. The Rates should be valid for a period of not less than ninety (90) days, or as requested by the Customer. Limited time offer Rates and/or promotional Rates must be specified by the Supplier, if applicable to the specific Second Stage request.

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

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

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

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

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

### **1.5 About OECM**

OECM is a trusted not-for-profit partner for Ontario’s 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, Local Housing Corporations, 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.

**A Marketplace of Choice**

www.oecm.ca

Marketplace

536 AGREEMENTS

1344 CUSTOMERS

419 SUPPLIERS

OECM conducts procurements that are compliant with the Broader Public Sector (BPS) Procurement Directive and the trade agreements

Refer to OECM's Marketplace Guide <https://oecm.ca/marketplaceguide>

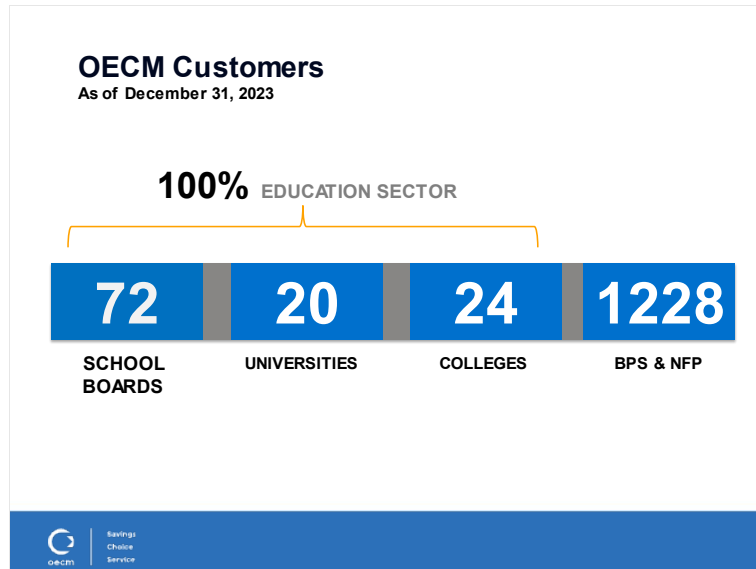
As of December 2023 Customers-- as of December 2023

OECM Settings Choice Service

### 1.5.1 Use of OECM Master Agreements

As of December 2023, thirteen hundred and forty-four (1,344) Customers were using one (1) or more OECM agreements with a cumulative spend of more than four (4) billion dollars over the last fifteen (15) years.

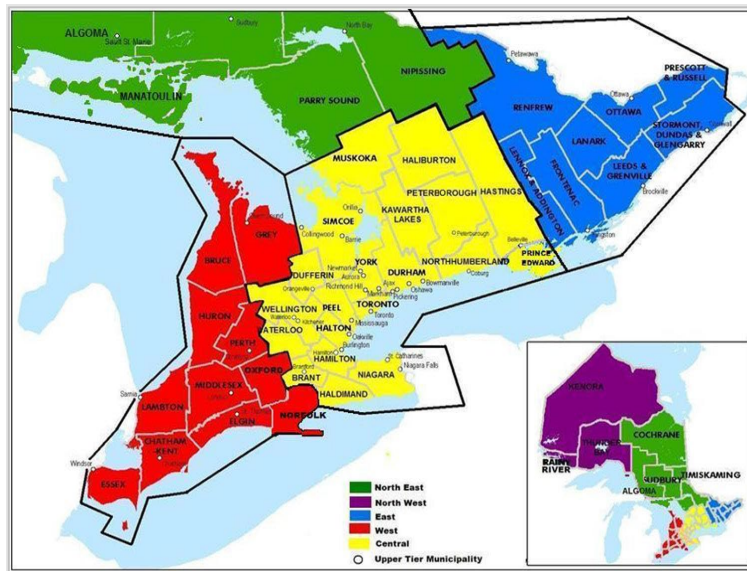




More information about OECM is available on our website - <http://www.oecm.ca/>.

### 1.5.2 OECM Geographical Zones

OECM Customers are located in five (5) geographical Zones throughout the Province of Ontario.



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

### 1.5.3 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 <https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/bps-procurementdirective>.

#### **1.5.4 Trade Agreements**

OECD procurements are undertaken within the scope of Chapter 5 of the Canadian Free Trade Agreement ("CFTA"), Chapter 19 of the Comprehensive Economic and Trade Agreement ("CETA"), and within the scope of the Trade and Cooperation Agreement between Quebec and Ontario and are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFP. For more information, refer to the Section 4.6.11.

