



Savings | Choice | Service

SOFTWARE LICENSE PRODUCTS AND RELATED SERVICES

REQUEST FOR PROPOSALS NUMBER: #2018-318

(Final with Amendments)

Request for Proposals Issued On: December 21, 2018

Proponent's Information & OTP Demonstration Session: 11:00 am on January 8, 2019

Proponent's Deadline to Submit Questions: 5:00 pm on January 8, 2019

Proponent's Deadline to Submit Questions Related to

Addenda & Question and Answer Documents: 5:00 pm on January **23**, 2019

Closing Date: 2:00 pm on February **19**, 2019 local time in Toronto, Ontario, Canada

All times specified in this RFP timetable are local times in Toronto, Ontario, Canada.
Please refer to Section 4.1.1 for the complete RFP timetable.

OECEM shall not be obligated in any manner to any proponent whatsoever until a written agreement has been duly executed with a supplier.

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PART 1 – INTRODUCTION

1.1 Invitation to Proponents

This non-binding Request for Proposals (“RFP”) is an invitation to obtain Proposals from prospective Proponents for the provision of Software License Products (“Products”) and related services on an as-and-when-required basis to support OECM Clients (“Clients”) as further described in Part 2 – the Deliverables (the “Deliverables”) in the following three (3) Categories:

- (a) Category A – Microsoft License Products and related services;
- (b) Category B – Adobe License Products and related services; and,
- (c) Category C – Other Software License Products and related services.

The Proponent may submit a Proposal for one (1), two (2) or all three (3) Categories.

This RFP is issued by OECM, in partnership with Ontario University Council of Chief Information Officers (“OUCCIO”). The Ontario University sector will be leveraging the Agreements resulting from this RFP through OUCCIO. Details of the Agreements will be shared with the awarded Suppliers.

1.2 Objective of the RFP

The objective of this RFP is to provide OECM Clients the ability to purchase Products and related services to satisfy their needs as described in Part 2 – The Deliverables.

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

- (a) Be capable of providing a wide range of quality license Products in a timely manner, demonstrating value for money;
- (b) Fulfill the requirements under Software House Arrangement, established between Software Houses and Clients;
- (c) Assist Clients by improving the visibility and intelligence around Software House Arrangements, enabling strategic management of licenses Products and related services;
- (d) Effectively administer and support Clients;
- (e) Be responsive to Clients and proactively deliver quality service Products and related services; and
- (f) Reduce the costs of competitive procurement processes associated with the Products and related services on an ongoing basis (i.e. fewer competitive procurement documents issued by Clients).

1.3 Supplier Expertise and Capabilities

The Supplier should possess the following expertise and capabilities:

- (a) Be fully cognizant of and have the demonstrated license Products knowledge;
- (b) Possess and maintain authorized Value-Added Reseller (“VAR”) status for license Products and related services;
- (c) Provide maximum flexibility in responding to changing and evolving requirements and technology; and
- (d) Provide knowledgeable and professional services ensuring Clients’ needs are met.

1.4 Type of Agreement for Deliverables

It is OECM’s goal to meet Clients’ business needs by offering flexibility as represented through our marketplace of Products and Services. Through OECM’s constant dedication to the pillars of savings, choice, and service OECM may, through this RFP process, enter into Master Agreements (“Agreements”) per Category as outlined below:

- (a) One (1) Agreement for Category A;
- (b) One (1) Agreement for Category B; and,
- (c) One (1) or more Agreements for Category C.

The Term of the Agreement is intended to be for three (3) years, with an option in favour of OEMC to extend the Term on the same terms and conditions for up to three (3) years. Supplier performance (i.e. Client uptake, satisfaction, performance, quality, service provision, response time, reporting, marketing efforts and any commitments made in the Proponent's Proposal) will be considered when contemplating an Agreement extension and supplier refresh, if necessary.

Clients participating in the Agreements will execute a Client Supplier Agreement ("CSA") with a Supplier as attached in Appendix A – Form of Agreement. Prior to executing a CSA, the Client may negotiate their unique requirements with the Supplier and mutually agree to additional terms and conditions (e.g. reporting, Rates, payment terms) ensuring the additional terms and conditions are not in any way inconsistent with the Form of Agreement agreed to by OEMC and the Supplier.

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

1.5 No Contract A and No Claims

This RFP process is non-binding, and it does **not** intend to create, 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 OEMC shall have the right to make any breach of contract, tort or other claims against the other with respect to the award of an Agreement, failure to award an Agreement or failure to honour a response to this RFP.

1.6 No Contract until Execution of Written Agreement

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

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

1.7 Non-Binding Rates Estimates

While the Proposal Rates will be non-binding prior to the execution of a written Agreement, such information will be assessed during the evaluation and ranking of the Proponents, 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 Agreement award.

1.8 No Guarantee of Volume of Work or Exclusivity of 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.

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

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

1.9 Overview of OEMC

OEMC is a not-for-profit collaborative sourcing and supplier relationship and contract management organization. OEMC's goal is to generate savings and process efficiencies to public sector and not-for-profit organizations by offering collaboratively sourced and competitively priced Products and Services through the OEMC marketplace supplier partner agreements.

Working in collaboration with Clients, OEMC:

- (a) Establishes, promotes and manages non-mandatory agreements for Products and Services commonly used throughout its' Client community;
- (b) Supports Clients' access and use of OEMC agreements through analysis, reporting and the development of tools, guides, and other materials; and,
- (c) Actively promotes adherence to the Ontario Broader Public Sector ("BPS") Procurement Directive and trade agreements in all phases of the sourcing and agreement lifecycle.

For more information about OEMC, please visit <http://www.oecm.ca/>.

1.10 OEMC Geographical Zones

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

- (a) Central Zone;
- (b) East Zone;
- (c) North East Zone;
- (d) North West Zone; and,
- (e) West Zone.

Also refer to Appendix D – OEMC School Board, University and College Clients in Ontario which illustrates OEMC's educational Clients by Zone.

1.11 Overview of OUCCIO

Formerly known as the Academic Computing Services Directors ("ACSD") group, OUCCIO was established to further the strategic and operational goals and objectives of Chief Information Officers and other Information Technology ("IT") leaders of each of the twenty (20) Ontario University members, as listed below:

- (a) Algoma University;
- (b) Brock University;
- (c) Carleton University;
- (d) Lakehead University;
- (e) Laurentian University;
- (f) McMaster University;
- (g) Nipissing University;
- (h) OCAD University;
- (i) Queen's University;
- (j) Ryerson University;
- (k) Trent University;
- (l) University of Guelph;

- (m) University of Ontario Institute of Technology;
- (n) University of Ottawa;
- (o) University of Toronto;
- (p) University of Waterloo;
- (q) University of Western Ontario;
- (r) University of Windsor;
- (s) Wilfrid Laurier University; and,
- (t) York University.

The mission of OUCCIO is to enhance its members' ability to strategically and effectively lead information technology support for Ontario Universities. It is a member run organization that provides a provincial voice on information technology use supporting teaching, learning, administration and research leading to the achievement of the mission of Ontario Universities. This council operates on behalf of the membership based on activity-based fundraising.

1.12 OECM Project Advisory Committee

The following OECM Clients were involved with the development of the requirements set out in this RFP.

- (a) OUCCIO;
- (b) Humber College;
- (c) Nipissing University;
- (d) Seneca College;
- (e) University of Windsor; and,
- (f) York Catholic District School Board.

1.13 Ontario Broader Public Sector Procurement Directive

OECM follows the BPS Procurement Directive effective April 1, 2011 issued by the Ontario Management Board of Cabinet.

