

RETURN BIDS TO:
RETOURNER LES SOUMISSIONS À:

Bid Receiving - PWGSC / Réception des soumissions - TPSGC

11 Laurier St./11, rue Laurier

Place du Portage, Phase III

Core 0A1 / Noyau 0A1

Gatineau, Québec K1A 0S5

Gatineau

Québec

K1A 0S5

Bid Fax: (819) 997-9776

Request For a Standing Offer Demande d'offre à commandes

National Master Standing Offer (NMSO)

Offre à commandes principale et nationale (OCPN)

Canada, as represented by the Minister of Public Works and Government Services Canada, hereby requests a Standing Offer on behalf of the Identified Users herein.

Le Canada, représenté par le ministre des Travaux Publics et Services Gouvernementaux Canada, autorise par la présente, une offre à commandes au nom des utilisateurs identifiés énumérés ci-après.

Comments - Commentaires

Vendor/Firm Name and Address**Raison sociale et adresse du fournisseur/de l'entrepreneur**

Issuing Office - Bureau de distribution

Network equipment and services/Equipment de réseau et services

Portage III 5C2

11 Laurier Street/11 rue Laurier

Gatineau, Québec K1A 0S5

Gatineau

Québec

K1A 0S5

Title - Sujet INFRASTRUCTURE MANAGEMENT SERVICES	
Solicitation No. - N° de l'invitation EN869-055068/E	Date 2013-04-12
Client Reference No. - N° de référence du client EN869-055068	GETS Ref. No. - N° de réf. de SEAG PW-\$NES-004-25964
File No. - N° de dossier 004nes.EN869-055068	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2013-05-27	Time Zone Fuseau horaire Eastern Daylight Saving Time EDT
Delivery Required - Livraison exigée See Herein	
Address Enquiries to: - Adresser toutes questions à: Stefanski(NES), Michael	Buyer Id - Id de l'acheteur 004nes
Telephone No. - N° de téléphone (819)956-0262 ()	FAX No. - N° de FAX (819)956-1411
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA 5A2 PLACE DU PORTAGE PHASE III 11 LAURIER STREET OTTAWA Ontario K1A0S5 Canada	
Security - Sécurité This request for a Standing Offer does not include provisions for security. Cette Demande d'offre à commandes ne comprend pas des dispositions en matière de sécurité.	

Instructions: See Herein

Instructions: Voir aux présentes

Vendor/Firm Name and Address Raison sociale et adresse du fournisseur/de l'entrepreneur	
Telephone No. - N° de téléphone Facsimile No. - N° de télécopieur	
Name and title of person authorized to sign on behalf of Vendor/Firm (type or print) Nom et titre de la personne autorisée à signer au nom du fournisseur/ de l'entrepreneur (taper ou écrire en caractères d'imprimerie)	
Signature	Date

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 - ***Appendix G: Security Requirement Check List***
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PART A: RFSO - Bidding Process

Request for Departmental Individual Standing Offers (DISO) for the provision of Networking Infrastructure Management Services (NIMS)

SECTION 1: General Information & Instructions to Offerors

The Bidder/Offeror is the legal entity submitting the offer in response to this solicitation and does not include the parent, subsidiaries, or other affiliates of that legal entity. By submitting an Offer, the Bidder/Offeror agrees to all of the Terms and Conditions set out herein and that all of these Terms, Conditions and Procedures will remain in place for the duration of any resulting DISO including all extension periods.

This RFSO is conducted to add maintenance services from (9) OEMs not presently listed, and incorporate the resulting Standing Offers into the NIMS Standing Offer by the means of an open competition.

A.1 Background and Description of Requirement

(a) The Crown has a requirement to establish Departmental Individual Standing Offers (DISOs) to obtain services as detailed below.

(i) **NIMS Group C - Maintenance Services**

This Group will consist of one (1) DISO per OEM listed below for the provision of maintenance services for various Controlled Entity Classes composing various government networks. Nine (9) OEMs are listed in Group C as follows:

- Riverbed;
- Fortinet;
- Hewlett-Packard Company;
- McAfee;
- Avaya;
- Brocade;
- F5 Networks;
- Eaton;
- Check Point

(b) Offerors may submit an offer for maintenance services for only one OEM, for a combination of OEMs or all OEMs listed.

A.2 Nature of Request for Standing Offer

One method of supply used by the Government of Canada to satisfy the requirements of identified users is to arrange with offerors to submit a Standing Offer to provide goods, services, or both, to the federal government during a specified period. The identified users to be served are then delegated purchasing authority by the government and may access the source of supply directly, as and when requested, by issuing call-ups detailing the exact quantities of

goods or level of services they wish to order from the Offeror at a particular time during the effective period of the Offeror's offer and in accordance with the predetermined conditions.

Wherever "Invitation to Tender" and "Tender" or Request for Offer " and "Offer" appear in this document and in the General Conditions, substitute the words "Request for Standing Offer" and "Standing Offer".

A.3 Structure and Format of this Solicitation

- (a) **Part A:** Part A of this solicitation describes the bidding process and includes the following Sections:
- (i) Section 1: General Information & Instructions to Offerors
 - (ii) Section 2: Offer Submission Instructions
 - (iii) Section 3: Evaluation Methodology
 - (iv) Section 4: Certifications
 - (v) Section 5: Conditions for Contracting
- (b) **Part B:** Part B of this RFSO contains the Model Standing Offer which includes the following Appendices:
- (i) **Group C- Maintenance Services**
 - (A) *Appendix G: Security Requirement Check List*
 - (B) *Appendix N: Statement of Work for NIMS Group C - Maintenance Services.*
 - (C) *Appendix O: Offeror User Guide for NIMS Group C Pricing Workbook*
 - (D) *Appendix P: Pricing Workbook for NIMS Group C for Riverbed.*
 - (E) *Appendix P: Pricing Workbook for NIMS Group C for Brocade.*
 - (F) *Appendix P: Pricing Workbook for NIMS Group C for Check Point.*
 - (G) *Appendix P: Pricing Workbook for NIMS Group C for Eaton.*
 - (H) *Appendix P: Pricing Workbook for NIMS Group C for F5 Networks.*
 - (I) *Appendix P: Pricing Workbook for NIMS Group C for Fortinet.*
 - (J) *Appendix P: Pricing Workbook for NIMS Group C for Hewlett-Packard.*
 - (K) *Appendix P: Pricing Workbook for NIMS Group C for McAfee.*
 - (L) *Appendix P: Pricing Workbook for NIMS Group C for Avaya Network*
 - (M) *Appendix R: Published Price List (PPL)*
 - (N) *Appendix S: Maintenance Plans for Cities Regions*
- (c) **Electronic Versions of Files:** If portions of this solicitation are also provided by Canada to Offerors in electronic format on a disk or CD-ROM through the Government Electronic Tendering Service (GETS), the hard copy documents (PDF file, faxed documents,

documents downloaded through the GETS, etc.) will take precedence over the electronic versions of documents. Amendments to this solicitation will be distributed through the GETS and new electronic versions will not necessarily be provided to reflect these amendments. It is the responsibility of the Offeror, in using electronic versions of portions of this solicitation, to ensure that it addresses any amendments to this solicitation in its offer.

A.4 Standard Acquisition Clauses and Conditions Manual

(a) **Standard Acquisition Clauses and Conditions Manual:**

All instructions, general terms, conditions and clauses identified herein by title, number and date are set out in the Standard Acquisition Clauses and Conditions Manual issued by Public Works and Government Services Canada (PWGSC).

An electronic version of the Manual is available on the PWGSC Website:

<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>

(b) **Terms and Conditions of Bid Solicitation, Standing Offer and any Resultant Call-up:**

Pursuant to the *Department of Public Works and Government Services Act*, S.C. 1996, c.16,

- (i) the general terms, conditions and clauses identified herein by title, number and date; and
- (ii) the Standard Instructions and Conditions, 9403-6 (2004-12-10)

are hereby incorporated by reference into and form part of this bid solicitation, the Standing Offer and any resultant call-up, as though expressly set out herein, subject to any other express terms and conditions herein contained.

(c) **Acknowledgement:**

Submission of a bid constitutes acknowledgement that the Offeror has read and agrees to be bound by such instructions.

A.5 RFSO Contains Entire Requirement

This document contains all the requirements relating to this solicitation. Other information or documentation provided to or obtained by the Offeror from any source prior to the date of this solicitation have no force or effect in relation to this solicitation.

A.6 Pre-Award Costs

- (a) No payment will be made for costs incurred in the preparation and submission of an offer in response to this Request for Standing Offer.
- (b) No costs incurred before receipt of a signed standing offer/call-up or specified written authorization from the Contracting Authority can be charged against any resultant Standing Offer.
- (c) No payment will be made for costs incurred for clarification(s), proof of offer testing and/or demonstration(s) that may be required by Canada.

A.7 Nature Requirements

- (a) **Mandatory requirements:**
 - (i) This solicitation contains mandatory requirements. All elements of this solicitation that are mandatory requirements are identified specifically with the words "shall", "must", "mandatory", or "(M)". An entire section of this document may be designated as mandatory.
 - (ii) Offers must comply with each and every mandatory requirement. If an offer does not comply with a mandatory requirement, the offer will be considered non-compliant and will receive no further consideration.
- (b) **Desirable requirements:**
 - (i) This solicitation contains desirable requirements. All elements of this solicitation that are desirable requirements are identified specifically with the word "Desirable", or "(D)". An entire section of this document may be designated as desirable. The bidder is not required to propose desirable elements or comply with Desirable clauses. No points are allocated to desirable requirements and such requirements will not be taken into consideration to select the successful Offer(s).
- (c) **Information:**
 - (i) In addition to the mandatory and desirable requirements, this solicitation contains information that, although it may not contain a mandatory requirement, should be taken into account by Offerors in preparing their offers.

A.8 Enquiries – Solicitation Period

- (a) **Where to Direct Enquiries:** All enquiries and other communications with government officials relating to this Request for Standing Offer are to be directed **ONLY** to the Contracting Authority named below. Non-compliance with this condition may (for that reason alone) result in disqualification of a Offeror's offer.
 Contracting Authority: Michael Stefanski
 E-mail Address: michael.stefanski@ssc.gc.ca
 Telephone: (819) 956-0262
 Facsimile: (819) 943-1411
- (b) **Time for Making Enquiries:** Enquiries should be submitted as early as possible during the bidding period. Enquiries must be received by the Contracting Authority no fewer than **ten (10) calendar days** prior to the bid closing date to ensure sufficient time to provide a response. Canada makes no commitment to provide answers to questions submitted after such time.
- (c) **Enquiries to be in Writing:** All enquiries must be submitted in writing, preferably by e-mail.
- (d) **Content of Enquiries:** Offerors should reference as accurately as possible the numbered item of the solicitation to which the enquiry relates. Care should be taken by Offerors to explain each question in sufficient detail in order to enable Canada to provide an accurate answer. Technical enquiries that are of a proprietary nature must be clearly

marked "PROPRIETARY" at each relevant item. Items identified as proprietary will be treated as such except where Canada determines that the enquiry is not of a proprietary nature. Canada may edit the questions or may request that the Offeror do so, so that the proprietary nature of the question is eliminated, and the enquiry can be answered with copies to all Offerors. Enquiries not submitted in a form that can be distributed to all Offerors may not be answered by Canada.

- (e) **Canada's Response to Enquiries:** To ensure consistency and quality of information provided to Offerors, the Contracting Authority will provide, through the Government Electronic Tendering System (GETS), simultaneously to all Offerors to which this solicitation has been sent, any significant information arising from enquiries received, without revealing the sources of the enquiries. Information provided verbally will not be binding upon Canada. Only additions, deletions or amendments made in writing to this solicitation by the Contracting Authority will be binding on Canada.
- (f) **Failure to Make Enquiries:** Offerors should make enquiries as early as possible and should not make assumptions regarding the nature of the requirements of this solicitation. Offerors who fail to raise issues and questions they may have during the bidding period do so at their own risk. Offerors who, instead of raising issues during the enquiries period, deviate from the mandatory requirements of this solicitation in their offers will be disqualified as non-compliant.