[End of Part 1]

## PART 1A – RULES OF INTERPRETATION AND DEFINITIONS

### 1A.1 Rules of Interpretation

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

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

### 1A.2 Definitions

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

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

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

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

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

- (a) 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. 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 RFP;

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

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

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

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

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

- (a) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including, but not limited to (i) having or having access to information in the preparation of its Proposal that is confidential to OECM and not available to other respondents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could reasonably be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or,

(b) in relation to the performance of its contractual obligations in an OEMC contract, the Proponent's other commitments, relationships or financial interests (i) could or could reasonably be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could reasonably be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

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

**"Cost Recovery Fee" or "CRF"** means a fee, which contributes to the recovery of OEMC'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 OEMC's competitively sourced agreements. Once Customer-Supplier Agreements have been executed, this fee is remitted by the Supplier to OEMC 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, Local Housing Corporations, 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 RFP specific to their organization;

**"Deliverable"** means all Products and related services to be provided or performed by the Supplier, under the Master Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Supplier 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;

**"Local Housing Corporation"** means a local housing corporation as defined in the Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1;

**"Master Agreement" or "Agreement"** means the agreement to be made between the Preferred Proponent and OEMC 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 OEMC 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* ([List of Ontario municipalities | Ontario.ca](#)) and related Service Organizations;

**"OEMC"** means the Ontario Education Collaborative Marketplace;

**"OEMC's Deadline for Issuing Final Addenda"** means the date and time as set out in Section 4.1.1 of this RFP and may be amended from time to time in accordance with the terms of this RFP;

**"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 OEEM or the Customer or created by the Proponent pursuant to the RFP;

**“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 RFP;

**“Product”** 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;

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

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

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

**“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;

**“Rates”** means the maximum prices, in Canadian funds, minimum percentage discount off Canadian published price, for the Products as set out in the Proponent’s submitted Appendix B - Commercial Response;

**“Request for Proposals”** or **“RFP”** means this Request for Proposals #2023-448 issued by OEEM, 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., Quick Quote (“QQ”), or Customer’s process (e.g., directly or via an online e-tendering platform) from a Customer or from OEEM on behalf of a Customer, seeking Rates and relevant Products specific to a Customer’s organization;

**“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 OEEM 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 1.4 of this RFP; 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 OEEM and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFP process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and result in any unfairness.

[End of Part 1A]

## PART 2 – THE DELIVERABLES

This Part of the RFP describes the Toner Cartridges (“Product”) and related service which will be incorporated into the final Master Agreement.

OECM requires that the Proponent has a clear and comprehensive understanding of the RFP 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 all RFP Deliverables.

### 2.1 Description of Deliverables

The Supplier shall provide a broad range of Products and Services to meet the requirements of Customers including but not limited to the following:

- a) Products:
  - i. OEM Products
  - ii. Remanufactured Products
  - iii. Other Related Products
  
- b) Related Services:
  - i. Recycling Program
  - ii. Warranty
  - iii. Testing

### 2.2 Products

Customers have different printer environment with various Products requirements and needs. In order to cover Customers’ needs, the Supplier shall make its catalogue of Products available to Customers during the Term of the Agreement. The Products will follow any Indoor-Air Quality (“IAQ”) as per industry standards and regulations as applicable in Canada. The Supplier shall furnish any documentation, certifications and labels associated with their Products to Customers and OECM as a proof of meeting IAQ industry standards and regulations as applicable in Canada. The Customers may choose to conduct Testing of the Products to ascertain IAQ which are to be mutually agreed by the Customer and the Supplier at an additional cost.

#### 2.2.1 OEM Products

The Supplier shall provide Customers with OEM Products. OEM Products refer to any new toner cartridge that was manufactured by the company which also manufactured the copier or printer. The Proponent proposing OEM Products it does not manufacture, shall ensure the Products are manufactured to the OEM’s quality and performance specifications. Manufacturers shall meet a minimum of ISO 9001:2008 certification.

#### 2.2.2 Remanufactured Products

The Supplier shall provide Remanufactured Products that refer to any used OEM toner cartridge that has been refilled to meet or exceed OEM quality and performance specifications. They shall be free of any infringement on the Intellectual Property of the OEM.

### 2.3 Other Related Products

#### 2.3.1 Compatible Products

The Supplier should provide Compatible Products to Customers. Compatible Products refer to any new toner cartridge that was manufactured by a third-party manufacturer and not by the OEM that manufactured the copier or printer. Compatible Products shall meet or exceed OEM quality and performance specifications. They shall be free of any infringement on the Intellectual Property of the OEM.

### **2.3.2 Bio-Toner Products**

The Supplier should provide Bio-toner Products to Customers. Bio-toner Products shall be manufactured to OEM standards in quality and performance which incorporates the use of agricultural raw materials such as corn or soy in the production and or final assembly of the cartridge, including casings, components and or toner. They shall be free of any infringement on the Intellectual Property of the OEM.

### **2.3.3 Product Kits**

The Supplier should provide Product kits (e.g., drum kits, maintenance kits, fuser kits, image kits, etc.) from OEM of the print device it is designed to operate in.

## **2.4 Related Services**

### **2.4.1 Product Recycling Program**

The Supplier shall have a robust recycling program available to Customers. The recycling program can be provided by either a Supplier or third-party Product recycling provider for all used and/or empty and/or or end-of-life Products from the Customer's locations.

The Product recycling program will be at no additional cost to Customers and shall include but not be limited to:

- a) A timely and reliable service;
- b) Ease of use for Customers;
- c) Assurances of capacity to accept and manage used Products for recycling from large accounts;
- d) A commitment to environmental sustainability;
- e) Assurances end-of-life Product is disposed of in a socially responsible manner;
- f) Responsible Recycling Certifications; and.
- g) Availability of the program in English and French.