The directive sets out rules for designated BPS entities on the purchase of goods and services using public funds.

The purpose of the directive is:

- (a) To ensure that goods and services, including construction, consulting services, and information technology are acquired by BPS entities through a process that is open, fair, and transparent;
- (b) To outline responsibilities of BPS entities throughout each stage of the procurement process; and,
- (c) To ensure that all BPS entities in Ontario are consistently managing their procurement processes.

The goal of the BPS supply chain code of ethics is to ensure an ethical, professional and accountable BPS supply chain in Ontario through:

- (a) Personal Integrity and Professionalism.
- (b) Accountability and Transparency.
- (c) Compliance and Continuous Improvement.

Visit the following website for the complete BPS Procurement Directive document:
<https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/BPSSC-Sec>.

1.14 Client Participation in OEM Marketplace Agreements

OECM currently has five hundred and ninety-eight (598) Clients using one (1) or more OEM agreements:

- (a) One hundred and sixteen (116) School Boards, Colleges and Universities; and,
- (b) Four hundred and eighty-two (482) other organizations.

Participation in OEM agreements has been steadily growing as illustrated in the table below, clearly demonstrating that the education sector and other public organizations are achieving value and savings by using OEM agreements. The annual spend for 2017 increased by twenty-six percent (26%) when compared to 2016.

1.15 Client's Usage of Agreements

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

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

Part Two the Second Stage Selection Process ("Second Stage") is managed by the Client or by OEM on the Client's behalf, and is focused on the Client's specific needs. Depending on the Client's internal policies, and potential dollar value of the license Product, a Client may select a Supplier, or seek Rates (e.g. by issuing a non-binding Second Stage Selection Process) from the Supplier for their specific license Product requirements. If selected by the Client, the Supplier shall provide the license Products in accordance with the specifications stated in the Agreement and in the Client's CSA.

When a Second Stage is issued, which does **not** constitute a contract A, contract B situation, it will identify the required license Products or it may request the Supplier to propose appropriate license Products to fulfill the Client's requirements and any other applicable information. The Client may negotiate license Products with the Supplier to meet their unique requirements. The Supplier must respond to a Second Stage Selection Process and at minimum, the response should set out the following:

- (a) Proposed license Products and related services;
- (b) Response to any unique requirements (e.g. assessment services); and,
- (c) Final, net Rates.

Clients are **not** obligated to sign a CSA to obtain specific licence Product and related services pricing. However, a CSA must be signed prior to the provision of any license Product and related services commences.

1.16 Client Supplier Agreements

OECM and the Supplier will work together to encourage the use of the Agreement resulting from this RFP.

The Supplier will actively promote the Agreement to Clients by:

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

OECM will promote the use of the Agreement with Clients by:

- (a) Using online communication tools to inform and educate;
- (b) Holding information sessions and webinars, as required;
- (c) Attending, where appropriate, Client 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 improvement opportunities.

1.17 Historical Activity

OECM currently has software license products and related services agreement in place with one (1) supplier for the entire Province. These agreements expire on May 31, 2020. This RFP process is being conducted to ensure that a new Agreement is in place to satisfy Clients ongoing requirements.

Currently, there are ninety-three (93) unique Clients using the OECM software license products and related services agreement:

- (a) Sixty-three (63) School Boards;
- (b) Six (6) Colleges;
- (c) Eight (8) Universities; and,
- (d) Twenty-one (21) other BPS organizations.

The approximate value of purchases made through the existing agreement from June 2015 to July 2018 was twenty-two million dollars (\$22,000,000). Colleges and Universities have separate agreements for the provision Microsoft and Adobe license Products; their spend and utilization for Microsoft and Adobe license Products are not captured in the current OECM software license products and related services agreement.

Clients using the current OECM software license products and related services agreement are not, in any way, obligated to participate in any Agreement resulting from this RFP.

1.18 Proponent Consortium Information

Where a consortium is responding to this RFP, the following shall apply:

- (a) One (1) of the members of the Consortium shall identify itself as the Proponent on behalf of the consortium in Form 1 – Form of Offer within OTP Section 1.1 Qualification Envelope. The Proponent must also list all consortium members and state what each member will supply in the Consortium Information within OTP Section 1.4 Qualification Envelope; and,
- (b) The Proponent shall assume full responsibility and liability for the work and actions of all consortium members with respect to the obligations to be assumed pursuant to this RFP.

[End of Part 1]

PART 2 - THE DELIVERABLES

2.1 Description of Deliverables

The Supplier shall provide Products and related services that meet the requirements as laid out in Part 2 – The Deliverables. The requirements have been split into three (3) Categories as described below:

Category	Deliverables	RFP Section Reference
Category A	Microsoft License Products and Related Services	2.2
Category B	Adobe License Products and Related Services	2.3
Category C	Other Software License Products and Related Service	2.4

Note: Sections 2.6 to 2.13 of Part 2 – Deliverables are applicable to all Categories.

The Proponent may choose to submit a Proposal for one (1), two (2), or all three (3) Categories.

2.2 CATEGORY A – MICROSOFT LICENSE PRODUCTS AND RELATED SERVICES

The Supplier shall provide the following Microsoft license Products including, but not limited to:

- (a) Microsoft 365 Education Suites;
- (b) SQL Server;
- (c) Windows Server;
- (d) Windows 10 Pro;
- (e) Office Professional;
- (f) Office 365 Suites;
- (g) Microsoft Project Professional;
- (h) Microsoft Visio Professional;
- (i) Dynamic 365;
- (j) Azure; and,
- (k) Other Microsoft licenses, as required.

2.2.1 Proponent's Accreditation for Category A

The Proponent **must** be in current possession and have repeatedly retained the Microsoft License Solution Provider ("LSP") or Partner accreditation for a minimum of the past three (3) years. Other Microsoft accreditation and/or expertise would be an asset (e.g. Gold Partner, Education Partner, and Cloud Solution Provider ("CSP")).

Please refer to Section 3.2.1 VAR Authorization for Category A for more information on how to comply with the above requirements.

2.3 CATEGORY B – ADOBE LICENSE PRODUCTS AND RELATED SERVICES

The Supplier shall provide the following Adobe license Product including, but not limited to:

- (a) Adobe Acrobat Pro Document Cloud;
- (b) Adobe Creative Cloud ("CC") Suite;

- (c) Photoshop CC;
- (d) Illustrator CC;
- (e) InDesign CC;
- (f) FrameMaker;
- (g) Experience Manager; and,
- (h) Other Adobe licenses, as required.

2.3.1 Proponent's Accreditation for Category B

The Proponent **must** be in current possession and have repeatedly retained Authorized Education Reseller accreditation from Adobe for a minimum of the past three (3) years. Other Adobe accreditation and/or expertise would be an asset (e.g. Platinum Partner and Solution Partner).

Please refer to Section 3.2.2 VAR Authorization for Category B for more information on how to comply with the above requirements.

2.4 CATEGORY C – OTHER SOFTWARE LICENSE PRODUCTS AND RELATED SERVICES

The Supplier should provide the following license Products including, but not limited to:

- Autodesk;
- Cisco;
- Commvault;
- CylancePROTECT;
- DRUVA;
- Faronics;
- IBM;
- iboss;
- Nvivo;
- SAS;
- Scope5;
- Solarwinds;
- Sophos;
- Symantec;
- Trend Micro;
- Veeam;
- VMware; and,
- Other Software House licenses, as required.