A.9 Bid Receiving Address

- (a) **Location and Time for Delivery of Offer:** Due to the nature of this solicitation, electronic transmission of offers by such means as electronic mail or facsimile to Shared Services Canada (SSC) is not considered to be practical and therefore will not be accepted. **The offer must be delivered to the following location, by the time and date indicated on page 1 of this solicitation document:**

Bid Receiving Unit
Department of Public Works and Government Services
Level 0A1, Phase III
11 Laurier Street
Gatineau, Quebec K1A 1C9

Offers must not be sent directly to the Contracting Authority. Offers sent directly to the Contracting Authority will not be considered.

- (b) **Responsibility for Timely Delivery:** Timely delivery and correct direction of bids is the sole responsibility of the Offeror. SSC and PWGSC will not assume or have transferred to it those responsibilities.
- (c) **Bid Receiving Unit Address Solely for Delivery of Offers:** The above address is for the sole purpose of bid submission. No other communications are to be forwarded to this address. The Offeror should ensure that the Offeror's name and return address, the solicitation number and the bid closing date appear legibly on the outside of the Offeror's bid submission. For more information concerning instructions applicable to bid solicitation (Late and Delayed Bid, etc.), Offerors should refer to the "Standard Instructions and Conditions" 9403, which can be found at the following Internet Site: <http://www.pwgsc.gc.ca/sacc>.
- (d) **Late and Delayed Bids:** It is SSC and PWGSC policy to return, unopened, bids received after the stipulated bid solicitation closing date and time, unless they qualify as a delayed bid as described in 9403 Standard Instructions and Conditions. Offerors should note that, for the purposes of the Delayed Bid provision in 9403, Purolator is not

considered to be part of Canada Post Corporation and, therefore, delayed Purolator deliveries (like any other private courier service) do not qualify for consideration as Delayed Bids.

A.10 Bid Validity

- (a) **Bid Validity Period:** Notwithstanding 9403, the bid validity period for offers submitted in response to this solicitation must be **180** days. By submitting a offer, Offerors are agreeing not to revoke their offers during such period.
- (b) **Extension of Bid Validity Period:** Canada may request an extension of the bid validity period, if Canada determines that such period is not sufficient for evaluation and Standing Offer award. If Canada requests an extension of the bid validity period, a Offeror may refuse to extend its bid validity period, in which case Canada will continue its evaluation without regard to that Offeror's offer.

A.11 Offeror's Responsibilities

It is each Offeror's responsibility to:

- (a) obtain clarification of the requirements contained in this solicitation, if necessary, prior to submitting a offer;
- (b) ensure that it has responded to all the requirements of this solicitation clearly and concisely;
- (c) prepare its offer in accordance with the instructions contained in this solicitation; and
- (d) submit a complete offer prior to the bid closing date and time.

A.12 Rights of Canada

Canada reserves the right to:

- (a) reject any or all offers received in response to this solicitation;
- (b) cancel and/or reissue this requirement at any time;
- (c) enter into negotiations with Offerors on any or all aspects of their offers;
- (d) if only one compliant offer is received, negotiate with the sole compliant Offeror to ensure best value to Canada;
- (e) award a Standing offer for a part only of the Work, provided Canada adheres to the existing evaluation methodology described in selecting an Offeror for Standing Offer award; and
- (f) if no compliant offers are received and the requirement is not substantially modified, re-tender this requirement by inviting only the Offerors who responded to this solicitation by submitting a offer to resubmit offers within a period designated by Canada of no fewer than *10 calendar days*.

A.13 Vendor Performance Policy

- (a) Canada may reject a bid where any of the following circumstances is present:
 - (i) the Offeror, or any employee or subofferor included as part of the bid, has been convicted under section 121 ("Frauds on the government" & "Offeror subscribing to election fund"), 124 "Selling or purchasing office"), or 418 ("Selling defective stores to Her Majesty") of the *Criminal Code*; or

- (ii) the Offeror is subject to a Vendor Performance Corrective Measure, under the Vendor Performance Policy, which renders the Offeror ineligible to bid on the Work;
- (iii) an employee or subofferor included as part of the bid is subject to a Vendor Performance Corrective Measure, under the Vendor Performance Policy, which would render that employee or subofferor ineligible to bid on the Work, or the portion of the Work the employee or subofferor is to perform;
- (iv) with respect to current or prior transactions with the Government of Canada:
 - (A) the Offeror is bankrupt or where, for whatever reason, its activities are rendered inoperable for an extended period;
 - (B) evidence, satisfactory to Canada, of fraud, bribery, fraudulent misrepresentation or failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Offeror, any of its employees or any subofferor included as part of its bid;
 - (C) Canada has exercised its contractual remedies of suspension or termination for default with respect to a Standing offer with the Offeror, any of its employees or any subofferor included as part of its bid; or
 - (D) Canada determines that the Offeror's performance on other contracts, including the efficiency and workmanship as well as the extent to which the Offeror executed the work in accordance with contractual terms and conditions, is sufficiently poor to jeopardize the successful completion of the requirement being bid on.
- (b) Where Canada intends to reject a bid pursuant to a provision of paragraph (a), other than (a)(ii), the Contracting Authority will so inform the Offeror and provide the Offeror ten (10) days within which to make representations, prior to making a final decision on the bid rejection.

A.14 Conflict of Interest

- (a) If Canada has employed the assistance of private sector contractors in the preparation of this solicitation, Canada will disqualify any Offer in respect of which Canada determines, in its sole discretion, that the previous involvement, whether direct or indirect, of the Offeror (or any subcontractor, employee, agent, representative or advisor of the Offeror) in the preparation of this solicitation confers an unfair advantage upon the Offer or creates a conflict of interest.
- (b) The previous experience of an incumbent in providing the goods or services described in this solicitation (or similar goods and services) WILL not be considered by Canada as conferring an unfair advantage upon the Offeror or creating a conflict of interest.
- (c) By submitting a bid, the Bidder represents that it does not consider itself to be in a conflict of interest, nor to have an unfair advantage as a result of any involvement it had in the preparation of this solicitation; however, the Offeror acknowledges that it is within Canada's sole discretion to determine whether a conflict of interest or unfair advantage exists.

A.15 Joint Venture Offers

- (a) **Definition of Joint Venture:** For the purposes of this solicitation, a joint venture is defined as an association of two or more parties who combine their money, property, knowledge, or other resources in a single joint business enterprise, sometimes referred to as a consortium. A joint venture is to be distinguished from:
- (i) the relationship between shareholders of a corporation;
 - (ii) the relationship between partners in a partnership (including a partnership that is a limited partnership or a limited liability partnership); or
 - (iii) the relationship between a prime Offeror who submits a bid and the subcontractors it intends to use to perform some of the work.
- (b) **Information required from Joint Venture Offeror:** It is the sole responsibility of the Offeror to indicate clearly, in its Offer, that it is a joint venture. The following information is also required from any joint venture Offeror:
- (i) the name of the joint venture;
 - (ii) the legal name of each member of the joint venture;
 - (iii) the name of the lead member of the joint venture (i.e., the single member chosen by the others to act on their behalf); and
 - (iv) confirmation that the lead member has been appointed with full authority to act as the agent of the other members of the joint venture for the purposes of responding to this solicitation and for all matters relating to any resulting contract.

The following is a suggested format for providing this information:

Joint Venture Offer

This offer is being submitted by a joint venture.

Name of joint venture _____

Legal name of lead member of joint venture _____

Legal name of each other member(s) of joint venture _____

[adjust number of lines, as applicable]

As the authorized signatory of the lead member of the joint venture, I hereby confirm that all the members of the joint venture identified above have appointed the lead member as their agent for the purposes of responding to this solicitation and for all matters relating to any resulting standing offer.

Signature of lead member _____

Name of authorized signatory of lead member _____

Date Signed _____

If this information is not provided in the offer, the Offeror must provide this information upon request by the Contracting Authority. It is the sole responsibility of the Offeror to be precise and

accurate in its offer when referring to the Offeror as a whole (i.e., the entire joint venture comprising all members, in which case the Offeror should use the name of the joint venture), or an individual member of the joint venture (in which case the Offeror should use the legal name of that member).

- (c) **Signature of Offer by Joint Venture:** If a offer is being submitted by a joint venture, the offer is required to be signed by the lead member of the joint venture on behalf of all members of the joint venture. The Contracting Authority may, at any time, require each member of the joint venture to confirm that the lead member has been appointed with full authority to act as its agent for the purposes of this solicitation and any resulting standing Offer, by executing an agreement in a form specified by Canada confirming such agency.
- (d) **Vendor Performance Policy:** If a offer has been submitted by a joint venture, where in the Article entitled "Vendor Performance Policy" the term "Offeror" appears, it means "Offeror or any of its members".
- (e) **Procurement Business Number for Joint Venture Offeror:** Unless the joint venture has its own PBN, the PBN of the lead member will be used.
- (f) **Certifications:** Except where expressly provided otherwise, any certifications required to be made by the Offeror must be made by the lead member on behalf of the joint venture; provided, however, that where a certification is required to be made by a third party (for example, an OEM) that relates to the capacity of the Offeror to perform any portion of the Work, that certification must be made in respect of the joint venture as a whole, or must be made in respect of the joint venture member(s) who will be performing that Work. For example, if a certification is required from an OEM certifying that the Offeror has been authorized to service the OEM's equipment, each member of the joint venture that will be involved in servicing that OEM's equipment in the performance of the Work must be named in the certification, or the joint venture itself must be named.
- (g) **Employment Equity Requirement for Joint Venture Offeror:** Unless this solicitation expressly provides otherwise, each member of a joint venture Offeror must satisfy the requirements described in the Article entitled "Employment Equity Requirement".
- (h) **Security Requirement:** Unless this solicitation expressly provides otherwise, each member of a joint venture Offeror must satisfy the requirement described in this Article entitled "Security Requirement".
- (i) **Evaluation of Joint Venture Proposals:** Except where expressly provided otherwise, at least one member of a joint venture Offeror must meet any given mandatory requirement of this solicitation. Joint venture members cannot, however, pool their abilities to satisfy any single mandatory requirement of this solicitation. Wherever substantiation of a mandatory requirement is required, the Offeror is requested to indicate which joint venture member satisfies the requirement. Any Offeror with questions regarding the way in which a joint venture offer will be evaluated should raise such questions through the Enquiries process as early as possible during the solicitation period.

Example: A offeror is a joint venture consisting of members X, Y and Z. If a solicitation requires: (a) that the offeror have 3 years of experience providing maintenance services, and (b) that the offeror have 2 years of experience integrating hardware with complex networks, then each of these two requirements can be met by a different member of the joint venture. However, for a single requirement, such as the requirement for 3 years of experience providing maintenance services, the offeror

cannot indicate that each of members X, Y and Z has one year of experience, totalling 3 years. Such a response would be declared non-compliant.

(Note: this example is not specific to this solicitation and does not relate to the requirements of this solicitation - it is provided only for illustrative purposes.)

- (j) **Liability of Joint Venturers under any Resulting Standing Offer:** If a standing offer is awarded to a joint venture, all members of the joint venture shall be jointly and severally or solidarily liable for the performance of the Standing offer and any resultant Call-up. Any resulting Standing Offer entered into with a joint venture must be signed by all the members of the joint venture identified in the Offeror's response to this solicitation.

A.16 Volumetric Data

Appendix M provides the inventory of devices presently being managed by Shared Services Canada (SSC) on the behalf of its Clients. This inventory has been provided to Offerors to assist them in preparing their offers. The inclusion of this inventory in this solicitation does not represent a commitment by Canada that Canada's future usage of Network Infrastructure Management Services (NIMS) will be consistent with this inventory. It is provided purely for information purposes.