### **2.4.2 Product Warranty**

All Products must be covered by the original manufacturer's warranty, understanding OEMs may apply various warranty terms and conditions. The Supplier shall provide full manufacturers' warranty coverage on all Products to the Customers, from the date of receipt or acceptance of the Products.

The Supplier shall be responsible for arranging Product exchanges and repairs. All shipping costs related to approved warranty exchanges and repairs shall be at no cost to the Customers.

In the event that a conflict should arise between the Agreement and terms and conditions of the original manufacturer's warranty, the Agreement shall prevail.

Proponents shall warrant that all proposed Products are free of defects in material and workmanship for a period of:

- a) Twelve (12) months for all Products (OEM, Remanufactured or Compatible and Bio-Toner); and,
- b) Remanufactured, Compatible and Bio-Toners shall meet or exceed the OEM warranty period.

### **2.4.3 Equipment Warranty**

The Supplier shall warrant that the use of Remanufactured Products will not void any Manufacturer's warranty on Customer's equipment.

If problems occur with the Customer's equipment due to the Proponent's defective Remanufactured Product, the Proponent shall:

- c) Provide, within two (2) Business Days, a trained authorized service technician to repair damaged equipment; or
- d) Reimburse, within two (2) Business Days, Customers for any service performed to repair the damaged equipment; or
- e) Upon mutual agreement, replace, within ten (10) Business Days, the equipment at no cost to the Customer, if the equipment cannot be repaired or restored to its previous condition.



#### **2.4.4 Testing**

During the Term of the Agreement resulting from this RFP, there will be instances where Customers may want to test Products and or alternative Products.

##### **a) Testing – Internal**

- i. Customers reserve the right to request the Supplier to provide a Product in order to conduct technical and functional compliance testing during the Term of the Agreement.
- ii. The Products will be provided for a minimum period of fifteen (15) Business Days at no cost to Customers (including freight costs, to and from the Customer's location).
- iii. Customers may test to ensure it meets their specific requirements, functions in their technology environment and to assess its suitability for their purpose.
- iv. Customers may have different Products testing processes and procedures. Prior to or at the CSA execution, Supplier and Customer shall mutually agree to other testing requirements (e.g. longer testing period).

##### **b) Testing – External**

- i. Customers reserve the right to have Products tested by an external third-party testing organization.
- ii. A full report will be available to Supplier where applicable and upon request.
- iii. If the external test results prove that the Product does not meet the Customers' technical requirements, the Supplier will be responsible for applicable testing costs, including freight costs to and from the Customer's location.
- iv. If, however, the test results demonstrate compliance with the Customer's requirements, the costs associated with this testing shall be borne by Customers determined and mutually agreed upon in advance of the external testing.

#### **2.5 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.

All Proponents will adhere to the regulations of Electrical and Electronic Equipment ("EEE") Regulation as per Resource Productivity and Recovery Authority ("RPRA") under the *Resource Recovery and Circular Economy Act, 2016* ("RRCEA") as mandated by the province, unless exempted. If exempted, the Proponent must furnish proof of exemption as and when required by OEM during the term of the contract.

#### **2.6 Workplace Hazardous Material Information System**

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

#### **2.7 Disaster Recovery and Business Continuity**

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

## 2.8 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 Products and provide them at Customer and OEM 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 OEM shall be considered an approval by OEM for the Supplier to carry on such activity without the requisite licence, right to use or approval.

## 2.9 Environmental, Social, and Governance

The Supplier shall possess and provide information, if requested by OEM or the Customer, related to its 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 OEM and Customers informed about social procurement processes.

Throughout the Term of the Master Agreement, OEM and/or the Customer may consult with the Supplier to assess ESG commitments.

## 2.10 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 Products 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.

## **2.11 Order Management**

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

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

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

### **2.11.1 Minimum Order**

The Supplier and Customers may mutually agree to a minimum order value or volume requirement(s) to be incorporated in the Customer-Supplier Agreement.

### **2.11.2 Order Acknowledgement**

The Supplier shall acknowledge the receipt of an order by Customer immediately or within one (1) Business Day if requested by the Customer. The Supplier will include in this acknowledgement, any Products ordered that cannot be fulfilled (e.g., back orders). The Customer, at its sole discretion may:

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

### **2.11.3 Order Changes and/or Cancellation**

The Supplier shall accept new orders, order changes and/or cancellation as may be required based on Customer’s requirements, at no additional cost to the Customer.

### **2.11.4 Coordinating Bulk Purchases**

The Supplier shall support coordinated bulk purchases initiated by OEMC and/or Customers for several Customers during the Term. If this occurs, OEMC or the Customer may negotiate a lower Rate with the Supplier for bulk purchases. Lead time and/or delivery locations, per Customer, for bulk purchases may differ from that set out in Section 2.13.1. OEMC or the Customer will ensure reasonable lead times for bulk purchases are requested.