2.4.1 Proponent's Accreditation for Category C

The Proponent **must** be in current possession and have repeatedly retained the VAR accreditation for an extensive list of license Products, such as those listed under Section 2.5 and should be in current, good standing with each listed Software Houses for a minimum of the past three (3) years.

Please refer to Section 3.2.3 VAR Authorization for Category C and Appendix H – Authorized VAR Form for more information on how to comply with the above requirements.

2.5 Services for ALL Categories

Services listed in Sections 2.5.1 to 2.5.6 are applicable to all Categories and shall be provided to Clients at no additional cost.

Following software asset management principles, the Supplier shall provide the following related services to Client including, but not limited to:

- (a) Acquisition support;
- (b) Transition support;
- (c) License structure shift support;
- (d) Administrative support;
- (e) Technical support; and,
- (f) Web portal customized for Client to access information related to license Products;

2.5.1 Acquisition Support Services

When required, the Supplier shall assist and support a Client or a group of Clients in the acquisition and/or extension of a Software House Arrangement for license Products.

The Supplier's acquisition support services may vary depending on the license Product required and shall include, but not be limited to:

- (a) Proactive communication plan to inform Clients of current Software House Arrangement expiry;
- (b) Point of contact for customer support;
- (c) Evaluate options between similar off-the-shelf license Products and make recommendations to Client;
- (d) Assist in the development of an acquisition and/or negotiation plan;
- (e) Conduct a competitive process;
- (f) Selection and negotiation support; and,
- (g) Software House Arrangement finalization.

2.5.2 Transition Support Services

The Supplier shall provide support if the Client is transitioning to and/or from a different VAR - ensuring seamless transition during a change of VAR process with minimal service disruption to the Client.

2.5.3 License Structure Shift Support Services

In the event of Rate structure change and/or license Product structure change mandated by a Software House, the Supplier shall provide license structure shift support services to Clients and OEM, including, but not be limited to:

- (a) Proactive communication plan to inform Clients of mandated change from Software House;
- (b) Point of contact for customer support;
- (c) Recommend a risk mitigation plan to lower financial impact to Clients;

- (d) Assist in the development of a negotiation plan; and,
- (e) Negotiation and finalization support.

2.5.4 Administration Support Services

The Supplier shall provide the following administration support services including but not limited to:

- (a) Providing easy access to a responsive account representative (or a team of personnel led by a representative) assigned to the Client to support its needs;
- (b) Enrolling Clients with customized requirements and consolidate into an invoice in a timely fashion;
- (c) Issuing invoices to various Clients under Software House Arrangements and reconciling payment;
- (d) Fulfilling other VAR responsibilities required by a Software House;
- (e) Providing Client account setup and ensure seamless transition;
- (f) Establishing an ongoing communications program with the Client (e.g. new Service available)
- (g) Attending quarterly business reviews with Clients or other meetings, as requested; and,
- (h) Providing reports to Clients, as required.

The Supplier's team must be responsive to the needs of the Clients (i.e. next Business Day response), provide requested information and documentation in a timely manner and issue resolution.

2.5.5 Technical Support Services

The following technical support services will be provided by the Supplier:

- (a) Easy access for day-to-day technical support (i.e. by toll free telephone number, email, voicemail, online chat and fax);
- (b) Notify Clients of license Product upgrades patches, fixes available in a timely fashion;
- (c) Support Client technology teams in resolving Product failures;
- (d) Ensure minimal disruption to the Client and provide support in a timely manner;
- (e) Establish and track software quality metrics, upon request; and,
- (f) Guide Client technology team members on monitoring, maintenance and best practices on license Product.

2.5.6 Customized Web Portal Services

The Supplier should provide a customized and login-secured web portal allowing OEMCM and its Clients access to Product information at no additional costs, such as, but not limited to:

- (a) License Products purchased;
- (b) Active usage;
- (c) License Product numbers;
- (d) License Product expirations or renewal details;
- (e) Product Rates; and,
- (f) Other agreement information.

This web portal shall be customized with a number of hierarchies to allow for user customization. The tool should also have flexible reporting capabilities.

2.5.7 Other Services

During the Term of the Agreement, a Client may request other services including but not limited to the following:

- (a) Customizing or configuring license Products;
- (b) Additional training for license Products; and
- (c) License Product utilization assessment services.

During the Term, new related services and/or features may be available as a result of technology advancement, the Supplier shall keep Clients and OEM informed and make these services and/or features available to Clients.

2.6 Invoicing

The Supplier shall submit to the Client invoices after license Products and related services have been provided. The invoices will be in either paper or electronic format, as detailed in the Client's CSA. The invoice shall be itemized and contain, at a minimum, the following information:

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

2.6.1 Payment Terms

The Client's standard payment terms are net thirty (30) days. Different payment terms (e.g. prepay) may be mutually agreed upon between the Client and Supplier when executing a CSA.

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

2.7 Agreement Management Support to OEM

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

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

- (h) Managing issue resolution in a timely manner (with escalation processes to resolve outstanding issues);
- (i) Timely submission of reports as described in Appendix E – Reporting Requirements, and,
- (j) Complying with Agreement close out processes (e.g. ensuring all Agreement obligations have been fulfilled, such as submission of final reporting and CRF to OECM).

2.7.1 Supplier's Performance Management Scorecard

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

2.7.2 Reporting to OECM

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

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

2.7.3 Saving Calculation

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

Upon Client's approval to OECM, the Supplier shall provide OECM with the Clients' historical spend (e.g. baseline information) prior to the effective date of this Agreement if applicable to facilitate savings calculations and develop analysis.

2.8 Disaster Recovery and Business Continuity

The Supplier is to provide to OECM and/or Clients upon request, relevant information about the Supplier's disaster recovery and business continuity program including the process, policies and procedures related to preparing for recovery or continuation of Products and Services support critical to Clients.

2.9 Licenses, Right to Use and Approvals

Suppliers shall obtain all permits, licenses, and approvals required in connection with the supply of the Products and Services. The costs of obtaining such permits, licenses, and approvals shall be the responsibility of, and shall be paid for by, the Supplier.

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

2.10 Accessibility for Ontarians with Disabilities Act

OECM and its Clients are committed to the highest possible standards for accessibility. The Supplier must be capable to recommend and deliver, as appropriate for the Deliverables, accessible and inclusive Services consistent with the Ontario Human Rights Code ("OHRC"), the *Ontarians with Disabilities Act, 2001* ("ODA") and *Accessibility for Ontarians with Disabilities Act, 2005* ("AODA") and its regulations in order to achieve accessibility for Ontarians with disabilities.

In accordance with Ontario Regulation 429-07 made under the *Accessibility for Ontarians with Disabilities Act, 2005* (Accessibility Standards for Customer Service), Clients have established policies, practices and procedures governing the provision of its services to persons with disabilities.

The AODA may be found at <https://www.ontario.ca/laws/statute/05a11>

2.11 Documentation

The Supplier shall maintain all necessary records related to the provision of the Products and Services for seven (7) years after the expiration of the Term of the Agreement.

Further information is detailed in Appendix A – Form of Agreement.

2.12 Rates Methodology

Two (2) types of Rates for all Categories shall be applicable to license Products in the Agreement resulting from this RFP:

- **Maximum net Rate for Category A – Microsoft License Products and Related Services, core Microsoft license Products for Microsoft Campus Program license Product Rates ONLY; and,**
- **Minimum percentage discount off of the suggested retail price published by the applicable Software House for all other core and non-core license Product Rates for all Categories.**

*This Rate is the proposed minimum percentage discount off the suggested retail price published by the applicable Software House.

Note: related services for all Categories are provided to Clients at no additional cost.