SECTION 2: Bid Submission Instructions

A.17 Offer Format

- (a) **Separate Volumes:** Offerors are requested to prepare their offers in **three (3)** separately bound volumes as follows:
- (i) **Volume 1 - Technical Offer for NIMS Group C** (with no reference to pricing): 1 original plus **[2]** additional paper copies and **[3]** soft copies
 - (ii) **Volume 2 – Financial Offer for NIMS Group C:** 1 original plus **[2]** additional paper copies and **[3]** soft copies.
 - (iii) **Volume 3 - Green procurement baseline questionnaire:** 1 original plus one (1) additional copy. Please note that the completion of this questionnaire is at the discretion of the bidders. The response to this questionnaire will not be evaluated nor taken into consideration in the evaluation and Selection methodology described in section 3 of this RFSO.
- Additional documentation referred to in the Technical Offer can also be provided and may be separately bound.
- For Group C, Offerors may submit for maintenance services for only one OEM, for a combination of OEMs or all OEMs listed.
- (b) **Cover Page:** The front cover page of each volume of the Offeror's offer should identify:
- (i) the title of the Offeror's offer;
 - (ii) the solicitation number;
 - (iii) the volume number;
 - (iv) the full legal name of the Offeror;
- (c) **Title Page:** The first page of each volume of the Offeror's offer, after the cover page, should be the Title Page, which should contain:
- (i) the name and address of the Offeror;
 - (ii) the name, address and telephone number of the Offeror's contact;
 - (iii) the offer date; and
 - (iv) the solicitation number.
- (d) **Table of Contents:** The page following the Title Page of each volume of the offer should be the Table of Contents. The Table of Contents should contain a listing of all sections and sub-sections with associated page numbers. It should also list the associated tables, figures, and appendices contained in the part of the offer to which it refers.
- (e) **Headers & Footers:** Each subsequent page of each volume of the offer should include a header and/or footer that includes the following information:
- (i) the offer title;
 - (ii) the Offeror's name;
 - (iii) the date of the offer; and
 - (iv) the page number.

- (f) **Numbering System:** Offerors are requested to prepare their offers using a numbering system corresponding to that of this solicitation. All references to descriptive material, technical manuals and brochures included as part of the offer should be referenced accordingly.
- (g) **Electronic Copies of Offer:** Offerors must submit a hard copy of their offer. Offerors are also requested to submit **three [3]** soft copy of their offer on diskette or CD-ROM. If there is a discrepancy between the hard copy version and the soft copy version, the hard copy will take precedence over the soft copy.
- (h) **Multiple Offers:** An Offeror may submit more than one offer in response to this solicitation. If an alternate offer is submitted, it must be a physically separate document, clearly marked as an alternate offer. Each offer will be evaluated independently, without regard to the other offers submitted by that Offeror and, therefore, every offer submitted by a Offeror must be complete. If an Offeror has submitted multiple offers and wishes to withdraw one or more of those offers, Canada reserves the right to require that the Offeror withdraw either all its offers or none of them.

A.18 Signature of Offer by Offeror

- (a) Canada requires that each offer be signed by the Offeror or by an authorized representative of the Offeror. If an offer is being submitted by a joint venture, the offer is required to be signed by all members of the joint venture or a statement is to be provided to the effect that the signatory represents all parties of the joint venture.
- (b) Offerors' offers should be properly signed as set out above when submitted at bid closing. However, where Canada determines that the Offeror has omitted to sign the offer as required, Canada will provide the Offeror with 24 hours to submit a proper signature page.
- (c) By submitting an offer, the Offeror agrees to be bound by the process set out in this solicitation regarding the conduct of this solicitation and the evaluation of offers.

Note to Offerors: Offerors can sign their offers by copying the front page of this solicitation, signing it, and submitting it as part of their offer or by including a signature page in a prominent location in their offers.

A.19 Technical Offer

- (a) Offerors **should** include the following in their Technical Offers:
 - (i) the first page of this RFSO signed by authorized representative(s) in accordance with article A.18 above;
 - (ii) a Corporate Profile providing a brief history of the firm;
 - (iii) certificate number or the information requested by the The Federal Contractors Program for Employment Equity (FCP-EE) as described in article A.24 , if Offerors are subject to the program. and
 - (iv) the certifications stipulated in Section 4 of the RFSO.
- (b) The Crown will not accept a list of Authorized Agents or Re-seller who would be authorized by the bidder to act on its behalf for the purposes of receiving call-ups against any resulting DISO(s) for Group C. All call-ups under any resulting DISO(s) will

be forwarded to the successful Offeror(s) in accordance with the term of the model Standing Offer.

- (c) Offerors **must** include the following in their Technical Offers:
- (i) **List of any Subcontractors** who would be directly involved in the provision of any services resulting from call-ups against the resulting DISO(s); and
 - (ii) **Statement of Compliance** for the following sections of this solicitation:
 - (A) **Part B titled “Model Standing Offer” of this RFSO;**
 - (B) **Appendix N: Statement of Work for NIMS Group C - Maintenance Management Services.**

A Statement of Compliance is not required in response to Part A of this solicitation.
- (d) Offerors must include a **Statement of Compliance** in their Technical Proposals in accordance with the following:
- (i) The Statement of Compliance must indicate, on a paragraph-by-paragraph basis, whether the Offeror complies with the relevant paragraph of the Statement of Work for NIMS Group C . The Statement of Compliance for Part B titled “Model standing Offer” must be, on a article-by article basis .
 - (ii) For mandatory items, Offerors must indicate in their Statement of Compliance whether they:
 - (A) **COMPLY:** indicates the Offeror complies with and/or accepts this item, clause, specification, terms or conditions in all respects; or
 - (B) **DO NOT COMPLY:** indicates an inability or unwillingness on the part of the Offeror to comply with and/or accept the item, clause, specification, terms or conditions in all respects.

Use of terms such as “comply with the following changes”, “understood”, or the like for mandatory requirements will be deemed to be DO NOT COMPLY.

Some articles in this solicitation may contain more than one mandatory requirement. Bidders must only use the term “Comply” when they can comply with all requirements contained in the paragraph. Partial compliance will be deemed to be “DO NOT COMPLY”.
 - (iii) Offerors may submit their statement of Compliance for their Technical Offers by completing the following Appendices :
 - (A) *Appendix I: Model Standing Offer (Part B) Compliance Checklist;*
 - (B) *Appendix Q: NIMS Group C Compliance Checklist ;*
 - (iv) For all items in this solicitation for which the Offeror is not required to provide a Statement of Compliance or substantiation, Offeror are indicating by submitting a offer that they consider themselves to be fully compliant to the mandatory requirements if awarded a Standing Offer.

A.20 Financial Offer

- (a) The Financial Offer **should** be a separately bound part of the Offeror's offer and should be the only part containing pricing information.

- (b) The **Financial Offer for Group C must include** all the pricing sheets listed below for each OEM for which the Offerors are submitting an Offer. The Offeror must follow the instructions in Appendix O to complete the pricing sheets listed below. The completed pricing table must include a price for every item in the pricing table for each OEM for which the Offerors are submitting an Offer.

(A) *Appendix P: Pricing Workbook for NIMS Group C for Riverbed*

- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
- (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
- (3) *Appendix P.3: Pricing Sheet for Business Volume*
- (4) *Appendix P.4: Financial Summary*

(B) *Appendix P: Pricing Workbook for NIMS Group C for Fortinet.*

- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
- (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
- (3) *Appendix P.3: Pricing Sheet for Business Volume*
- (4) *Appendix P.4: Financial Summary*

(C) *Appendix P: Pricing Workbook for NIMS Group C for Eaton.*

- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
- (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
- (3) *Appendix P.3: Pricing Sheet for Business Volume*
- (4) *Appendix P.4: Financial Summary*

(D) *Appendix P: Pricing Workbook for NIMS Group C for McAfee.*

- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
- (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
- (3) *Appendix P.3: Pricing Sheet for Business Volume*
- (4) *Appendix P.4: Financial Summary*

(E) *Appendix P: Pricing Workbook for NIMS Group C for F5 Networks.*

- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
- (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
- (3) *Appendix P.3: Pricing Sheet for Business Volume*
- (4) *Appendix P.4: Financial Summary*

- (F) *Appendix P: Pricing Workbook for NIMS Group C for Brocade.*
- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
 - (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
 - (3) *Appendix P.3: Pricing Sheet for Business Volume*
 - (4) *Appendix P.4: Financial Summary*
- (G) *Appendix P: Pricing Workbook for NIMS Group C for Hewlett-Packard*
- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
 - (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
 - (3) *Appendix P.3: Pricing Sheet for Business Volume*
 - (4) *Appendix P.4: Financial Summary*
- (H) *Appendix P: Pricing Workbook for NIMS Group C for Check Point*
- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
 - (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
 - (3) *Appendix P.3: Pricing Sheet for Business Volume*
 - (4) *Appendix P.4: Financial Summary*
- (I) *Appendix P: Pricing Workbook for NIMS Group C for Avaya*
- (1) *Appendix P.1: Pricing Sheet for Maintenance Services*
 - (2) *Appendix P.2: Pricing Sheet for Maintenance Under Warranty*
 - (3) *Appendix P.3: Pricing Sheet for Business Volume*
 - (4) *Appendix P.4: Financial Summary*

(c) Published Price List (PPL) for Group C

- (A) The *Financial Offer for Group C* **must** include a copy of the published price list used by the Offeror to complete the Pricing Workbook detailed in Appendix P. The Offeror may insert its published price list as Appendix R in its offer.
- (B) All Published Price List (PPL) prices must be in Canadian dollars, FOB destination if applicable, include all shipping and handling charges to destination (Canadian Customs duties and excise taxes included if applicable), Goods and Services Tax (GST) and Harmonized Sales Tax (HST) extra.
- (C) Exchange Rate (see article B.26)
- (1) All bids are evaluated in Canadian currency. Therefore, for evaluation purposes, if the PPL submitted with the Offer is

based on a US PPL, the rate quoted by the Bank of Canada as being in effect on the date of bid closing, shall be applied as the initial conversion factor for the specified currency.

- (2) Rates proposed by Offerors that are not identical to the rates quoted by the Bank of Canada as being in effect on date of bid closing will not be accepted for the purposes of this exchange rate adjustment provision.
- (d) The Financial Offer must include all costs for the requirement described in this solicitation for the entire Standing Offer period, including any option years. Failure to complete adequately the above pricing sheets will render the Bidder's offer non-compliant.
- (e) All prices must be in Canadian dollars, FOB destination if applicable, include all shipping and handling charges to destination (Canadian Customs duties and excise taxes included if applicable), Goods and Services Tax (GST) and Harmonized Sales Tax (HST) extra.

A.21 GREEN PROCUREMENT BASELINE QUESTIONNAIRE

- (a) The purpose of this questionnaire in Appendix T is to assist the Government of Canada (GC) in understanding your industry's progress in greening its supply chain and operations.
- (b) The federal government is committed to greening its supply chain. As of April 2006, the GC's Policy on Green Procurement took effect, requiring all federal departments and agencies to take the necessary steps to incorporate environmental considerations into the procurement process. Environmental considerations with goods or services address those associated with the whole life cycle of the product or service, from the extraction of the raw material, through its use by customers as well as the process by which it is disposed once it is no longer required.
- (c) One of the avenues for greening the government procurement is through the greening of procurement instruments used in commodity management.
- (d) At this time, Shared Services Canada (SSC) and Public Works and Government Service Canada (PWGSC) wants to understand how the industry has progressed in incorporating environmental considerations into its goods and services. Upcoming requests for proposal (RFP) will require that suppliers meet certain mandatory environmental criteria. While adding new environmental criteria, SSC and PWGSC need to ensure that there is still enough competition amongst potential suppliers to obtain a fair price for the requested goods and services. It is therefore necessary to understand the current state of the industry, relative to environmental factors, in order to successfully incorporate mandatory environmental criteria without inappropriately limiting competition.
- (e) In the future, it is anticipated that environmental criteria will become more demanding as the GC will encourage suppliers to improve the environmental performance of their goods and services and mitigate negative environmental factors.
- (f) Please fill out the questionnaire in Appendix T and return it with your offer. Please note the completion of this questionnaire is at the discretion of the bidders. The response to this questionnaire will not be evaluated nor taken into consideration in the evaluation and Selection methodology described in section 3 of this RFSO.