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

### **2.11.5 Electronic Commerce**

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

## **2.12 Delivery**

All Products shall be Delivered Duty Paid (“DDP”) to inside the door or the dock of the Customer’s location as requested by the Customer. Customers may have more than one (1) location within their organization (e.g.

hundred (100) individual schools, three (3) campuses) and may have more than one (1) delivery location within one (1) delivery address (e.g. two (2) mini-store locations in one (1) campus). The Supplier and Customer will set out this arrangement when completing a CSA.

The Supplier should deliver orders with correct Products and quantities within the lead time and specific Customer locations, if requested.

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

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

#### **2.12.1 Delivery Lead Times**

The Supplier shall deliver Products according to the following delivery lead times understanding that there may be extenuating circumstances (e.g. a longer delivery lead-time when purchasing special Products):

- (a) Products will be delivered within one (1) Business Day for Central, East and West Zones as shown in Appendix D – OECM Geographical Zones; and
- (b) Products will be delivered within two (2) Business Days for North East and North West Zones as shown in Appendix D – OECM Geographical Zones.

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

The Supplier and Customers may mutually agree upon other lead times which are beneficial to both parties. These terms may include blanket purchase orders with scheduled release dates, bulk or large orders or special delivery requirements (e.g. specific hours).

#### **2.12.2 Back Orders**

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

#### **2.12.3 Product Substitution**

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

#### **2.12.4 Damaged or Defective Shipment**

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

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

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

#### **2.12.5 Returns**

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

### **2.12.6 Recalls**

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

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

### **2.12.7 Discontinued Products**

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

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

## **2.13 Invoicing**

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

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

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

### **2.13.1 Payment Terms and Methods**

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

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

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

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

### **2.13.2 Electronic Fund Transfer**

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

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

## 2.14 Rates

The proposed Product Rates shall be firm Rates for Customers located in Ontario for the entire term of the Master Agreement including extension period if exercised and shall be:

- (a) Minimum percentage discount off MSRP applicable to all Customers;
- (b) In Canadian funds and shall include all applicable costs, including, but not limited to overhead, materials, fuel, fuel surcharge, duties, tariffs, travel and carriage, delivery, office support, profit, permits, licences, labour, insurance, and Workplace Safety Insurance Board costs and all other overhead, office support, profit, licenses including any fees or other charges required by law; and,
- (c) Exclusive of the HST, or other similar taxes.

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

The Customer and Supplier will mutually agree on Rates and the process and timing for refreshing those Rates based on the Customer's Product needs and incorporated in the Customer-Supplier Agreement. However, the Rates for Ontario Customers, shall not exceed the Master Agreement Rates.

Rates for Customers outside of Ontario will be negotiated and mutually agreed upon by the Customer and Supplier.

### 2.14.1 Incentives for Customers

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

- (a) Early payment discount for Customers;
- (b) Higher volumes; and,
- (c) Overall growth.

In consultation with OECM, the Customer may negotiate specific details related to one (1) or more financial incentives.

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

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

### 2.14.2 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.

**2.14.3 OEMC Cost Recovery Fee**

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

The Supplier shall pay to OEMC a maximum CRF of two point five percent (2.5%) on all Products and related services invoiced by the Supplier to the Customers throughout the Term.

CRF will be calculated as follows:

<b>EXAMPLE OF HOW CRF WILL BE CALCULATED WITH A CRF = 2.5%</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 2.5% CRF	\$2500	\$325.00	\$2825.00
If Supplier has \$200,000 total sales in second quarter	\$200,000 x 2.5% CRF	\$5000	\$650.00	\$5650.00
If Supplier has \$50,000 total sales in third quarter	\$50,000 x 2.5% CRF	\$1250	\$162.50	\$1412.50
If Supplier has \$50,000 total sales in fourth quarter	\$50,000 x 2.5% CRF	\$1250	\$162.50	\$1412.50
<b>Total CRF Payment to OEMC for <u>first year of the Master Agreement</u>:</b>				<b>\$11300.00</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:

<b>Calendar Quarter</b>	<b>Months</b>	<b>CRF Payment Due Date</b>
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 OEMC’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.

## **2.15 Supplier Support to Customers**

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

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

### **2.15.1 Transition Support**

The Supplier should, at no additional cost, provide Customers transition support such as setting up a Supplier's account from the Customers current purchasing agreement with minimal service disruption.

## **2.16 Supplier Management Support to OEM**

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

- (a) Assigning to OEM 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 OEM's and Customer's confidentiality by not disclosing Confidential Information without the prior written consent of OEM 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 OEM to review such information as:



- i. CSAs and upcoming opportunities;
  - ii. Authorized Reseller status; and,
  - iii. Review and monitor performance management compliance;
- (f) Complying with Appendix E – OEMC’s Supplier Code of Conduct requirements as described on the OEMC website at <https://oecm.ca/suppliers/#code-of-conduct>;
- (g) Managing issue resolution in a timely manner;
- (h) Complying with agreed upon escalation processes to resolve outstanding issues;
- (i) Timely submission of reports as described in Appendix C – 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 OEMC).

**2.16.1 Master Agreement Award and Launch**

The Supplier will meet with OEMC 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.

**2.16.2 Promoting OEMC Master Agreements**

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

The Supplier will actively promote the Master Agreement to Customers which may include, but not be 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 Products).