The proposed maximum net Rates and the proposed minimum percentage discount off Rates license Products shall be firm **for the first year of the Agreement**.

The Supplier may, lower its Rates for specific Client Products when the Client and Supplier mutually agree without affecting the Rates in the Agreement.

In extenuating circumstances, OECM may consider a Rate adjustment substantially effecting the provision of license Products resulting from new or municipal, provincial, or federal regulations, by-laws, Fair Wage Policy, substantial fluctuations in foreign exchange Rates as published by Bank of Canada, ordinances or tariffs. Any such request from the Supplier must be accompanied by evidentiary based documentation deemed appropriate by OECM. The Supplier must submit documentation (i.e. Rate impact analysis) demonstrating how the request affects the delivery of license Products in this Agreement. OECM will not consider any fixed costs or overhead adjustments in its review of the Supplier's documentation.

2.12.1 Optional Rate Refresh

OECM's goal is to keep Rates as low as possible for Clients. However, the Supplier may request a Rate refresh for license Products **on the anniversary date of the Agreement and every anniversary thereafter**.

Suppliers must provide a written notice at least one hundred and twenty (120) days prior to the anniversary date of the Agreement and subsequently every year thereafter including the extension period, if exercised. If a Rate refresh request is not requested, the Rates from the previous year shall remain in effect until the next Rate refresh opportunity.

As part of any Rate review, OECM will consider Rate adjustments that reflect changes in operation, adjustments due to new or changed municipal, provincial, or federal regulations, by-laws, Fair Wage Policy, substantial fluctuations in foreign exchange Rates as published by Bank of Canada, ordinances or tariffs. Any Rate refresh request from a Supplier must be accompanied and supported by the Software House by appropriate documentation (i.e. Software House's letter of increases, detailed calculations, and individual Client impact analysis) to support any Rate adjustment. OECM may also incorporate a third party index (e.g. Consumer Price Index) in its Rates review. OECM will not consider any fixed costs or overhead adjustments in its review.

Rate adjustments from a substantial fluctuation between the Canadian dollar ("CAD") and United States dollar ("USD") exchange rate may be considered where the average USD-to-CAD exchange rate has a variance of a plus or a minus five percent (+/- 5%) or greater to the baseline rate established by OECM. Any such request from the Supplier must be accompanied by supporting evidence that the fluctuation in the exchange rate had a direct impact on the Rates of the Products.

Volumes and Agreement management performance (i.e. Supplier's Performance Management Scorecard results) will be considered when contemplating a Rate refresh.

If a proposed Rate refresh was agreed upon between OEMC and the Supplier, the new Rates would only be applicable to license Products ordered after the amendment effective date of the agreed upon Rate change. The effective date of the Rate change must allow Clients a minimum of thirty (30) day prior notice from OEMC. If, however, a proposed Rate increase is not accepted by OEMC the Agreement shall be terminated within one-hundred and twenty (120) days unless the Supplier agrees to withdraw its request for a Rate increase and continue the provision of the license Products at the lower agreed upon Rates.

Decreases to the Rates shall be accepted at any time during the Term of the Agreement.

Agreements will be amended to reflect all Rate changes accordingly.

2.12.2 Optional License Product Refresh

To ensure the license Products remains relevant, OEMC or the Supplier may request an annual review of the core and non-core license Product list. License Products (e.g. emerging technology/innovation) may be added to the Agreement to align with Client needs. If requesting a license Product refresh, the Supplier or OEMC shall provide a written notice to the other party at least one hundred and twenty (120) days prior to the anniversary date of the Agreement and subsequently every year thereafter including the extension periods, if exercised.

Volumes and Agreement management performance (i.e. Supplier's Performance Management Scorecard results) will be considered when contemplating adding license Products to the Agreement. In the event the Supplier's performance is poor and/or unacceptable, OEMC may not agree to the Supplier's addition request. All other Products shall remain unchanged.

Any license Product refresh request from the Supplier must be accompanied by appropriate documentation, such as Product description, Software House name, Software House product number, Supplier product number, and rationale for the Product addition.

Rates, for newly added license Products will be negotiated at the time ensuring they align with similar Products currently available on the Agreement. All other license Products shall remain unchanged, unless adjusted as described in Section 2.12.1 Optional Rate Refresh.

Agreements will be amended accordingly.

2.13 OEMC Cost Recovery Fee ("CRF")

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

The Supplier shall pay to OEMC a CRF of two percent (2%) on all Products and/or Services invoiced by the Supplier to the Clients through the Term of the Agreement.

The CRF shall be paid to OEMC, via EFT, on a quarterly basis based on the calendar year by the tenth (10) Business Day of the month following each applicable quarter.

CRF payment dates, for the first year of the Agreement, will be as follows:

CRF Payments	Payment Date
The first CRF including any Client purchases made between the Agreement execution date and June 30, 2019 shall be paid to OEMC by:	July 12, 2019
The next CRF, including any Client purchases made between July 1, 2019 to September 30, 2019 shall be paid to OEMC by:	October 14, 2019

CRF Payments	Payment Date
Subsequent CRF payments shall be paid to OECM on the tenth (10) Business Day following each calendar quarter.	January 15, 2020 and April 14, 2020

HST is applicable to the CRF payments made to OECM.

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

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

OECM may charge interest, as described in the Agreement, for late CRF payments.

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

[End of Part 2]

PART 3 – EVALUATION OF PROPOSALS

3.1 Stages of Proposal Evaluation

OECM will conduct the evaluation of Proposals in the following **six (6)** stages **per Category**:

Stages	Evaluation	RFP Section Reference	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	200 Points	100 Points
Stage III	Commercial Response	3.4	300 Points	Not Applicable
Stage IV	Cumulative Score	3.5	500 Points	Not Applicable
Stage V	Tie Break	3.6	No Point Allocation	Not Applicable
Stage VI	Negotiations	3.7	No Point Allocation	Not Applicable

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

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

The Proponent **must** complete the following forms in the Qualification Envelope of OTP to qualify and proceed to the next stage of evaluation.

Form	Title	OTP Section Reference
Form 1	Form of Offer	1.1
Form 2	Compliance with Agreement	1.5
N/A	VAR Authorization, if applicable	1.6 1.7 1.8

VAR Authorization for each Category must be completed in the Qualification Envelope of OTP, see Sections 3.2.1 to 3.2.3 for requirements.

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

(a) Conflict of Interest

In addition to the other information and representations made by each Proponent in the Form of Offer, each Proponent must declare whether it has an actual or potential Conflict of Interest. If, at the sole and absolute discretion of OECM, the Proponent is found to be in a Conflict of Interest, OECM may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Proponent.

The Proponent, by submitting its Proposal, warrants that to its best knowledge and belief, no actual or potential Conflict of Interest exists with respect to the submission of the Proposal or performance of the contemplated Agreement other than those disclosed in the Form of Offer. Where OECM discovers a Proponent's failure to disclose all actual or potential Conflicts of Interest, OECM may disqualify the Proponent or terminate any Agreement awarded to that Proponent pursuant to this RFP process.

3.2.1 VAR Authorization for Category A

Proposals for **Category A – Microsoft License Products** must include a letter issued and signed by Microsoft substantiating the Proponent's accreditation and good standing is required as follows:

- (a) The named Proponent is confirmed to be an authorized VAR reseller of Microsoft license Products and Services with License Solution Partner (“LSP”) accreditation;
- (b) Proponent will be eligible and authorized to fulfill the requirements established under a Microsoft Software House Arrangement, established between Software Houses and Clients;
- (c) Proponent is confirmed to have maintained the LSP or equivalent accreditation status and have been in good standing for a minimum of the past three (3) years;
- (d) The date of when the Proponent became an authorized VAR for Microsoft license Products and Services;
- (e) Letter must be current and dated within one (1) month of the Proponent’s Proposal Submission Deadline; and
- (f) Letter to be signed by an authorized representative from Microsoft and issued on Microsoft letter head.