A.22 References to Information not Contained in Offer

Except as specifically provided otherwise in this solicitation, Canada will evaluate an Offeror's offer on the documentation provided as part of that offer. References in an offer to additional information not submitted with the offer, such as:

- (a) website addresses where additional information can be found;
- (b) technical manuals or brochures not submitted with the offer; or
- (c) existing standing offers, supply arrangements or contracts with the Government of Canada,

will not be considered and, therefore, references to them in response to any requirement may result in the offer being declared non-compliant.

A.23 Procurement Business Number

- (a) For procurement purposes, the Government of Canada uses a unique Procurement Business Number (PBN) to identify a company and its branches, divisions, or offices, where appropriate. The PBN is created using the entity's Canada Customs and Revenue Agency Business Number.
- (b) All Canadian companies are required to have a PBN prior to standing offer award. In exceptional circumstances, Canada may decide to award, at its own discretion, a standing offer to a company without a PBN. Non-Canadian companies are strongly encouraged to obtain a PBN.
- (c) Companies may register for a PBN in the Supplier Registration Information (SRI) service on line at the Contracts Canada Internet site at: <http://contractscanada.gc.ca>. In order for companies to be sourced by government buyers, they must complete the registration process and activate their account in the SRI service.
- (d) For non-Internet registration, contact the Contracts Canada InfoLine at 1-800-811-1148 or (819) 956-3440, in the National Capital Area, to obtain the telephone number of the nearest Supplier Registration Agent.

Note to Offerors: Offerors are requested to include their Procurement Business Number in their Financial Offers. Upon request by the Contracting Authority, Offerors must provide their Procurement Business Number.

A.24 Employment Equity Requirement for Offerors

- (a) The Federal Contractors Program for Employment Equity (FCP-EE) requires that some organizations bidding for federal government contracts, valued at \$200,000 or more (including all applicable taxes), make a formal commitment to implement employment equity, as a condition precedent to the standing offer award. If the offeror is subject to the Program, evidence of its commitment must be provided prior to the award of any standing offer.

Contractors that have been declared Ineligible Contractors by Human Resources Development Canada-Labour (HRDC-Labour) are no longer eligible to receive government contracts over the threshold for solicitation of bids as set out in the Government Standing offer Regulations (currently at \$25,000, including all applicable taxes), either as a result of a finding of non-compliance by HRDC-Labour, or following

their voluntary withdrawal from the Program for a reason other than the reduction in their workforce. Any bid from ineligible contractors will not be considered for award.

- (b) The Offeror is requested to indicate in its technical offer whether the Offeror:
- (i) is not subject to FCP-EE, having a workforce of less than 100 permanent full or part-time employees in Canada,
 - (ii) is not subject to FCP-EE, being a regulated employer under the Employment Equity Act;
 - (iii) is subject to the requirements of FCP-EE, having a workforce of 100 or more permanent full or part-time employees in Canada, but has not previously obtained a certificate number from HRDC-Labour, (having not bid on requirements of \$200,000 or more), in which case a duly signed certificate of commitment is provided herewith (attached);
 - (iv) is subject to FCP-EE, and has a valid certification number (e.g. has not been declared Ineligible Offeror by HRDC-Labour).

By supplying the above information in its signed offer, the Offeror is certifying that the supplied information is correct.

- (c) If the Offeror does not fall within the exceptions enumerated in (b)(i) or (ii), the Program requirements do apply, and as such, the Offeror is required to submit HRDC-Labour form LAB 1186, Certificate of Commitment to Implement Employment Equity, DULY SIGNED or a valid Certificate number confirming its adherence to the FCP-EE.
- (d) The Offeror acknowledges that the Minister shall rely on this certification to award the Standing offer. Should a verification by the Minister disclose a misrepresentation on the part of the Offeror, the Minister shall have the right to treat any standing offer resulting from this bid as being in default, and to terminate it pursuant to the Default provisions of the Standing offer.
- (e) In all cases, the Offeror is required to produce evidence or supporting information on demand prior to standing offer award, if such evidence is not included with its bid.

NOTE: Information on the FCP-EE and the Certificate of Commitment (LAB 1186), are available on the following HRDC-Labour Website:

<http://www.hrsdc.gc.ca/en/gateways/topics/wzp-gxr.shtml> and

Note to Offerors: Offerors are requested to indicate in their Technical Offers whether or not they are subject to the FCP EE and, if they are subject to the program, are requested to submit their Certificate number. Upon request by the Contracting Authority, Offerors must provide the required information.

A.25 Status of resources

- (a) **Status of Resources:** By submitting a Offer, the Offeror is certifying that either:
- (i) all the individual resources proposed are employees of the Offeror; or
 - (ii) in the case of any individual proposed who is not an employee of the Offeror, the Offeror is certifying that it has written permission from such person (or the employer of such person) to propose the services of such person in relation to the work to be performed in fulfillment of this requirement and to submit such

person's résumé, if requested, to the Contracting Authority in connection with this solicitation. During the bid evaluation, the Offeror must upon the request of the Contracting Authority provide a copy of such written permission, in relation to any or all non-employees proposed. Failure to comply with such a request may lead to disqualification of the Offer's offer.

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SECTION 3: EVALUATION METHODOLOGY

A.26 Introduction

- (a) This Request for Standing Offer (RFSO) consists of :
- (i) **NIMS Group C** will consist of one (1) DISO per OEM listed below for the provision of maintenance services for various Controlled Entity Classes composing various government networks. Nine (9) OEMs are listed in Group C as follows:
- Riverbed Technology Inc.;
 - Fortinet;
 - Hewlett-Packard Company;
 - McAfee Inc.;
 - Avaya Inc.;
 - Eaton Corporation PLC;
 - Brocade Communications Systems Inc.;
 - Check Point Software Technologies Inc; and/or
 - F5 Networks Inc.
- (b) For Group C, Offerors may submit an offer for maintenance services for only one OEM, for a combination of OEMs or all nine (9) OEMs. Offers received will be evaluated independently in accordance with **Evaluation and Selection Methodology** stipulated herein.

A.27 Evaluation Team

An evaluation team composed of representatives SSC will evaluate the Offer on behalf of Canada. Canada reserves the right to hire any independent consultant, or use any Government resources, which it deems necessary to evaluate any Offer. Not all members of the evaluation team will necessarily participate in all aspects of the evaluation.

A.28 Conduct of Evaluation

In conducting its evaluation of the Offeror's offer, Canada may, but will have no obligation to, do the following:

- (a) seek clarification or verification from the Offeror regarding any or all information provided by the Offeror with respect to this solicitation;
- (b) request, prior to award of any standing offer, specific information with respect to any Offeror's legal capacity or status;
- (c) conduct a survey of the Offeror's facilities or its technical capabilities to determine if they are adequate to meet the requirements of this solicitation;
- (d) correct any error in the extended pricing of the Offeror's offer, by using the unit pricing. Any errors in quantities of the Offeror's offer will be changed to reflect the quantities stated in the solicitation; and
- (e) verify any information provided by the Offeror with third parties, including but not limited to Software Publishers of any software being proposed and Original Equipment Manufacturers of any equipment being proposed.

A.29 Offeror's Time for Responding during Evaluation

- (a) **Requests for Clarifications:** If Canada seeks clarification or verification from the Offeror regarding its offer, the Offeror will have **three (3) working days** or such longer

period as is specified in writing by the Contracting Authority to provide the necessary information to Canada. Failure to meet this deadline will result in the offer being declared non-compliant.

- (b) **Extension of Time:** If additional time is required by the Offeror, time may be granted at the sole discretion of the Contracting Authority.

A.30 Evaluation and Selection Methodology

- (a) **Conduct of Evaluation in Phases:** There are several phases in the evaluation methodology, which are described below. Notwithstanding that the evaluation and selection methodology will be conducted in phases, the fact that Canada has proceeded to a later phase shall not be deemed to mean that Canada has conclusively determined that the Offeror has successfully passed all the previous phases. Canada reserves the right to conduct phases of the evaluation concurrently or non-sequentially.

- (b) **Phase 1 – Contractual and Technical Evaluation of Mandatory Requirements for Group C .**

Each Offer submitted shall be reviewed for compliance with all mandatory requirements of this RFSO by ensuring that:

- 1) Statement of Compliance has been completed satisfactorily for Part B titled "Model Standing Offer" of this RFSO. Offerors may submit their statement of Compliance for Part B by completing the table in Appendix I.
- 2) Statement of Compliance has been completed satisfactorily for **the Statement of Work for NIMS Group C for which the Offerors are submitting an offer.** Offerors may submit their statement of Compliance for the Statement of Work by completing the following appendices :
 - **Appendix Q NIMS Group C Compliance Checklist**

- (c) **Phase 2 – Evaluation of Financial Offer for Group C.**

- (i) The Crown will evaluate each compliant Offer based on its submitted Financial Offer in the applicable NIMS Pricing Workbook for Group C .
- (ii) For NIMS Group C:
 - (A) An Offer Evaluation Value (OEV) will be calculated from reoccurring prices using formulas in each of the Services Worksheets and the Financial Summary Worksheet per OEM identified in the NIMS Pricing Workbooks Group C as detailed in Appendix P.
 - (B) The OEV for each OEM identified in Group C will be evaluated as per Appendix O of the NIMS RFSO.

- (d) **Phase 3**

- (i) For NIMS Group C :
 - (A) The Compliant Offers per OEM listed in Group C will be ranked based on the Offer Evaluation Value (OEV) calculated at phase 2. The lowest OEV for each OEM will be ranked the highest.

- (B) The Compliant Offeror with the lowest OEV for each OEM listed in Group C will proceed to Phase 5, Offeror Selection.

(e) **Phase 4 – Offeror Selection for Group C.**

- (i) For NIMS Group C :

(A) Any resulting Standing Offer for Group C will be awarded **to the lowest OEV per OEM**

(B) Once an Offeror has qualified for an OEM identified in Appendix P, all maintenance services for other Controlled Entity listed in the OEM's Published Price List provided for Group C falling within the Controlled Entity Classes defined in Appendix N will be available for call-up.

(ii) Offerors who have not satisfied any Conditions for Contracting specified in phase 4 of this RFSO in the time allotted by Canada will be deemed non-compliant and their offers will be given no further consideration.

(iii) Offerors should note that all standing offer awards are subject to Canada's internal approvals process, which includes a requirement to approve funding in the amount of any proposed standing offer. Notwithstanding that an Offeror may have been recommended for standing offer award, issuance of any standing offer will be contingent upon internal approval in accordance with Canada's policies. If such approval is not given, no standing offer will be awarded.