OEMC will promote the use of the Master Agreement with Customers which may include, but not be 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.

### **2.16.3 Supplier Performance Management Scorecard**

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

### **2.16.4 Process to Add Other Products**

During the Term the Supplier may request adding other Products (e.g., newly available Products) to the Master Agreement at Master Agreement anniversary date, or as mutually discussed and agreed upon by Supplier and OECM to align with Customer needs. OECM will review and assess the request and may accept or reject based on Products in the current Master Agreement and Customer needs.

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

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

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

Rates, for newly added Products, will be negotiated at the time of the request.

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

### **2.16.5 Saving Calculation**

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

The Supplier shall report Customer savings (e.g., Master Agreement Rate versus Rate invoiced to Customer, total cost of ownership, cost avoidance and/or other savings).

### **2.16.6 OECM's Supplier Recognition Program**

OECM's suppliers play a fundamental role in ensuring Customers' needs are met with consistent and exceptional service. As part of OECM's efforts to provide greater value to Customers and support their Supplier selection process across OECM agreements, OECM has a Supplier Recognition Program ("SRP"). Through the SRP, OECM 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.

### **2.16.7 Reporting to OECM**

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

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

[End of Part 2]

## PART 3 – EVALUATION OF PROPOSALS

### 3.1 Stages of Proposal Evaluation

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

Stage	Description	Refer to RFP Section	Scoring Methodology and Maximum Points (if applicable)	Minimum Threshold Requirement (if any)
Stage I	Qualification Response	3.2	Pass/Fail	Pass
Stage II	Technical Response	3.3	600	360
Stage III	Commercial Response	3.4	400	Not Applicable
Stage IV	Cumulative Score	3.5	1000	Not Applicable
Stage V	Tie Break Process	3.6	Not Applicable	Not Applicable
Stage VI	Negotiations	3.7	Not Applicable	Not Applicable
Stage VII	Master Agreement Finalization	3.8	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
Qualification Response	Qualification
Appendix B – Commercial Response (in Microsoft Excel format only)	Commercial
Appendix G – OEM Undertaking/OEM Authorized Reseller Letter	Qualification

If the Proponent fails to insert information contained in the above forms, OECEM 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

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

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

Only Proposals that meet or exceed the minimum thresholds will receive a **pass** in this stage and proceed to Stage III of the evaluation process. The overall threshold for the Technical Response is sixty percent (60%) or three hundred and sixty points (360).

Point allocations for the Technical Response sections are as follows:

Technical Response Sections	Available Points	Minimum Threshold, if any
Proponent's Experience and Capabilities	50	N/A
Customer Service and Account Management	150	N/A
Products and Related Services	200	N/A
Value Added Services	50	N/A
Environmental Social and Governance	150	N/A
<b>TOTAL POINTS:</b>	<b>600</b>	<b>360</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.

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

### 3.4 Stage III – Commercial Response

The Proponent **must** complete and upload Appendix B – Commercial Response, in Microsoft Excel format only, into the OTP Commercial Envelope for this stage of evaluation. The proposed Rates shall be applicable to Ontario Customers only. Other Customers shall negotiate and mutually agreed upon Rates applicable to their organization with the Supplier.

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

Point allocations for the Commercial Response sections are as follows:

Commercial Response Sections	Available Points
OEM	160
Remanufactured and Alternate Products	160
Minimum Percentage Discount off Canadian Published Price	80
<b>TOTAL POINTS:</b>	<b>400</b>

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

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

<b>EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR OEM PRODUCTS</b>		
Proposed Rates	Calculation	Resulting Points
If Proponent 1 proposes the lowest Rate of \$100.00 for OEM products, it would receive 100% of the points allocated.	$\$100 \div \$100 \times 160$ Points	160
If Proponent 2 proposes the second lowest Rate of \$200.00 for OEM Products, it would receive 50% of the points allocated.	$\$100 \div \$200 \times 160$ Points	80

<b>EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR OEM PRODUCTS</b>		
<b>Proposed Rates</b>	<b>Calculation</b>	<b>Resulting Points</b>
If Proponent 3 proposes the third lowest Rate of \$400.00 for OEM Products, it would receive 25% of the points allocated.	$\$100 \div \$400 \times 160$ Points	40

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

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

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

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

### 3.5 Stage IV – Cumulative Score

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

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

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

### 3.6 Stage V – Tie Break Process

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

### 3.7 Stage VI – Negotiations

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

The negotiations may include:

- (a) RFP Deliverables;
- (b) Master Agreement management (e.g., performance, KPIs, penalties, reporting);

- (c) Master Agreement terms and conditions;
- (d) Additional references, if required;
- (e) Rates; and,
- (f) Best and Final Offer.

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

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

- i. Request the Preferred Proponent to submit its Best and Final Offer;
- ii. Terminate negotiations with that particular Preferred Proponent;
- iii. Extend the negotiation timeline; or,
- iv. Publish one (1) or some of the Suppliers, who have executed Master Agreements, within our promotional marketing launch.

Other Master Agreements, if successfully negotiated with other Preferred Proponents would be added to OECM's website at a later date.