OECM may, at its sole discretion, contact Microsoft to validate information proposed prior to the award and/or any during the Term of the Agreement.

Authorized VAR letter must be uploaded into the Qualification Envelope of OTP.

3.2.2 VAR Authorization for Category B

Proposals for **Category B – Adobe License Products** must include a letter issued and signed by Adobe substantiating the Proponent’s accreditation and good standing is required as follows:

- (a) The named Proponent is confirmed to be an authorized VAR reseller of Adobe license Products and Services with Authorized Education Reseller accreditation; and
- (b) Proponent will be eligible and authorized to fulfill the requirements established under an Adobe Software House Arrangement, established between Software Houses and Clients;
- (c) Proponent is confirmed to have maintained Education Reseller accreditation status and have been in good standing for a minimum of the past three (3) years;
- (d) The date of when the Proponent became an authorized VAR Adobe license Products and Services;
- (e) Letter must be current and dated within one (1) month of the Proponent’s Proposal Submission Deadline; and
- (f) Letter to be signed by an authorized representative from Adobe and issued on Adobe letter head.

OECM may, at its sole discretion, contact Adobe to validate information proposed prior to the award and/or any during the Term of the Agreement.

Authorized VAR letter must be uploaded into the Qualification Envelope of OTP.

3.2.3 VAR Authorization for Category C

Proposals for **Category C – Other Software License Products** must include Appendix H – Authorized VAR Form, posted as a separate Microsoft Word file, must be completed and uploaded into the Qualification Envelope of OTP.

OECM may, at its sole discretion, contact the Software Houses to validate information proposed prior to the award and/or any during the Term of the Agreement.

3.3 Stage II – Form 3 – Technical Response for each Category

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

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

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

Point allocations for the Technical Response components per Category are as follows:

Technical Response Components	Available Points per Category	Minimum Threshold, if any
1. Proponent’s Overview	25	50
2. Service Deliverables	75	
3. Proponent’s VAR Qualifications	50	25
4. Category Specific Service Deliverables	50	25
TOTAL POINTS:	200	100

Detailed point allocations are set out in the Technical Envelope on OTP.

N/A indicates not applicable.

3.4 Stage III – Commercial Response per Category

The Proponent must complete and upload Appendix B – Commercial Response, for the specific Category, into the Commercial Envelope on OTP for this stage of evaluation.

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

Point allocations for the Commercial Response components per Category are as follows:

Commercial Response Components	Available Points per Category		
	Category A	Category B	Category C
1. Core license Products	250	250	300
2. Non-core license Products	50	50	Not Evaluated
TOTAL POINTS:	300	300	300

Refer to Appendix B – Commercial Response for sub-point allocations.

Each Rate, for all Categories, will be evaluated based on the relationship of the Proponent’s proposed Rate in comparison to other Proponent’s proposed Rates on Appendix B - Commercial Response using a relative formula.

3.4.1 Maximum Net Rate Evaluation for Category A (Core License Microsoft Products for Microsoft Campus Program)

The below is an example of how points will be calculated for proposed maximum net Rate:

**EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR
CATEGORY A – MICROSOFT LICENSE PRODUCTS AND RELATED SERVICES,
1.0 CORE MICROSOFT LICENSE PRODUCTS, PART II – CORE MICROSOFT LICENSE
PRODUCTS FOR MICROSOFT CAMPUS PROGRAM,
1.11 SQL SERVER 2017 STANDARD CAL**

Proposed Rates	Calculation	Resulting Points
If Proponent 1 proposes the lowest maximum net Rate of \$100.00, it would receive 100% of the points allocated.	$\$100 \div \100×20.0 Points	20.0
If Proponent 2 proposes the second lowest maximum net Rate of \$200.00, it would receive 50% of the points allocated.	$\$100 \div \200×20.0 Points	10.0
If Proponent 3 proposes the third lowest maximum net Rate of \$400.00 for, it would receive 25% of the points allocated.	$\$100 \div \400×20.0 Points	5.0

The maximum net Rate for each core Product will be evaluated and scored using a relative formula (i.e. by dividing that Proponent's Rate into the lowest Rate bid) for proposed license Product Rates.

Where:

- (a) \$0.00 is entered in any Rate cell, it is deemed to mean that the particular Product **will be provided to Clients at no 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 as per example below:

EXAMPLE – WHERE FOUR (4) PROPOSALS WERE RECEIVED WITH \$0.00 RATE PROPOSED		
Number of Proponents proposing \$0.00 Rate for a particular Product	The number of remaining Proponents	The percentage (%) of the sub-point allocation for the remaining Proponents:
1	3	75%
2	2	50%
3	1	25%

- (b) N/A or not applicable or blank in any Rate cell, it is deemed to mean that the particular Product will not be provided to Clients. Therefore, when evaluating and scoring the Rates, a Proposal specifying N/A or not applicable or blank in a Rate cell will receive a zero (0) point allocation for that particular Product.

3.4.2 Minimum Percentage Discount Off Rate Evaluation per Category

The below is an example of how points will be calculated for proposed **minimum percentage discount off** of suggested retail price published by Software House:

STEP 2 – EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR CATEGORY C – OTHER SOFTWARE LICENSE PRODUCTS AND RELATED SERVICES, 1.0 CORE SOFTWARE LICENSE PRODUCTS, 1.1 AUTODESK		
Proposed Rates	Calculation	Resulting Points
If Proponent 1 proposes the highest percentage discount of 30%, it would receive 100% of the points allocated.	$30\% \div 30\% \times 12.5$ Points	12.5

STEP 2 – <u>EXAMPLE</u> OF COMMERCIAL RESPONSE EVALUATION FOR CATEGORY C – OTHER SOFTWARE LICENSE PRODUCTS AND RELATED SERVICES, 1.0 CORE SOFTWARE LICENSE PRODUCTS, 1.1 AUTODESK		
Proposed Rates	Calculation	Resulting Points
If Proponent 2 proposes the second highest percentage discount of 24%, it will receive 80% of the points allocated.	$24\% \div 30\% \times 12.5 \text{ Points}$	10.0
If Proponent 3 proposes the third highest percentage discount of 15%, it will receive 50% of the points allocated.	$15\% \div 30\% \times 12.5 \text{ Points}$	6.25

The proposed minimum percentage discount off of suggested retail price by Software House will be evaluated and scored using a relative formula (i.e. by dividing that Proponent's percentage into the highest percentage) for proposed minimum percentage discount off license Product Rates.

Where:

- (a) 100% is entered in any Rate cell, it is deemed to mean that the particular Product will be provided to Clients at no cost. Therefore, when evaluating and scoring the Rates, a Proposal specifying 100% in a Rate cell shall receive the maximum point allocation for that particular Product.
- (b) 0% is entered in any Rate cell, it is deemed to mean that the particular Product will be provided to Clients at suggested retail price published by Software House. Therefore, when evaluating and scoring the Rates, a Proposal specifying 0% in a Rate cell shall receive the minimum point allocation for that particular Product.
- (c) N/A or not applicable or blank in any Rate cell, it is deemed to mean that the particular Product will not be provided to Clients. Therefore, when evaluating and scoring the Rates, a Proposal specifying N/A or not applicable or blank in a Rate cell will receive a zero (0) point allocation for that particular Product.