A.31 Inclusion of Software Publisher Terms and Conditions

- (a) Acceptance of the terms and conditions contained in the Model Standing Offer (including those relating to software licensing) set out in this RFSO (Part B - Model Standing Offer) is a mandatory requirement of this solicitation.
- (b) However, Offerors may, as part of their Offers, submit additional software use terms. Whether or not those software use terms will be included in the resulting standing offer (as an Appendix in accordance with the Priority of Documents provision set out in the Model standing offer) will be determined in accordance with the process set out below, by which Canada will determine whether or not such software use terms are acceptable to Canada. Whether or not additional software use terms proposed by a Offeror are acceptable to Canada is a matter solely within the discretion of Canada.
- (c) The terms and conditions governing the use of all software provided by the Offeror to Canada under any resulting standing offer will be those terms and conditions contained or referenced in this RFSO (i.e., the Model Standing Offer Articles, which will be incorporated into the resulting call-ups) plus any software use terms incorporated into the resulting standing Offer in accordance with this provision.
- (d) The following five-step process shall be used to negotiate the incorporation of software use terms proposed by Offerors.
- (i) Offerors will submit proposals, which may include additional software use terms that are inconsistent with the terms of the Model Standing Offer. Offerors shall not submit Software Publishers' full standard license terms;

- (ii) At any time during the evaluation process, Canada will review the software use terms proposed by responsive Offerors to determine if there are any provisions proposed by Offerors that are unacceptable to Canada.
- (iii) If Canada determines that any provision is unacceptable to Canada, Canada will notify the Offeror, in writing, and will provide the Offeror with an opportunity to remove that provision from its offer or to propose alternate language for consideration by Canada. Canada may set a time limit for the Offeror to respond.
- (iv) If the Offeror refuses to remove provisions unacceptable to Canada from its Offer within the time limit set by Canada in its notice, the Offeror's offer will be deemed non-compliant and will receive no further consideration. Canada will then continue with the evaluation process, without regard to that Offeror's proposal.
- (v) If the Offeror agrees to remove the provisions that are unacceptable to Canada, the proposed terms and conditions (as revised) will be incorporated as an Appendix to the resulting standing offer, as set out in the Priority of Documents, Part B, Model Standing Offer.
- (e) For greater certainty and to eliminate the danger that any terms will be incorporated into the Standing Offer without the consent of both parties, unless any such terms proposed by the Offeror are separately reproduced as a separate appendix to the Standing Offer and initialed by the parties, they shall not become part of the Standing Offer. Inclusion of terms in the Offeror's Offer shall not have the effect of including those terms in the Standing Offer, whether or not Canada has objected to them under the procedures described above.

A.32 Financial Capability

- (a) **Financial Capability Requirement:** The Offeror must have the financial capability to undertake this requirement.
- (b) **Provision of Financial Information:** In order to demonstrate its financial capability, the Offeror must provide the following information to the Contracting Authority within **15 working days** of a request:
 - (i) Audited Financial Statements, if available, or the Unaudited Financial Statements, for the Offeror's last three fiscal years, or for the years that the Offeror has been in business if this is less than three years (including, as a minimum, the Balance Sheet, the Statement of Retained Earnings, the Income Statement and any notes to the statements).
 - (ii) If the date of the Financial Statements provided in (i) above is more than three months from the date on which Canada requests this information, the Offeror must also provide Interim Financial Statements, consisting of a Balance Sheet and year-to-date Income Statement, as of two months prior to the solicitation closing date.
 - (iii) Should the Offeror not have been in business for at least one full fiscal year, the following must be provided:
 - (A) the opening Balance Sheet on commencement of business; and

- (B) interim Financial Statements, consisting of a Balance Sheet, and a year-to-date Income Statement, as of two months prior to the solicitation closing date.
- (iv) Evidence, by certification from the Chief Financial Officer or an authorized representative of the Offeror, regarding the accuracy of any financial information provided.
- (v) A confirmation letter from the Offeror's financial institution(s) outlining the total of lines of credit granted and the amount of credit that remains available and not drawn upon as of one month prior to the solicitation closing date.
- (vi) If the offer is submitted by a joint venture, then the financial information requested at Sub-articles (i) through (v) is required from each member of the joint venture.
- (vii) If the Offeror is a subsidiary of another company then the financial information requested at Sub-articles (i) through (v) is also required from the parent company.
- (viii) Financial Information already provided to SSC or PWGSC: Any information requested under Sub-articles (i) through (vii) that is already on file at SSC or PWGSC does not have to be provided if:
 - (A) the Offeror identifies the specific information that is on file and for which requirement this information was provided; and
 - (B) the Offeror authorizes the use of this information to support the financial capability for this requirement.

It is the Offeror's responsibility to ensure that this information is actually available within PWGSC.
- (c) **Confidentiality:** Should the Offeror provide the information requested above to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as permitted by the *Access to Information Act*, R.S.C. 1985, Section 20.1 (b), (c).
- (d) Canada shall determine, in Her reasonable discretion, whether the Offeror has the financial capability to undertake this requirement.

A.33 Price Support

- (a) **If only one compliant offer is received**, Canada may require that price support be submitted to supplement the offer to assist Canada in determining whether the offer represents good value to Canada. Canada may require one or more of the following:
 - (i) paid invoices for like goods or services (like quality and quantity) sold to other customers. If the Offeror is obliged by statute or contract to maintain the confidentiality of another customer's information, the Offeror may black out any information on the invoices or contracts that could reasonably reveal the identity of the customer (such as the customer's name and address), as long as the Offeror provides, together with the invoices and contracts, a certification from its Senior Financial Officer regarding the profile of the customer (e.g., whether it is a public sector or private sector customer and the customer's size and service locations).;

-
- (ii) a price breakdown showing, if applicable, the cost of direct labour, direct materials, purchased items, engineering and plant overheads (if applicable), general and administrative overhead, transportation, profit, etc.; or
 - (iii) a current published price list and the percentage discount available to Canada;
 - (b) If Canada determines that the prices being offered by the Offeror do not represent good value to Canada, Canada reserves the right to reject the offer or negotiate with that Offeror.

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SECTION 4: Certifications

Note to Offerors: This Section contains certifications. Offerors are requested to submit these certifications with their offers at bid closing. All certifications should be included in their technical Offer.

If an Offeror does not submit a certification contained in this part at the time of bid closing, Canada may require the Offeror to submit the certification within two (2) working days, or such longer period as Canada may specify. Failure to comply with the request of the Contracting Authority will render the Offeror's offer non-compliant.

The Contracting Authority has the right to ask for additional information to verify the Offeror's compliance to the applicable certifications before or after award of a standing offer. If it is determined that any certification made by the Offeror is untrue, whether made knowingly or unknowingly, or that the Offeror does not comply with the certifications, or the Offeror fails to comply with a request from the Contracting Authority for additional information, the Offeror's offer will be declared non-compliant.

Offerors may wish to complete the certifications in this Section by reproducing this Part, completing the required information, signing the certifications and including them in their offers. Offerors may also satisfy the requirement by reproducing the certifications in another way, provided the wording of the certification is not changed.

A.34 OEM Certifications for Maintenance Services for Group C

- (a) The Offeror and/or sub-contractors shall be OEM-certified for the provisioning of technical and maintenance services where the Controller Entity (CE) are under warranty as stipulated in article 5 of the statement of Work for NIMS Group C.
- (b) The Offerors are required to submit the certification(s) for each OEM for which they wish to offer maintenance services. The certification(s) below, must be signed by the applicable OEM(s) (not the Offeror). This certification is not required for products for which the Offeror is the OEM. A separate OEM certification is required from each OEM for which the Offeror is submitting a offer in Group C.
- (c) The Offerors and its subcontractors must collectively hold the required certifications for the provision of maintenance services for the OEM(s) for which the Offeror is submitting an offer.
- (d) No standing offer will be awarded to an Offeror, unless the applicable OEM certification(s) set out below has been provided to Canada.
- (e) OEM means the manufacturer of the hardware, as evidenced by the name appearing on the hardware and on all accompanying documentation.
- (f) CE means Controlled Entity and is defined in paragraph 7 of Appendix N.

OEM Certification for Maintenance Services

The OEM identified below hereby authorized the Offeror or the subcontractor named below to provide the following services to the Crown for CE under OEM warranty:

- Maintenance services; and
- access to all OEM support portals to access Controlled Entity (CE) technical information.

The certification is applicable Canada-wide, under any standing offer resulting from the Solicitation identified below.

Signature of authorized signatory of OEM _____

Print Name of authorized signatory of OEM _____

Print Title of authorized signatory of OEM _____

Date Signed _____

Solicitation Number	EN869-055068/E
Full Legal Name of Offeror or Subcontractor	
Full Legal Name of OEM	
Full Address of OEM	
Name of OEM's Authorized Representative	
Telephone Number of OEM's Authorized Representative	
Fax Number of OEM's Authorized Representative	

A.35 Subcontracting Certification:

- (a) If the Offeror will be subcontracting portions of the Work, the Offeror is required to provide proof that it has established a relationship with such subcontractors by way of a letter on the letterhead of the subcontractors. The letter must be signed by the subcontractor and must indicate that:
- (i) the subcontractor has agreed to perform work for the Offeror, if it is awarded a Standing Offer as a result of this solicitation; and
 - (ii) the subcontractor shall comply with the terms and conditions of the resulting Standing Offer.
- (b) A separate certification is required from each subcontractor.

A.36 SOFTWARE PUBLISHER (SP) CERTIFICATION

- (a) If the Offeror is the Software Publisher for any of the proprietary software component(s) proposed, then the Offeror should fill out the Certification Form provided below.

CERTIFICATION FORM	
SOFTWARE PUBLISHER (SP)	
By signing below the Offeror hereby certifies that it is the Publisher of the proposed software (detailed in the list below), and that it has or has obtained the rights to license the proposed software and to license any non-proprietary sub components incorporated into the software royalty free for the end user.	
<u>List all SOFTWARE products</u>	_____

Signature of the authorized signatory of the Software Publisher (SP)	_____
Print Name of the authorized signatory of the Software Publisher (SP)	_____
Print Title of the authorized signatory of the Software Publisher (SP)	_____
Date Signed	_____

- (b) If the Offeror is not the Software Publisher (SP) for any or for some of the proprietary software component proposed as part of its Offer, then the Offeror is required to submit the following Certification Form provided below, which must be signed by each Software Publisher (SP). No Standing Offer will be awarded to a Offeror who is not the Software Publisher (SP) of all of the proprietary software it proposes to supply to Canada, unless the Software Publisher (SP) certification set out below has been provided to Canada. If the proprietary software proposed by the Offeror originates with multiple Software Publishers (SPs), a separate Software Publisher (SP) certification is required from each such Software Publisher (SP).

CERTIFICATION FORM**SOFTWARE PUBLISHER (SP) CERTIFICATION**

The Software Publisher (SP), identified below, hereby authorizes the Offeror named below to provide its products, named below, under any contract resulting from the Solicitation identified below.

List all SOFTWARE products

Signature of the authorized signatory of the Software Publisher (SP)

Print Name of the authorized signatory of the Software Publisher (SP)

Print Title of the authorized signatory of the Software Publisher (SP)

Date Signed

Solicitation Number	
Name of Offeror	
Name of the Software Publisher (SP)	
Address of the Software Publisher (SP)	
Name of the Software Publisher (SP)'s Authorized Representative	
Telephone Number of the Software Publisher (SP)'s Authorized Representative	
Fax Number of the Software Publisher (SP)'s Authorized Representative	

A.37 Price Protection - Most Favoured Customer/Certification

- (a) The Offeror hereby represents and warrants that the prices to be charged to Canada under each call-up resulting from this Standing Offer will not exceed the lowest prices/rates that the Offeror has charged any **other Canadian Public Sector customer**, including the Offeror's most favored customer, for like quality

and quantity of the deliverables in the year prior to the date on which such call-up is issued.