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

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

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

OECM shall at all times be entitled to exercise its rights under Section 4.6.

[End of Part 3]

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

### 4.1 General Information and Instructions

#### Procurement Process Non-Binding

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

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

#### Non-Binding Rates

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

#### 4.1.1 RFP Timetable

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

RFP Timetable	
Event	Time/Date
OECCM's Issue Date of RFP:	February 14, 2024
Proponent's Information and OTP Demonstration Session:	2:00 pm on February 20, 2024
Proponent's Deadline to Submit Questions:	5:00 pm on February 23, 2024
OECCM's Deadline for Issuing Answers:	February 28, 2024
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	5:00 pm on March 5, 2024
OECCM's Deadline for Issuing Final Documents:	March 7, 2024
Closing Date:	2:00:00 pm on March 18, 2024
Anticipated Master Agreement Start Date:	May, 2024

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

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

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



#### **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 RFP process and to learn how to use OTP to submit its Proposal.

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

Information provided during this session will be posted on OTP.

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

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

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

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

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

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

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

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

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

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

### **4.2 Communication after RFP Issuance**

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

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

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

- (a) Any employee or agent of OECM;
- (b) Any project advisor;
- (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 RFP**

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

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

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

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

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

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

To ensure the Proponent clearly understand issued addenda, OECM allows Proponents to ask questions related to addenda, and question and answer documents. Refer to Section 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 RFP or its process.

#### **4.2.3 Proponent's Intent to Submit Proposal**

The Proponent should inform OECM, via OTP **Message**, by the date specified in the RFP Timetable noted in Section 4.1.1 of the RFP, if it intends to submit a Proposal in response to this RFP.

#### **4.2.4 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 RFP; and,
- (b) Claim that OECM is responsible for any of the circumstances listed in Section 4.2.2 of this RFP.

#### 4.2.5 All New Information to Proponents by way of Addenda

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

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

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

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

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

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

### 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%20responding%20to%20tender%20guide.pdf).

To be considered in the RFP 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 RFP on the Closing Date.

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

#### 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 RFP as set out below.

Description	OTP Envelope	Complete within OTP	Complete and Upload to OTP
Qualification Response	Qualification	√	
Technical Response	Technical	√	
Appendix B – Commercial Response (in Microsoft Excel format only)	Commercial		√
Appendix G – OEM Undertaking/OEM Authorized Reseller Letter	Qualification		√

#### 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 OEM

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 RFP process until the execution of a Master Agreement. To withdraw a Proposal after the Closing Date, the Proponent should send a **Message** to OEM 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 Products have been identified in its Proposal or will be provided to OEM 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 RFP**

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

#### **4.3.11 Amendments to RFP**

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

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

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

#### **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**

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

#### **4.3.16 RFP Incorporated into Proposal**

All provisions of this RFP 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 RFP.

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

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

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

### **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 RFP with negotiated changes, if any, and satisfy any other applicable conditions of this RFP within twenty (20) days of invitation to enter into negotiations. This provision is solely to the benefit of OECM and may be waived by OECM at its sole discretion.

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

#### **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 RFP, the Preferred Proponent will be allotted five (5) Business Days to execute the Master Agreement unless otherwise specified by OECM.

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

In accordance with the process rules in this Part 4 – Terms and Conditions of the RFP Process, there will be no legally binding relationship created with any Proponent prior to the execution of a written agreement.

#### **4.4.3 Master Agreement**

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

- (a) Any such Master Agreement will commence upon signature by the duly authorized representatives of OECM and the Preferred Proponent; and,
- (b) May include, but not be limited to, the general Master Agreement terms contained in Appendix 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 RFP 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 RFP process, and subject to having attended a debriefing, the Proponent shall submit a protest in writing to OECM within ten (10) days from such a debriefing.

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

A protest in writing should include the following:

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

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

### **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 RFP or the acceptance of any Proposal:

- (a) Remains the property of OECM and shall be removed from OECM's premises only with the prior written consent of OECM;
- (b) Must be treated as confidential and shall not be disclosed except with the prior written consent of OECM;

- (c) Must not be used for any purpose other than for replying to this RFP and for the fulfillment of any related subsequent agreement; and,
- (d) Must be returned to OECM upon request.

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

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

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

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

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

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

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

#### **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 Products 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 Products 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 RFP, the Proponent agrees to the use of such information for the evaluation process, for any audit of this procurement process, and for contract management purposes.



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

The 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 RFP, the Proponent agrees to the use of such information for the evaluation process, for any audit of this procurement process, and for contract management purposes.