3.5 Stage IV – Cumulative Score

At this stage, the scores from Stages II and III will be combined for each Proposal and subject to the express and implied rights of OEMC; the Proponents with the highest scoring Proposals or all Proponents per Category 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, OEMC may adjust Technical Response scores related to the information obtained during the reference check.

3.6 Stage V - Tie Break Process

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

3.7 Stage VI – Negotiations

Concurrent negotiations, with the Preferred Proponents, will be based on the RFP requirements, and the Preferred Proponent's Proposal, understanding OEMC is seeking the best overall solution and value for money for Clients.

The negotiations may include:

- (a) Products and related services;
- (b) Agreement management (e.g. performance, KPIs, penalties, reporting);
- (c) Agreement terms and conditions;

- (d) Additional references, if required;
- (e) Rates; and,
- (f) Best and Final Offer.

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

OECM intends to complete negotiations within fifteen (15) calendar days after notification. If, for any reason, OECM and a Preferred Proponent fail to reach an agreement within the aforementioned timeframe, OECM may at its sole and absolute discretion (a) request the Preferred Proponent to submit its Best and Final Offer; (b) terminate discussions and negotiations with that particular Preferred Proponent, or (c) extend the negotiation timeline.

Once a Preferred Proponent and OECM reach an agreement, the Preferred Proponent will be invited to execute an Agreement.

3.8 Agreement Finalization

Upon, successful completion of the negotiation process the Preferred Proponent, per Category, will be afforded five (5) Business Days to execute the Agreement, unless other specified by OECM. Once the Agreement has been executed, Clients may execute a CSA with the Supplier.

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

3.8.1 Notification to Other Proponents

Once the Agreement is executed between OECM and the Preferred Proponent, per Category, the other Proponents shall be notified directly in writing and 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 Agreement.

3.9 Agreement Launch and Marketing

OECM will promote the use of the Agreement with Clients as set out in Section 1.14. During the post-award period, the Supplier will be expected to meet with OECM, as-and-when-required, to discuss an effective collaborative Agreement launch approach.

OECM will work closely with the Supplier and request that, where available, communications and marketing experts join discussions to achieve the desired outcome. During this period, the Supplier should provide OECM the information as requested including, but not limited to:

- (a) Supplier profile and logo;
- (b) Supplier contact information; and,
- (c) Access to knowledge sharing materials (e.g. webinars);
- (d) Marketing materials; and,
- (e) Other relevant materials.

[End of Part 3]

PART 4 - TERMS AND CONDITIONS OF THE RFP PROCESS

4.1 General Information and Instructions

4.1.1 RFP Timetable

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

RFP Timetable	
Event	Date/Time
OECEM's Issue Date of RFP:	December 21, 2018
Proponent's Information and OTP Demonstration Session:	11:00 am on January 8, 2019
Proponent's Deadline for Questions:	5:00 pm on January 8, 2019
OECEM's Deadline for Issuing Answers:	January 16 , 2019
Proponent's Deadline for Questions Pertaining to <u>Issued Documents only</u> :	5:00 pm on January 23 , 2019
OECEM's Deadline for Issuing Final Addenda:	January 29 , 2019
Closing Date:	2:00 pm on February 19 , 2019
Agreement Start Date:	April 2019

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

OECEM 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 may, but is not required to, participate in the Proponent's Information and OTP Demonstration Session, which will take place at the time set out in Section 4.1.1.

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

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

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

Information provided during this session will be posted on OTP.

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

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

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

4.1.5 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.

4.1.6 Proponent's Costs

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

- (a) The preparation, presentation and submission of its Proposal;
- (b) The Proponent's attendance at any meeting in relation to the RFP process, including any presentation and/or interview;
- (c) The conduct of any due diligence on its part, including any information gathering activity;
- (d) The preparation of the Proponent's own questions; and,
- (e) Any discussion and/or finalization, if any, in respect of the Form of 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 member of OECM's governing body (such as Board of Directors, or advisors);
- (c) Any employee, consultant or agent of OECM's Clients, including Advisory Group members; and,
- (d) 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 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 for 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 about issued addenda. 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 to Notify

In the event the Proponent has any reason to believe that an error, omission 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.

4.2.4 All New Information to Proponents by way of Addenda

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

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

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

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

The Proponent who intends to respond to this RFP is requested not to cancel the receipt of addenda or amendments option provided by OTP, since it must obtain all of the information 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.bravosolution.com/esop/nac-host/public/web/login.html>.

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

- (a) Email at eTenderhelp_CA@bravosolution.com; or,
- (b) By phone at 866-722-7390.

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 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 noted below.

Appendix/Form Title	OTP Envelope	Complete Form within OTP	Complete Appendix and Upload to OTP
Form 1 – Form of Offer	Qualification	√	
Form 2 – Compliance with Agreement	Qualification	√	
Form 3 – Technical Response per Category	Technical	√	
Appendix B – Commercial Response per Category	Commercial		√

4.3.3 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 question in Form 3 – Technical Response. Technical Responses left blank and/or unanswered will receive a score of zero (0). Refer to RFP Section 3.3;
- (c) Information attached as part of the Commercial Envelope in OTP will not be considered as part of the evaluation of Evaluation Stage II - Technical Response. Refer to RFP 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 RFP Section 4.3.12 Clarification of Proposals.

4.3.4 Proposal Receipt by OECM

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

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

4.3.5 Withdrawal of Proposal

A Proponent may withdraw its Proposal only by deleting its submission on OTP before the Closing Date.

4.3.6 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.

4.3.7 Completeness of Proposal

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

4.3.8 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.

4.3.9 Acceptance of RFP

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

4.3.10 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.

4.3.11 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.

4.3.12 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 who, in the opinion of OECM, make an unintentional error of form in its Proposal.

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

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

4.3.13 Verification of Information

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

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

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

4.3.14 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.

4.3.15 RFP Incorporated into Proposal

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

4.3.16 Exclusivity of Contract

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

4.3.17 Substantial Compliance

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

4.3.18 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 Clients.

The Preferred Proponent shall execute the 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 Agreement within the allotted twenty (20) days, OECM will be at liberty to extend the timeline, request the Preferred Proponent to submit its Best and Final Offer as described in Section 3.8 or to terminate discussions and negotiations with the Preferred Proponent.

4.4.2 Failure to Execute an 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) days to execute the Agreement.

If the Preferred Proponent cannot execute the Agreement within the allotted timeframe, OECM may rescind the invitation to execution and Agreement.

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

4.4.3 Notification to Other Proponents

Once the 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.

4.4.4 Agreement

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

- (a) Any such 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 Agreement terms contained in Appendix A.

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 must 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, Confidential Information and FIPPA

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 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 and Services unless specifically requested. OECM shall maintain the information for a period of seven (7) years from the time of collection. Should OECM request such information, OECM will treat this information in accordance with the provisions of this Section;
- (b) Use – Any personal information as defined in the Personal Information Protection and Electronic Documents Act, S.C. 2005, c.5 that is requested from a Proponent by OECM shall only be used to select the qualified individuals to undertake the Products and Services and to confirm that the work performed is consistent with these qualifications; and,
- (c) Consent – It is the responsibility of the Proponent to obtain the consent of such individuals prior to providing the information to OECM. OECM will consider that the appropriate consents have been obtained for the disclosure to and use by OECM of the requested information for the purposes described.

4.5.5 Non-Disclosure Agreement

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

4.5.6 Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act (Ontario)*, applies to information provided by the Proponent. A Proponent should identify any information in its Proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by OECM and its Clients. 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 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.

4.5.8 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>.