- (b) The Offeror further represents and warrants that, for on-going deliveries pursuant to such a call-up, the prices/rates under that call-up will remain the lowest prices/rates that the Offeror has charged any other **Canadian Public Sector**, including the Offeror's most favored **public sector customer**, for like quality and quantity of the deliverables throughout the period of call-up. If the Offeror charges another **Canadian Public Sector customer** for like quantity and quality of goods or services during the period of the call-up, the Offeror shall begin charging Canada the lower rate from the first time the lower price is made available to any other customer.
- (c) At any time during the six (6) years after Canada makes the final payment under each call-up resulting from this Standing Offer or until the settlement of all outstanding claims and disputes, whichever is later, Canada reserves the right to conduct an audit of the Offeror's records pertaining to that call-up to verify that it is receiving pricing at these levels.
- (d) During such audit, the Offeror shall produce invoices and contracts for like goods or services (like quality and quantity) sold to other **Public Sector customers**. If the Offeror is obliged by statute or contract to maintain the confidentiality of another customer's information, the Offeror may black out any information on the invoices or contracts that could reasonably reveal the identity of the customer (such as the customer's name and address), as long as the Offeror provides, together with the invoices and contracts, a certification from its Senior Financial Officer regarding the profile of the customer (e.g., whether it is a public sector or private sector customer and the customer's size and service locations).
- (e) In determining whether the goods and services that have been provided to another **Canadian Public Sector customer** of the Offeror were of like quality, the terms and conditions of the contract pursuant to which the goods and services were delivered will be considered, if such terms and conditions are reasonably likely to have had a material effect on pricing.
- (f) If Canada's audit reveals that the Offeror charged lower prices for like quality and quantity of goods and services pursuant to any contract pursuant to which deliveries were made in the year prior to the date on which such call-up was issued, the Offeror shall pay to Canada the difference between the amount charged to Canada and the amount charged by the Offeror to its customer that received the lowest price for like quantity and quality of the goods/services.

Name of Firm

Representative and Title

Signature

A.38 Employment

- (a) For information purposes only, Offerors are requested to indicate the total number of full-time-equivalent (FTE) positions that will be created and maintained by the Offeror, if it were awarded a DISO.

DISO for NIMS Group C			
FTE Jobs created		FTE Jobs maintained	

SECTION 5: Conditions for Contracting

Note to Offerors: This Section contains conditions for contracting. These are conditions precedent to any standing offer award. To be considered for award of a standing offer, the Offeror must comply with all the Conditions for Contracting set out in this Section, unless the provisions set out below specifically exempt the Offeror. It is within Canada's sole discretion to determine whether or not an Offeror is exempt from a requirement; therefore, Offerors who are unclear regarding whether a requirement applies to them should submit a question in accordance with the Enquiries provision of this solicitation.

Offerors are requested to address all Conditions for Contracting in their Offers. Some of the Conditions for Contracting require the Offer to contact or apply to a third party to meet the requirement. Therefore, Offerors should initiate such processes as early in the bidding period as possible.

The Contracting Authority has the right to ask for additional information to verify or audit the Offeror's compliance to the applicable conditions for contracting before or after award of a standing offer. Failure to comply with the request of the Contracting Authority for additional information will render the offer non-compliant. Canada may declare an offer non-compliant where any applicable Condition for Contracting is not met by the Offeror. Canada is not required to delay the award of any standing offer to allow Offeror to comply with the Conditions for Contracting.

A.39 SECURITY REQUIREMENT (CIISD)

- (a) The Offeror must, at all times during the performance of the Standing Offer, hold a valid Facility Security Clearance at the level of SECRET, issued by the Canadian and International Industrial Security Directorate (CIISD), Public Works and Government Services Canada (PWGSC).
- (b) The Offeror personnel requiring access to PROTECTED/CLASSIFIED information, assets or sensitive work site(s) must EACH hold a valid personnel security screening at the level of SECRET, granted or approved by CIISD/PWGSC
- (c) The Offeror personnel requiring access to Comsec information/assets must have undergone a COMSEC briefing.
- (d) The Offeror MUST NOT remove any PROTECTED/CLASSIFIED information from the identified work site(s), and the Offeror must ensure that its personnel are made aware of and comply with this restriction.
- (e) Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of CIISD/PWGSC.
- (f) The Offeror must comply with the provision of the:
 - (i) Security Requirement Check List, attached at Appendix G.
 - (ii) Industrial Security Manual.
- (g) Subcontracts which contains security requirement are NOT to be awarded without the prior written permission of CIISD/PWGSC.

Part B: - MODEL STANDING OFFER

All of the terms and conditions and procedures contained in this Departmental Individual Standing Offer document will form part of any call-ups against the standing offer as if they were laid out in full in the call-up.

As a result of this Request for Standing Offers, Departmental Individual Standing Offers (DISOs) may be issued. All terms and conditions of the model Standing Offer will apply, unless otherwise indicated.

Note to Offerors: The clauses contained in this Model Standing Offer are intended to form the basis of any standing offer resulting from this solicitation. Except where specifically set out in this Model Standing Offer, acceptance by Offerors of all the clauses is a mandatory requirement of this solicitation. No modification or other terms and conditions included in the Offeror's offer will be applicable to the resulting Standing Offer notwithstanding the fact that the Offeror's offer may become part of the resulting Standing Offer.

Offerors submitting an offer containing statements implying that the offer is conditional on modification of these clauses or containing terms and conditions that purport to supersede these clauses will be considered non-compliant.

Offerors with concerns regarding the provisions of this Model Standing Offer should raise such concerns in accordance with the Enquiries provision of this solicitation.

If additional legal issues are raised by an Offeror's Offer, Canada reserves the right to address such issues in any Standing Offer awarded as a result of this solicitation. If the additional provisions are unacceptable to the Offeror, the Offeror may withdraw its offer.

B.1 Security Requirement

- (a) The Offeror must, at all times during the performance of the Standing Offer, hold a valid Facility Security Clearance at the level of SECRET, issued by the Canadian and International Industrial Security Directorate (CIISD), Public Works and Government Services Canada (PWGSC).
- (b) The Offeror personnel requiring access to PROTECTED/CLASSIFIED information, assets or sensitive work site(s) must EACH hold a valid personnel security screening at the level of SECRET, granted or approved by CIISD/PWGSC
- (c) The Offeror personnel requiring access to Comsec information/assets must have undergone a COMSEC briefing.
- (d) The Offeror MUST NOT remove any PROTECTED/CLASSIFIED information from the identified work site(s), and the Offeror must ensure that its personnel are made aware of and comply with this restriction.
- (e) Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of CIISD/PWGSC. Any subcontractor will require a valid Designated Organization Screening and its' personnel will require valid Reliability Status's.

- (f) The Offeror must comply with the provision of the:
 - (i) Security Requirement Check List, attached as Appendix G.
 - (ii) Industrial Security Manual.
- (g) Subcontracts which contains security requirement are NOT to be awarded without the prior written permission of CIISD/PWGSC.

B.2 International Sanctions

- (a) Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.
- (b) Details on existing sanctions can be found at:
<http://www.dfait-maeci.gc.ca/trade/sanctions-e.asp>
- (c) It is a condition of this Standing offer that the Offeror not supply to the Government of Canada any goods or services which are subject to economic sanctions.
- (d) By law, the Offeror must comply with changes to the regulations imposed during the life of the Standing offer. During the performance of the Standing offer, should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Offeror, the situation will be treated by the Parties as a force majeure. The Offeror shall forthwith inform Canada of the situation; the procedures applicable to force majeure shall then apply.

B.3 Defined Terms

- (a) Words and expressions defined in the General Conditions or Supplemental General Conditions and used in this **Standing Offer** shall have the meanings assigned to them in the General Conditions or Supplemental General Conditions.
- (b) In this **Standing Offer**, the following words and expressions have the following meanings:
 - i) The Offeror is **The entity identified on page 1 of the DISO**;
 - ii) For the purpose of this Standing Offer, wherever the words "Contract" and "Offeror" are found, they refer to the Contractual Agreement between the "Offeror" and Canada established each time an individual Call-up is made;
 - iii) "**Call-up**" means a requisition made by the Administrative Authority or the PWGSC Contracting Authority in accordance with the terms of this Standing Offer;
 - iv) "**Services**" means services listed in Appendix C and/or Appendix F (Pricing Workbook for Group A and/or B) and, with reference to a particular Call-up, means services requisitioned thereby.
- v) PPL means Published Price list. A Published Price List (PPL) can be:
 - a price list for the purchase of equipment published by the Offeror who is submitting an offer;

- a price list for the purchase of equipment published by the OEM of the product models listed in the Appendix P;
- a price list for the maintenance services of the equipment published by the Offeror who is submitting an offer; or
- a price list for the maintenance services of the equipment published by the OEM of the product model listed in Appendix P;

B.4 Applicable Laws

This Standing offer shall be interpreted and governed, and the relations between the Parties determined, by the laws in force in Ontario.

Note to Offerors: Offerors may, at their discretion, substitute the applicable laws of a Canadian province or territory of their choice without affecting the validity of their bid, by deleting the Canadian province or territory specified and inserting the Canadian province or territory of its choice or by otherwise indicating in their offers the province or territory of their choice. If no change is made, the Offeror acknowledges the applicable law specified is acceptable to the Offeror.

B.5 Standard Clauses and Conditions

(a) Standard Acquisition Clauses and Conditions (SACC) Manual:

All instructions, general terms, conditions and clauses identified herein by title, number and date are set out in the Standard Acquisition Clauses and Conditions Manual, issued by Public Works and Government Services Canada (PWGSC).

An electronic version of the Manual is available on the PWGSC Website:

<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>.

(b) Terms and Conditions of the *Standing Offer*.

Pursuant to the Department of Public Works and Government Services Act, S.C. 1996, c.16, the general terms, conditions and clauses identified herein by title, number and date, and the Particulars of the Standing Offer set out in Part B and, for the purchase of goods, the Conditions set out in Part C of standard instructions and conditions 9403-6 (2004-12-10) are hereby incorporated by reference into this Standing Offer and form part of any contract resulting from any call-up made pursuant to this Standing Offer as though expressly set out herein, subject to any other express terms and conditions herein contained.

(i) General Conditions

- (A) 9601 General Conditions – Long Form **(2005-12-16)**, which is amended by deleting Section 22 (Indemnity Against Third-party Claims) of 9601, General Conditions – Long Form.

(ii) Supplemental General Conditions

- (A) 9601-5 Support Services for Licensed Software (2005-06-10)

(B) 9601-6 Offeror to Own Intellectual Property Rights in Foreground Information (2004-12-10)

(iii) **SACC Clauses**

SACC Reference	Date	Title
B1000C	2006/06/16	Material
B1501C	2006/06/16	Electrical Equipment
C2000C	2006/06/16	Taxes - Foreign Suppliers
C2900D	2000/12/01	Taxes - Withholding of 15%

B.6 Priority of Documents

The documents specified below form part of and are incorporated into the Standing Offer and into every contract that results from this Standing Offer. If there is a discrepancy between the wording of any documents that appear on the list, the wording of the document that first appears shall prevail over the wording of any document that subsequently appears on the list.

- (a) Any call-up against this standing offer,
- (b) These articles of agreement including any individual SACC clauses incorporated into this Standing Offer by reference but excluding the Appendices .
- (c) *The following appendices for the applicable Group:*

For Group C- Maintenance Services

- (A) Appendix G: Security Requirement Check List
- (B) *Appendix N: Statement of Work for NIMS Group C - Maintenance Services.*
- (C) *Appendix O: Offeror User Guide for NIMS Group C Pricing Workbook*
- (D) *Applicable Appendix P listed below:*
 - (1) *Appendix P: Pricing Workbook for NIMS Group C for Riverbed Technology Inc.*
 - (2) *Appendix P: Pricing Workbook for NIMS Group C for Fortinet.*
 - (3) *Appendix P: Pricing Workbook for NIMS Group C for Hewlett-Packard Company .*
 - (4) *Appendix P: Pricing Workbook for NIMS Group C for McAfee Inc.*
 - (5) *Appendix P: Pricing Workbook for NIMS Group C for Avaya Inc*
 - (6) *Appendix P: Pricing Workbook for NIMS Group C for Brocade Communications Systems Inc.*
 - (7) *Appendix P: Pricing Workbook for NIMS Group C for Check Point Software Technologies Inc.*
 - (8) *Appendix P: Pricing Workbook for NIMS Group C for F5 Networks Inc.*

(9) *Appendix P: Pricing Workbook for NIMS Group C for Eaton Corporation PLC*

(E) **Appendix R: Published Price List (PPL)**

(F) **Appendix S: Maintenance Plans for Cities Regions**

(d) Supplemental General Conditions

(i) 9601-5

(ii) 9601-6

g) General Conditions 9601

h) Part B of Standard Instructions and Conditions 9403-6

i) the Offeror's Offer dated _____, as clarified by _____.