#### **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 RFP;
- (d) Verify with any Proponent or with a third party any information set out in a Proposal;
- (e) Check references other than those provided by Proponents;
- (f) With supporting evidence, disqualify any Proponent on grounds such as:
  - i. Bankruptcy or insolvency;
  - ii. False declarations;
  - iii. Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior agreement or agreements;
  - iv. Final judgments in respect of serious crimes or other serious offence; or,
  - v. Professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Proponent;
- (g) Disqualify any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Proponent whose Proposal is determined by OECM to be non-compliant with the requirements of this RFP;
- (i) Disqualify a Proposal based upon the past performance or on inappropriate conduct in a prior procurement process, or where the Proponent has or the principals of a Proponent have previously breached an agreement with OECM, or has otherwise failed to perform such agreement to the reasonable satisfaction of OECM (i.e., has not submitted required reporting and/or Cost Recovery Fees to OECM);

- (j) Disqualify any Proponent, who, in relation to this RFP or the evaluation and selection process, has engaged directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Supplier.
- (k) Disqualify the Proponent who has been charged or convicted of an offence in respect of an agreement with OECM, or who has, in the opinion of OECM, engaged in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion, unethical conduct, including lobbying as described above or other forms of deceitfulness, or other inappropriate communications offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of OECM, or where the Proponent reveals a Conflict of Interest or Unfair Advantage in its Proposal or a Conflict of Interest or evidence of any Unfair Advantage is brought to the attention of OECM;
- (l) Disqualify any Proposal of any Proponent who has breached any Applicable Laws or who has engaged in conduct prohibited by this RFP, including where there is any evidence that the Proponent or any of its employees or agents colluded with any other Proponent, its employees or agents in the preparation of the Proposal;
- (m) Make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- (n) Accept or reject a Proposal if only one (1) Proposal is submitted;
- (o) Reject a Subcontractor proposed by a Proponent within a Consortium;
- (p) Select any Proponent other than the Proponent whose Proposal reflects the lowest cost to OECM;
- (q) Cancel this RFP process at any stage and issue a new RFP for the same or similar requirements, including where:
  - i. OECM determines it would be in the best interest of OECM not to award a Master Agreement,
  - ii. the Proposal prices exceed the bid prices received by OECM for Products acquired of a similar nature and previously done work,
  - iii. the Proposal prices exceed the costs OECM or its Customers would incur by doing the work, or most of the work, with its own resources,
  - iv. the Proposal prices exceed the funds available for the Products, or,
  - v. the funding for the acquisition of the proposed Products has been revoked, modified, or has not been approved,

and where OECM cancels this RFP, OECM may do so without providing reasons, and OECM may thereafter issue a new request for proposals, request for qualifications, sole source, or do nothing;
- (r) Discuss with any Proponent different or additional terms to those contained in this RFP or in any Proposal;
- (s) Accept any Proposal in whole or in part;
- (t) If OECM receives a Proposal from a Proponent with Rates that are abnormally lower than the Rates in other Proposals, OECM may verify with the Proponent that the Proponent satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against OECM and/or its Customers or is otherwise engaged in a dispute with OECM and/or its Customers;

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

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

#### **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 RFP including, but not limited to, cancelling the RFP and issuing a new RFP for the same or similar Products.

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

#### **4.6.3 No Liability**

The Proponent agrees that:

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

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

#### **4.6.4 Assignment**

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

#### **4.6.5 Entire RFP**

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

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

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

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

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

#### **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 OECM and/or its Customers.

#### **4.6.9 Cancellation**

OECM may cancel or amend the RFP 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 RFP.

For more information, refer to the following:

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

#### **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 – COMMERCIAL RESPONSE**

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

The Proponent may not make any changes to any of the RFP forms, including Appendix B – Commercial Response. Any Proposal containing any such changes, whether on the face of the form or elsewhere in the Proposal, may be disqualified.

## APPENDIX C – SUPPLIER REPORTING REQUIREMENTS

Once CSAs have been executed, the Supplier must provide the following reports to OEM 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) Product provided (or Product Category provided); (d) Quantity invoiced; (e) Rate and total Rate; and, (f) Cost Recovery Fee.	Monthly	8th Business Day following each Calendar Month
<b>Performance Reporting</b>	<b>Frequency</b>	<b>Due Date</b>
(a) Key Performance Indicators ("KPIs") Report - As set out in Appendix D – Supplier Performance Management Scorecard. (b) Performance results specific to Customer's KPIs.	Quarterly (calendar)	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>		
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) OEM Ad Hoc Reports - As requested and mutually agreed upon.		

Final reporting requirements will be determined during negotiations.

## APPENDIX D – SUPPLIER PERFORMANCE MANAGEMENT SCORECARD

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

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

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

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

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

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

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

Failure, by the Supplier, to provide accurate reports by the due dates set out in Appendix C – 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 OEM. The Performance Management Scorecard and other performance indicators will be used to measure the Supplier's performance throughout the Term of the Master Agreement, ensuring Customers receive appropriate Products on time. The Supplier's performance score will be considered when OEM contemplates Master Agreement decisions such as:

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

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

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



<b>Supplier Provided Customer Performance Measures</b>		
<b>Key Performance Indicator</b>	<b>Performance Measurement</b>	<b>Performance Goal</b>
Order Fill Rate	% of non-backordered products for the customer	95% or greater
Delivery Performance	Orders delivered on time over total number of deliveries as per delivery lead times outlined in the Master Agreement	95% or greater
Accuracy of Invoices	% of invoices with correct rates	98% or greater
Product Quality	% of products received undamaged	98% or greater