4.5.9 Intellectual Property

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

4.5.10 Disqualification for Misrepresentation

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

4.5.11 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 Clients.

4.5.12 Cancellation

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

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, in OECM's sole and absolute discretion;
- (d) Verify with any Proponent or with a third party any information set out in a Proposal;
- (e) Check references other than those provided by Proponents;
- (f) With supporting evidence, disqualify any Proponent on grounds such as:
 - i. Bankruptcy or insolvency;
 - ii. False declarations;
 - iii. Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior agreement or agreements;
 - iv. Final judgments in respect of serious crimes or other serious offence; or,
 - v. Professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Proponent;
- (g) Disqualify any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Proponent who fails to cooperate with OECM which impedes the evaluation process, or whose Proposal is determined to be non-compliant with the requirements of this RFP;
- (i) Disqualify a Proposal 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 the Proponent who has been charged or convicted of an offence in respect of an agreement with OECM, or 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;
- (k) 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;
- (l) 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;
- (m) Accept or reject a Proposal if only one (1) Proposal is submitted;
- (n) Reject a Subcontractor proposed by a Proponent within a consortium;
- (o) Select any Proponent other than the Proponent whose Proposal reflects the lowest cost to OECM;
- (p) 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 an Agreement,
 - ii. the Proposal prices exceed the bid prices received by OECM for Products and Services acquired of a similar nature and previously done work,
 - iii. the Proposal prices exceed the costs OECM or its Clients would incur by doing the work, or most of the work, with its own Products and Services,
 - iv. the Proposal prices exceed the funds available for the Products and Services, or,
 - v. the funding for the acquisition of the proposed Products and Services has been revoked, modified, or has not been approved,

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

- (q) Discuss with any Proponent different or additional terms to those contained in this RFP or in any Proposal;
- (r) Accept any Proposal in whole or in part;
- (s) 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 Agreement; or,
- (t) Reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against OECM and/or its Clients or is otherwise engaged in a dispute with OECM and/or its Clients;

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 Agreement within allotted time from being notified, OECM may, in its sole discretion:

- (a) Extend the period for concluding the Agreement, provided that if substantial progress towards executing the 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 and Services.

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

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 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 Client is located and the federal laws of Canada applicable therein.

[End of Part 4]

APPENDIX A – FORM OF AGREEMENT

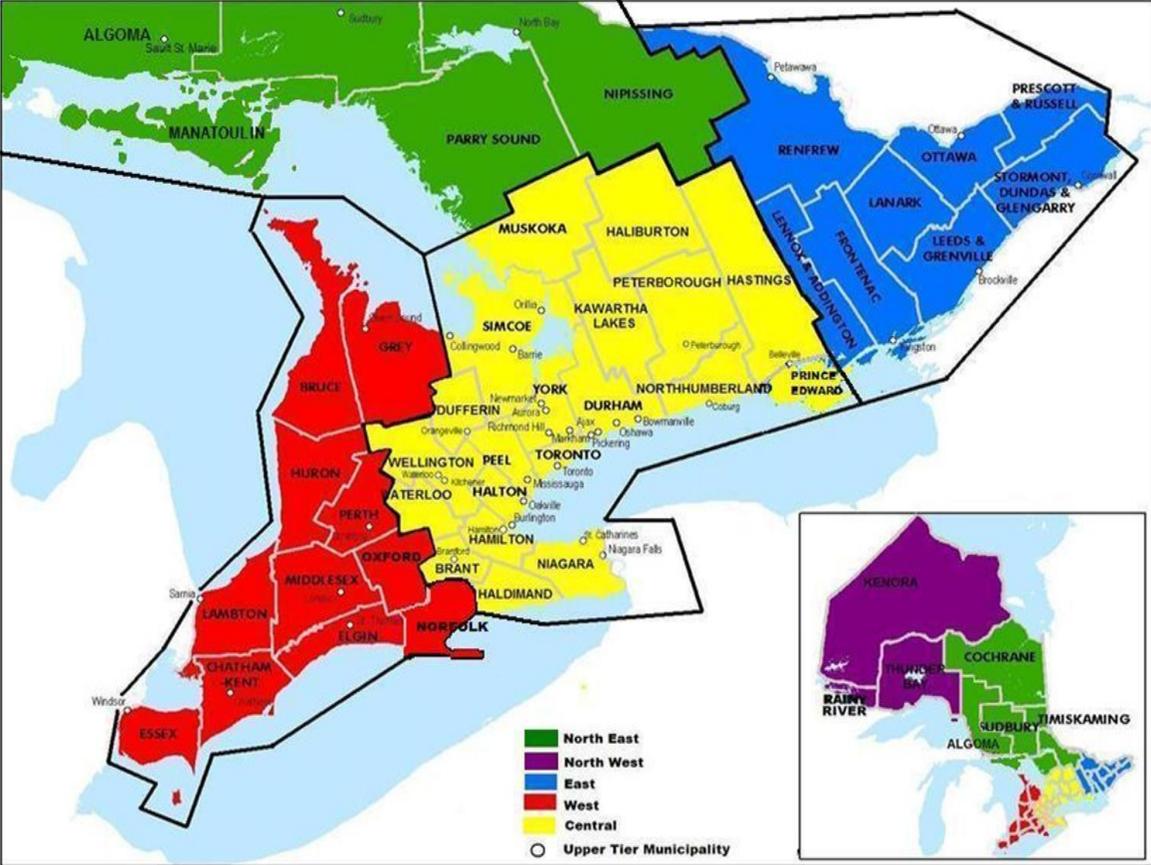
Appendix A – Form of Agreement is posted as a separate PDF file in OTP.

APPENDIX B – COMMERCIAL RESPONSE

Appendix B – Commercial Response is posted as separate Microsoft Excel files for **each Category** on OTP and must be completed and uploaded into the Commercial Envelope of the applicable Category in OTP.

APPENDIX C – OEMC GEOGRAPHICAL ZONES

Clients in the Province of Ontario are located in the following five (5) geographical Zones.



APPENDIX D – OECM SCHOOL BOARD, COLLEGE AND UNIVERSITY CLIENTS IN ONTARIO

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

Please note: DSB means District School Board; and CDSB means Catholic District School Board.

APPENDIX E – REPORTING REQUIREMENTS

Once Client-Supplier Agreements have been executed, the Supplier must provide the following reports for the Category awarded to OECM for the Term of the Agreement. Reports shall be submitted via email in Microsoft Excel format according to the dates set out below. Final reporting requirements will be determined during negotiations.

Supplier Reporting Requirements			
Report	Report Description	Frequency	Due Date
Supplier Integrated Reporting Template including:			
Sales Reports	Total volume of all invoiced Product and/or Service (include financial incentives), by Client	Monthly	By the 8th Business Day
Client-Supplier Agreement Status	The number of executed Client-Supplier Agreements, and those that are pending execution		
Second Stage Status Report	The number of requests received and submitted		
Other Reports:			
Key Performance Indicators (“KPIs”)	As set out in Appendix F – Supplier’s Performance Management Scorecard	Quarterly	By the 8th Business Day following each calendar quarter
Client Reports	As requested (e.g. sales, back order, delivery)	As requested	As requested
OECM Ad Hoc Reports	As requested and mutually agreed upon	As requested	As requested

Sales Reports

The Supplier shall be responsible for providing monthly sales reports to OECM. The reports shall include, but not be limited to:

- (a) Client’s organization name;
- (b) Client’s sector (College, School Board, University or other BPS);
- (c) Client’s address;
- (d) License Product details (e.g., Product description, Software House title, Software product number, the Supplier’s part number);
- (e) Quantity;
- (f) Rates and Total cost (subtotal excluding taxes);
- (g) Customer savings; and
- (h) Cost Recovery Fees.