B.7 Authorities for Canada

(a) **Contracting Authority:**

The Contracting Authority is the contracting officer named on page one (1) of this Standing Offer and is responsible for the management of this Standing Offer. Any changes to the Standing Offer must be authorized in writing by the Contracting Authority. The Offeror is not to perform work in excess of or outside the scope of this Standing Offer based on verbal or written requests or instructions from any government personnel other than the aforementioned officer.

(b) **Technical Authority**

The Technical Authority is responsible for all matters concerning the technical content of the Work under this Standing Offer. Any proposed changes to the scope of the Work are to be discussed with the Technical Authority, but any resulting change can only be confirmed by a revision to a standing offer issued by the Contracting Authority.

The Technical Authority is:

Shared Services Canada (SSC)

Contact: [To be completed by SSC]

E-Mail Address: [To be completed by SSC]

Telephone: [To be completed by SSC]

Facsimile: [To be completed by SSC]

Note to Offeror: The Technical Authority will be identified at the time of standing offer award.

(c) **Administrative Authority:**

The Administrative Authority is responsible for all matters concerning the call-ups under this Standing Offer up to the limit stated herein.

The Administrative Authority is:

Shared Services Canada (SSC)

Contact: [To be completed by SSC]

E-Mail Address: [To be completed by SSC]

Telephone: [To be completed by SSC]

Facsimile: [To be completed by SSC]

Note to Offeror: The Administrative Authority will be identified at the time of standing offer award.

(d) Worksite Authority

The Worksite Authority shall be the Consignee Department representative identified in each Call-up

- (e) The preceding authorities may delegate their authority and may act through a duly appointed representative within their respective departments. Canada shall notify the Offeror of any such delegation.

B.8 Offeror's Representative(s)

- (a) The Offeror's representative for administrative matters relating to this Standing Offer is:

 [Insert Offeror's Administrative Representative's Name, Phone Number & e-mail address]

- (b) The Offeror's representative for technical matters relating to this Standing Offer is:

 [Insert Offeror's Administrative Representative's Name, Phone Number & e-mail address]

B.9 Notices

- (a) Under this Standing offer, where the Offeror is required to provide notice to Canada or the Minister, such notice shall be provided in writing to the Contracting Authority.
- (b) Under this Standing offer, where Canada or the Minister is required to provide notice to the Offeror, such notice shall be provided in writing to the Offeror's representative designated in this Standing offer.

B.10 Requirement

- (a) **For NIMS Group C - Maintenance Services**

The Offeror shall provide maintenance services for the OEM listed below, identified in Appendix N on various government networks across Canada, on an "as and when ordered basis" using the specified Call-up form. These services shall be provided across Canada but excluding the regions covered by a ratified Comprehensive Land Claims Agreements (CLCA).

- (A) Maintenance services for _____ (SSC will complete this statement by inserting the applicable name of the OEM or OEMs).
- (b) Call-ups will only be raised by the Administrative or Contracting Authorities defined herein.

- (c) Receipt of a Standing Offer does not obligate the Crown to authorize or order all or any of the goods or services, whatsoever or to spend any monies whatsoever. The Crown's liability to pay for goods or services under the Standing offer shall be limited to that which arises from Call-ups against the Standing Offer, made within the period of the Standing offer specified herein.

B.11 Period of the Standing Offer

The period for placing call-ups and rendering services against this Standing Offer shall be from the date of authorization of the Standing Offer to June 3, 2014.

B.12 Extension of the Standing Offer Period

- (a) Canada has the right to request the Offeror to extend the period for placing call-ups against this Standing Offer.
- (b) Canada may exercise this option at any time by sending a notice to the Offeror at least thirty (30) calendar days prior to the expiry date of the Standing Offer.

B.13 Extension and New Class for NIMS Group C

- (a) Extension of OEM product set
- (i) During the Period of the Standing Offer, the Offeror may propose new devices, applications and/or process not listed in the PPL provided and accepted by the Crown that these items: :
- (A) are an extension of an existing OEM product set listed in the Pricing Workbook (Appendix P):
- (B) are the next generation of an existing OEM product, if such product listed in Appendix P is no longer manufactured and supported by the OEM; or
- (C) are a new OEM product set not listed in Appendix P but falling within an existing CE Class defined in article 2.1 of Appendix N.
- (b) New Controlled Entity (CE) Class
- (i) During the Period of the Standing Offer, the Offeror may propose new Controlled Entity Classes that:
- (A) are an extension of an existing Controlled Entity Class defined in article 2.1 of the Statement of Work for NIMS Group C (Appendix N) ;or
- (B) are the next generation of an existing Controlled Entity Class.
- (C) are consisting of future devices, processes and software not listed In Appendix A but identified as *Nth CE Class* in article 2.1 of Appendix N .

- (c) The rate(s) for the new product and/or Controlled Entity shall be calculated in accordance with the basis of payment for Group C stated in article B.26.
- (d) Whether or not to accept or reject a proposed extension of product set or new Controlled Entity Class is entirely within the discretion of Canada.
- (e) If accepted, the addition of the extension of product set or new Controlled Entity Class will be documented for the administrative purposes of Canada by a revision to a standing offer, by adding the Extension of product set or new Controlled Entity to this Standing Offer.

B.14 Maintenance Services from other OEM(s) not listed in Group C

PWGSC may, at any time, conduct further Requests for Standing Offers to add maintenance services from other OEMs not presently listed in Group C, and the resulting standing offers may be incorporated into this Standing Offer. Requirements for maintenance services from other OEM(s) will be subject to an open competition posted on the Government Electronic Tendering Service. The evaluation criteria for the new OEM will be identical to the criteria contained in this RFSO # EN869-055068/E.

B.15 Identified Users

Any authorized representative of a Canadian Government Department, Agency or Crown Corporation, as defined in the Financial Administration Act, is permitted to requisition supplies and services in accordance with the terms and conditions of this Standing Offer. **All requirements must be sent to the Administrative Authority stipulated in article B7 for processing.**

B.16 Contracting Under This Standing Offer

- (a) Authorized Call-ups against this Standing Offer will be made using Form DSS-MAS 942 or other similar form, paper or electronic, as specified by the Contracting Authority. Each Call-up results in a separate contract between Canada and the Offeror.
- (b) The Offeror acknowledges that no costs incurred before the receipt of a signed Call-Up can be charged to this Standing Offer or any Call-ups made against it.
- (c) The Offeror acknowledges and agrees that the terms and conditions set out in this Standing Offer apply to every Call-up made under this Standing Offer.
- (d) Offerors will note that Canada may adopt electronic purchasing tools that could apply to this DISO.

B.17 Call-up Process and Limitations

Individual Call-Ups made by identified user pursuant to this Standing Offer must not exceed the following limits.

- (a) **For NIMS Group C**
 - (i) All call-ups up to a maximum of \$10,000,000.00 (Taxes included) will be issued by the Contracting Authority.

- (b) Multiple call-ups ARE NOT to be issued to circumvent the above limitations UNDER ANY CIRCUMSTANCES.
- (c) A call-up against the Standing Offer shall form a Contract, only for those goods and services, or both, which have been called-up, provided always that such call-up is made in accordance with the terms set-out herein.

B.18 Reports on Usage

- (a) The Offeror shall provide the Contracting Authority with a Monthly report on usage of the standing offer. This report must be provided within 20 calendar days of the last day of the preceding month and must include the following:
 - (i) A report summarizing the overall Standing Offer Activity. This report shall be in table format and include as a minimum the call-up number, the Client name, the call-up date, the equipment/services ordered with a reference to the DISO sub-category and the total call-up value.
 - (ii) A copy of each invoice applicable to each Call-up referenced in the monthly report.
- (b) All Offerors must provide this monthly report whether they receive any call-ups or not. If no call-ups were received during the period, an e-mail to the Contracting Authority indicating "No Call-Up Activity received during the reporting period" is required.
- (c) The Offeror understands that failure to comply with this condition will result in the automatic withdrawal of the authority to call-up against their Standing Offer until this condition is met.

B.19 Withdrawal of Authority to Use the Standing Offer

- (a) If during the period of the Standing Offer, the Contracting Authority becomes aware that the Offeror is in violation of the terms and conditions of the Standing Offer (e.g., either through random inspections or written complaint from any Authorized Identified User, or otherwise), Canada may withdraw authority of Identified Users to use the Standing Offer as detailed below.
- (b) Conditions which could result in the withdrawal of authority to use the Standing Offer include:
 - (i) shipment of items which are not listed or authorized on the Standing Offer;
 - (ii) price or rate revision without prior authorization by the Contracting Officer;
 - (iii) Violation of the reporting requirements;
 - (iv) Violation of the Call-up limitations as detailed herein;
 - (v) documented history of chronic poor performance.
 - (vi) violation of any of the specific terms and conditions detailed in the Standing Offer (e.g., unauthorized change in number of Agent outlets, distribution of promotional or marketing literature without authorization, etc.).
- (c) The first violation of any of the terms and conditions of the Standing Offer, as detailed herein, could result in the withdrawal of authority to use the Offeror's Standing Offer for a period of up to three (3) months based on the importance or consequence of the violation.

- (d) If a similar violation is repeated, authority to use the Offeror's Standing Offer may be withdrawn for up to the remaining period of the Standing Offer.
- (e) Each reported instance of violation will be investigated by the Contracting Authority to confirm that the Offeror is indeed in violation of the terms and conditions of the Standing Offer. Where the Crown intends to withdraw the authority to use the Standing Offer pursuant to a provision of this article, the Contracting Authority will so inform the Offeror and provide the Offeror ten (10) calendar days within which to make representations, prior to making a final decision on withdrawing the authority to use the Standing Offer.
- (f) NOTE: If the violation is the failure to provide the Report on Usage, the withdrawal is automatic (No 10 day grace period), and will commence upon reception of a written notice to the Offeror.

B.20 PROFESSIONAL SERVICES – QUALIFICATIONS & REPLACEMENT OF PERSONNEL

- (a) **Qualifications of Personnel:** The Offeror shall ensure that all personnel assigned to perform the Work under this Contract meet the level of competence described in the Statement of Work and are acceptable to the Technical Authority.
- (b) **Offeror to Ensure Performance:** The Offeror shall monitor its employees to ensure that performance is maintained to the satisfaction of the Technical Authority.

B.21 TIME VERIFICATION

- (a) Time charged and the accuracy of the Offeror's time recording system may be verified by Canada's representatives before or after payment is made to the Offeror under the terms and conditions of the Standing Offer. If verification is done after payment, the Offeror agrees to repay any overpayment immediately upon demand by Canada.
- (b) Canada shall have the right to holdback, drawback, deduct and set off from and against the amounts of any moneys owing at any time by Canada to the Offeror, any credits owing and unpaid under this article. Should Canada elect not to exercise the foregoing right at any given time, this shall not be deemed a waiver of this right nor shall it affect the right(s) described above.

B.22 Delivery

- (a) The call-ups will stipulate the Committed Due Date (CDD) for the provisions of services. In no event, the CDD shall exceed 30 calendar days from date of call-up.
- (b) In the event that the volume of services called-up exceeds or threatens to exceed the Offeror's ability to supply, the Offeror shall advise the Contracting Authority immediately so that the appropriate action can be taken.

B.23 Inspection and Acceptance

The services called-up and provided against this Standing Offer will be performed to the satisfaction of and subject to acceptance by the Identified User or an authorized representative unless otherwise specified in the DSS-MAS 942 call-up document, or similar form.

B.24 Scans for Computer Viruses

The Offeror shall electronically scan, using a regularly updated product, all information storage and retrieval disks and tapes used in the performance of the Work for computer viruses and other coding intended to cause malfunctions prior to using them on Canada's equipment. The Offeror shall immediately inform the Technical Authority if disks or tapes used for the Work are found to contain computer viruses or other coding intended to cause malfunctions.