<b>OECM Evaluation of Supplier's Performances</b>		
<b>Key Performance Indicator</b>	<b>Performance Measurement</b>	<b>Performance Goal</b>
On Time Report Submissions	On time	98% of the time
Integrated Reporting Template Remittance	On time	98% of the time
Response Time to OECM Inquiries	24 Hours	98% of the time

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

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

**Penalties and Rewards**

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

## APPENDIX E – OEMC'S SUPPLIER CODE OF CONDUCT

The Supplier will take every measure to comply with OEMC'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 OEMC's Customers as mutually agreed upon between the Customer and Supplier. OEMC'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 Products to OEMC 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 OEMC, and only use this information as part of their business relations with OEMC;
- (d) Comply with intellectual property rights relating to the Products provided to OEMC and its Customers;
- (e) Never place an OEMC 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 OEMC; and,
- (g) Disclose to OEMC any behaviour deemed unethical on the part of an OEMC 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 OEMC 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 OEMC employees and Customers. The Supplier must avoid situations that may adversely influence their business relationship with OEMC or can be directly or indirectly perceived as a conflict of interest and interfere with the provision of the Products to OEMC or its Customers. The Supplier must disclose any actual or potential conflicts of interest promptly to OEMC;
- (c) Never offer to OEMC 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 OEMC's employees' ability to make business decisions in the best interest of OEMC and its Customers. If a Supplier is unsure whether a gift or entertainment offer to an OEMC employee complies with OEMC'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 OEMC or its Customers at risk of violating anti-bribery and/or anti-corruption laws. The Supplier must ensure that the requirements of all these applicable laws are met, and not engage in any form of corrupt practices including extortion, fraud or bribery;
- (e) Ensure that any outsourcing and/or subcontracting used to fulfill Products are identified and approved by the Customer and monitored to ensure compliancy with contractual obligations and adherence to OEMC's SCC. Supplier's employees, subcontractors and other service providers must adhere to the requirements of the SCC, which must be made available as necessary. The Supplier must also ensure that its subcontractors and other

service providers are paid properly and promptly to avoid any disruption in the provision of Products by the Supplier to OECM or its Customers;

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

The Supplier is expected to:

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

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

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

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

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

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

**APPENDIX F – OECM SCHOOL BOARD, COLLEGE AND UNIVERSITY CUSTOMERS IN ONTARIO**

Zones	School Board Customers			College Customers	University Customers
Central	Brant Haldimand Norfolk Catholic District School Board ("CDSB")	Hastings and Prince Edward DSB	Waterloo Region DSB	Centennial College of Applied Arts and Technology ("CAAT")	Brock University
	Conseil scolaire catholique MonAvenir	Kawartha Pine Ridge DSB	Wellington CDSB	Conestoga College Institute of Technology and Advanced Learning	McMaster University
	Conseil scolaire Viamonde	Niagara CDSB	York CDSB	Durham CAAT	OCAD University
	District School Board ("DSB") of Niagara	Peel DSB	York Region DSB	Fleming CAAT	Toronto Metropolitan University
	Dufferin-Peel CDSB	Peterborough Victoria Northumberland and Clarington CDSB		George Brown CAAT	Trent University
	Durham CDSB	Simcoe County DSB		Georgian CAAT	University of Guelph
	Durham DSB	Simcoe Muskoka CDSB		Humber College Institute of Technology and Advanced Learning	University of Ontario Institute of Technology
	Grand Erie DSB	Toronto CDSB		Loyalist CAAT	University of Toronto
	Halton CDSB	Toronto DSB		Mohawk CAAT	University of Waterloo
	Halton DSB	Trillium Lakelands DSB		Niagara CAAT	Wilfrid Laurier University
	Hamilton-Wentworth CDSB	Upper Grand DSB		Seneca CAAT	
	Hamilton-Wentworth DSB	Waterloo CDSB		Sheridan College Institute of Technology and Advanced Learning	
East	Algonquin and Lakeshore CDSB	Conseil scolaire de district catholique ("CSDC") de l'Est Ontarien	Renfrew County CDSB	Algonquin CAAT	Carleton University
	CDSB of Eastern Ontario	Limestone DSB	Renfrew County DSB	Canadore CAAT	Queen's University
	Conseil des écoles catholiques du Centre-Est	Ottawa CDSB	Upper Canada DSB	La Cité collégiale	University of Ottawa
	Conseil des écoles publiques de l'Est de l'Ontario	Ottawa-Carleton DSB		St. Lawrence CAAT	
North East	Algoma DSB	Conseil scolaire public du Nord-Est de l'Ontario	Northeastern CDSB	Cambrian CAAT	Algoma University
	Conseil scolaire catholique de district des Grandes Rivières	DSB Ontario North East	Rainbow DSB	Collège Boréal	Laurentian University
	Conseil scolaire catholique du Nouvel-Ontario	Huron-Superior CDSB	Sudbury CDSB	Northern CAAT	Nipissing University
	Conseil scolaire catholique Franco-Nord	Near North DSB		Sault CAAT	

**APPENDIX G – OEM UNDERTAKING/OEM AUTHORIZED RESELLER LETTER**

The Proponent must complete this Appendix, posted as a separate Microsoft Word document, and upload it into OTP.