CSA Status Report

CSA reports should, at a minimum, include new and pending CSAs.

Second Stage Status Report

The Supplier shall be responsible for providing monthly Second Stage reports to OEMC as further described below, including but not limited to:

- (a) Second Stage reference numbers;
- (b) Client's organization name;
- (c) Client contact;
- (d) Second Stage summary (e.g. Products and related services requested, committed volume);
- (e) Value of the Second Stage;
- (f) Customer savings; and,
- (g) Second Stage status (e.g. submitted to Client, due date to Client).

The Supplier shall be responsible for any other ad hoc reports requested by OEMC.

The reporting due dates for the first year of the Agreement will be:

Reports	Due Date
Supplier Integrated Reporting Template:	<ul style="list-style-type: none">• June 12, 2019;• July 11, 2019;• August 13, 2019;• September 12, 2019;• October 10, 2019;• November 13, 2019; and,• December 11, 2019.
Other Reports:	<ul style="list-style-type: none">• July 11, 2019;• October 10, 2019; and,• January 13, 2020.

APPENDIX F – SUPPLIER’S PERFORMANCE MANAGEMENT SCORECARD

Agreement performance means the Supplier aligns with OECM’s three (3) pillars of Savings, Choice and Service, supporting the growth of the Agreement among Clients, and providing quality Products and related 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.

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

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

Reporting, as described in Appendix E – Reporting Requirements is mandatory for the Successful Proponent to submit as they provide evidence and justification of adherence to the Agreement. Through consolidation of reporting information, OECM provides Clients a thorough understanding of the Agreement aiding the adoption of the Agreement.

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

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

During the Term of the Agreement, the Supplier shall collect and report the agreed upon performance measures as requested by OECM. The Performance Management Scorecard and other performance indicators will be used to measure the Supplier’s performance throughout the Term of the Agreement, ensuring Clients receive Products and/or Services deemed acceptable and delivered on time. The Supplier’s performance score will be considered when OECM contemplates Agreement decisions such as:

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

The Supplier shall maintain accurate records to facilitate the required performance management reporting requirements.

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

Client-Specific Performance Measures		
Key Performance Indicator	Performance Measurement	Performance Goal
Administration Support to Clients	Response time of less than 1 Business Day	98% of the time
Technical Support to Clients	Response time of less than 4 Business Hours	98% of the time
Second Stage Response Rate	Response to Second Stage request within 2 Business Days	98% of the time
Client Issues – Number of Client Complaints	Total of Client complaints annually out of total Client requests	Client complaints are less than 2% of total Client requests
Accurate Invoicing	Number of Invoicing errors annually	98% accuracy

Supplier Specific Performance Measures		
Key Performance Indicator	Performance Measurement	Performance Goal
On time Spend Report Submissions	On time	98% of the time
On time CSA Status reports Submissions	On time	98% of the time
Executed CSAs receiving within 30 days of execution	On time	98% of the time
On time payment remittance	Day of	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 Agreement.

APPENDIX G – RFP RULES OF INTERPRETATION AND DEFINITIONS

Rules of Interpretation

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

- 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;
- Words in the RFP shall bear their natural meaning;
- 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”;
- 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;
- Unless otherwise indicated, time periods will be strictly applied; and,
- The following terminology applies in the RFP:
 - Whenever the terms “must” or “shall” are used in relation to OEMC or the Proponent, such terms shall be construed and interpreted as synonymous and shall be construed to read “OEMC shall” or the “Proponent shall”, as the case may be;
 - The term “should” relates to a requirement that OEMC would like the Proponent to address in its Proposal; and,
 - The term “will” describes a procedure that is intended to be followed.

Definitions

Unless otherwise specified in this RFP, capitalized words and phrases have the meaning set out in the Form of Agreement attached as Appendix A 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;

“Best and Final Offer” or **“BAFO”** means a process during the negotiation in which the Preferred Proponent may be invited by OEMC 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 all Municipalities, Academic Institutions, School Boards, Health Care Providers and Major Transfer Payment Recipients in the Province. Please see <http://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/EN/bpsdef.html> for more information;

“Business Continuity Plan” means the documents created by the Proponent which describes how the Proponent will maintain continuity of its operations and its commitment and ability to provide to the Clients the Deliverables identified as time critical during an event of force majeure, or other emergency, disaster or disruption;

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

“Client” means organizations such as school boards or authorities, colleges, universities, shared service organizations, not-for-profit organizations, municipalities and local boards, hospitals, other health care agencies, provincially funded organizations (“PFO”), Crown corporations, and any other broader public sector agencies, boards or commissions or similar entities not specifically mentioned here;

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

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

“Commercial Response” means the Rates submitted by the Proponent within Appendix B and uploads to OTP as part of the Commercial Envelope;

“Confidential Information” means confidential information of OECM and/or any Client (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;

“Conflict of Interest” means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Proponent’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement;

“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 OECM’s operating costs as a not-for-profit/non share corporation, which is based on the before tax amount invoiced by the Supplier to Clients for Deliverables acquired through OECM’s competitively sourced agreements. Once CSAs have been executed, this fee is collected and remitted by the Supplier to OECM on a quarterly basis;

“Deliverables” means Products and Services to be delivered as specified in this RFP;

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

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and all regulations adopted thereunder, in each case, as amended or replaced from time to time;

“License Solution Partner”, **“License Solution Provider”** or **“LSP”** means the level or name of Microsoft VAR accreditation by requirement of the Supplier to fulfill the requirements established the Microsoft Software House Arrangement;

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

“OECM” means the Ontario Education Collaborative Marketplace;

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

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

“Personal Information” or **“PI”** is defined in Appendix A the Form of Agreement;

“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;

“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 of the documentation and information submitted by a Proponent in response to the RFP;

“Purchasing Card” or **“P-Card”** means the corporate charge card(s) used by the Client, as may be changed from time to time;

“Rates” means the prices for the Deliverables as set out in the Proponent’s submitted Appendix B - Commercial Response;

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

“Request for Proposals” or **“RFP”** means this Request for Proposals #2018-318 issued by OECM, including all appendices and addenda thereto;

“Second Stage Selection Process” or **“Second Stage”** means a request or document initiated by a Client or OECM on behalf of a Client seeking specific Products and/or Services, Rates and other relevant information from one (1) or more Suppliers;

“Software House” means the entity that develops commercial off-the-shelf software Products (e.g. Microsoft);

“Software House Arrangements” means an enterprise software license arrangement that is a centrally negotiated solution, designed to offer ease of access and volume-based or sector based discounts to a combination of end-users (e.g. Microsoft Campus and School Agreement, Microsoft Enrollment for Education Solution, Adobe Value Incentive Plan, and Adobe Cumulative Licensing Program);

“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 Agreement as mutually agreed upon by the Client;

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

“Technical Response” means the technical information the Proponent submits within OTP as part of the Technical Envelope;

“Term” has the meaning set out in Section 1.4 of this RFP;

“Value-Added Reseller” or **“VAR”** means a vendor that takes an existing product or service, incorporates its own value through added benefits and resells it as a new product or service;

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

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

APPENDIX H – AUTHORIZED VALUE-ADDED RESELLER FORM

Appendix H – Authorized Value Added Reseller Form, posted as a separate Microsoft Word file, must be completed and uploaded into the Qualification Envelope in OTP for Proponents submitting a Proposal for Category C – Other Software License Products and Related Services.