B.25 Basis of Payment

(a) For NIMS Group C:

(i) For the provision of Maintenance services for the Controlled Entities identified in Appendix P, the Offeror shall be paid the firm current monthly recurring prices subject to downward revision in accordance with paragraph (d) below.

(A) The firm current monthly recurring prices for the Controlled Entities without OEM warranty listed in Appendix P1 shall never exceed the lower of:

- (1) The monthly recurring prices detailed in Appendix P1 less the applicable Business Volume Discount listed in Appendix P3.
- (2) The monthly recurring price calculated by applying the Percentage of PPL for Maintenance Service stipulated in Appendix P1 to the current Published Price List (PPL) less the applicable Business Volume Discount in Appendix P3.

(B) The firm current monthly recurring prices for the Controlled Entities with OEM warranty listed in Appendix P2 shall never exceed the lower of:

- (1) The monthly recurring prices detailed in Appendix P2 less the applicable Business Volume Discount listed in Appendix P3.
- (2) The monthly recurring price derived from current PPL less the applicable Offeror Discount stipulated in Appendix P2 and the applicable Business Volume Discount in Appendix P3.

The monthly recurring price derived from current PPL shall mean the monthly recurring price calculated by applying the Percentage of PPL for Maintenance Service stipulated in Appendix P1 to the current Published Price List (PPL) less the applicable Business Volume Discount in Appendix P3.

(ii) For the provision of Maintenance services for the Controlled Entities not listed in Appendix P but falling within the same Controlled Entities Classes identified in Appendix N, the Offeror shall be paid the firm current monthly recurring prices subject to downward revision in accordance with paragraph (d) below.

(A) The firm current monthly recurring prices for the Controlled Entities without OEM warranty shall equal the monthly recurring price calculated

by applying the Percentage of PPL for Maintenance Service stipulated in Appendix P1 to the current Published Price List (PPL) less the applicable Business Volume Discount in Appendix P3.

- (B) The firm current monthly recurring prices for the Controlled Entities with OEM warranty shall equal the monthly recurring price derived from current PPL less the applicable Offeror Discount stipulated in Appendix P2 and the applicable Business Volume Discount in Appendix P3.

The monthly recurring price derived from PPL shall mean the monthly recurring price calculated by applying the Percentage of PPL for Maintenance Service stipulated in Appendix P1 to the current Published Price List (PPL) less the applicable Business Volume Discount in Appendix P3.

- (C) Percentage of PPL for Maintenance Services in Appendix P1

During the period of the Standing Offer and any extension, the Offeror may offer a higher Percentage off the PPL identified in Annex Appendix P1 for the applicable maintenance plan.

- (iii) Percentage of Discount in Appendix P2

- (A) During the period of the Standing Offer and any extension, the Offeror may offer a higher discount rate than identified in Appendix P2 for the applicable maintenance plan.

- (iv) Published Price List (PPL), and Updates

- (A) Following issuance of this DISO, it is the Offeror's responsibility to update price list(s) provided with its offer. The Offeror shall provide one (1) copy of all updates to price list(s) to Contractual and Technical Authorities.

- (B) The Offeror agrees and understands that the Crown reserves the right to accept or reject any proposed price or rate revision. The Offeror agrees that no price or rate revision shall come into effect until formally authorized by the Contracting Authority in writing.

- (v) Exchange Rate Fluctuation (PPL)

- (A) As stated in this RFSO document, offers for Group C will contain a Published Price List which shall be expressed in Canadian currency. In the event that the Canadian PPL was developed using a Foreign Currency PPL, the following will apply:

- (1) The exchange rate of ____ has been used by the Offeror to develop the Canadian PPL. This exchange rate is to be based on the rate quoted by the Bank of Canada as being in effect on the date of bid closing. The ceiling prices for the DISO shall be based on the Canadian PPL submitted and remain as the effective ceiling prices for one year from the date the DISO comes into effect.
- (2) On an annual basis, where an offeror indicated in it's DISO that it's Canadian PPL was based on a Foreign Currency PPL, the

Offeror may request a revision of the Ceiling Canadian PPL based on fluctuations in the Exchange Rate. Any changes will be based on the rate quoted by the Bank of Canada as being in effect on date of the review.

(vi) The prices/rates for the option periods shall be the lesser of :

- (A) the firm current rates/prices detailed in Appendix C and/or Appendix F which are subject to downward revision in accordance with paragraph (d) below; or
- (B) The current published list price, less any applicable Government discount.

(b) **Price and Rates Revision for Firm Current Prices and Rates:**

The firm prices stipulated in paragraph (c) above are subject to downward revision in accordance with the following paragraphs (i) to (v).

- (i) The unit prices and rates payable for goods or services ordered on any Call-up will be those in effect on the Standing Offer or any subsequent revision to a Standing Offer issued by Canada, effective on the date of the Call-up.
- (ii) In the event that during the Standing Offer period a price and/or rate decrease is published or publicly announced, or the Offeror's prices and/or rates must be revised in compliance with the Article entitled "Price Protection - Most Favoured Customer", the Offeror will provide the benefit of such decreases to Canada.
- (iii) During the period of the Standing Offer where in accordance with (ii) above the Offeror is required to reduce the prices and/or rates listed in its Standing Offer, it will immediately send a notification to the Contracting Authority to reflect such a price reduction.
- (iv) The Offeror acknowledges and agrees that Canada reserves the right to accept or reject any proposed price and/or rate revisions, and that no such revisions will come into effect until formally authorized in writing by the Contracting Authority. Where the revisions are authorized, the Contracting Authority reserves the right to require the Offeror to deliver to it a revised Pricing Workbook in both hard and electronic copy
- (v) The firm current prices and rates shall never exceed the lower of:
 - (A) The unit prices detailed in the Pricing Workbook;
 - (B) The current published list prices on the date of the Call-up less any applicable Government discount(s); or
 - (C) The lowest prices/rates that the Offeror has charged any other customer for like quality and quantity of goods or services in accordance with the Article entitled "Price Protection - Most Favoured Customer".

(c) **Travel and Living:** There shall be no travel time or travel and living expenses payable for services provided. All the rates include travel and living expenses to any sites in Canada.

(d) **Transportation Charges:**

- (i) The prices and rates include all transportation charges to any sites in Canada for all services provided for Group C, except for the Return to Depot Maintenance Plan (DMP).
- (ii) The transportation charges for Return to Depot Maintenance Plan shall be paid as follows:
 - (A) The Crown shall bear the transportation costs of Controlled Entities (CEs) from the Crown's site to the Offeror's designated maintenance services depot.
 - (B) The Offeror shall paid the transportation charges of CEs from the Offeror's designated maintenance service depot to any Crown's site in Canada.
- (e) All prices and rates are FOB destination, include Canadian Custom duties and excise taxes included where applicable.
- (f) The Provincial Sales Tax is excluded to all prices and rates.
- (g) **GST/HST:**
 - (i) All prices and amounts of money in the Standing Offer are exclusive of Goods and Services Tax (GST) or Harmonized Sales Tax (HST) as applicable, unless otherwise indicated. The GST or HST, whichever is applicable, is extra to the price herein and will be paid by Canada.
 - (ii) The estimated GST/HST is included in the total estimated cost. GST/HST, to the extent applicable, will be incorporated into all invoices and progress claims and shown as a separate item on invoices and progress claims. All items that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. The Offeror agrees to remit to Revenue Canada any GST/HST paid or due.

B.26 Price Protection - Most Favoured Customer

- (a) The Offeror hereby represents and warrants that the prices/rates to be charged to Canada under each call-up resulting from this Standing Offer will not exceed the lowest prices/rates that the Offeror has charged any other **Canadian Public Sector Customer**, including the Offeror's most favored customer, for like quality and quantity of the deliverables in the year prior to the date on which such call-up is issued.
- (b) The Offeror further represents and warrants that, for on-going deliveries pursuant to such a call-up, the prices/rates under that call-up will remain the lowest prices/rates that the Offeror has charged any other **Canadian Public Sector**, including the Offeror's most favored **public sector customer**, for like quality and quantity of the deliverables throughout the period of the call-up. If the Offeror charges another **Canadian Public Sector customer** a lower price/rate for like quantity and quality of goods or services during the period of the call-up, the Offeror shall begin charging Canada the lower rate from the first time the lower price is made available to any other customer.

- (c) At any time during the six (6) years after Canada makes the final payment under each call-up resulting from this Standing Offer or until the settlement of all outstanding claims and disputes, whichever is later, Canada reserves the right to conduct an audit of the Offeror's records pertaining to that call-up to verify that it is receiving pricing at these levels.
- (d) During such audit, the Offeror shall produce invoices and contracts for like goods or services (like quality and quantity) sold to other **Public Sector customers**. If the Offeror is obliged by statute or contract to maintain the confidentiality of another customer's information, the Offeror may black out any information on the invoices or contracts that could reasonably reveal the identity of the customer (such as the customer's name and address), as long as the Offeror provides, together with the invoices and contracts, a certification from its Senior Financial Officer regarding the profile of the customer (e.g., whether it is a public sector or private sector customer and the customer's size and service locations).
- (e) In determining whether the goods and services that have been provided to another **Canadian Public Sector customer** of the Offeror were of like quality, the terms and conditions of the contract pursuant to which the goods and services were delivered will be considered, if such terms and conditions are reasonably likely to have had a material effect on pricing.
- (f) If Canada's audit reveals that the Offeror charged lower prices for like quality and quantity of goods and services pursuant to any contract pursuant to which deliveries were made in the year prior to the date on which such call-up was, the Offeror shall pay to Canada the difference between the amount charged to Canada and the amount charged by the Offeror to its customer that received the lowest price for like quantity and quality of the goods/services.

B.27 Method of Payment

- (a) Payment by Canada to the Offeror for the Work shall be made within:
- (i) thirty (30) days following the date on which all of the Work has been delivered at the delivery point specified in the Call-up(s), not the ultimate destination, and all other Work required to be performed by the Offeror under the terms of the Standing Offer has been completed; or
 - (ii) thirty (30) days following the date on which an invoice and substantiating documentation are received according to the terms of the Standing Offer;
- whichever date is the later.
- (b) If Canada has any objection to the form of the invoice or the substantiating documentation, within fifteen (15) days of its receipt, Canada shall notify the Offeror of the nature of the objection. Failure by Canada to act within fifteen (15) days will only result in the date specified in paragraph (a) of the clause applying for the sole purpose of calculating interest on overdue accounts.

B.28 Invoices

- (a) Invoices shall be submitted using the methodology outlined in the applicable Statement Of Work in Appendix N.
- (b) A copy of every invoice or credit note must be sent to the Contracting Officer at the same time as it is sent to the SSC billing group.
- (c) For joint venture, invoices shall be submitted by the Lead Member on the behalf of all member of the joint venture Offeror.

B.29 Supplemental Invoicing Instructions

- (a) Pursuant to paragraph 221 (1)(d) of the Income Tax Act, payments made by departments and agencies under applicable services contracts (including contracts involving a mix of goods and services) must be reported on a T4-A supplementary slip. To enable departments and agencies to comply with this requirement, offerors are required to provide the following information on each invoice:
 - (i) the legal name of the entity or individual, as applicable, i.e. the name associated with the Social Insurance Number (SIN) or Business Number (BN), as well as the address and the postal code;
 - (ii) the status of the Offeror, i.e. individual, unincorporated business, corporation or partnership;
 - (iii) for individuals and unincorporated businesses, the Offeror's SIN and, if applicable, the BN, or if applicable, the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) number;
 - (iv) for corporations, the BN, or if this is not available, the GST/HST number. If there is no BN or GST/HST number, the T2 Corporation Tax number must be shown; and,
 - (v) the following certification signed by the Offeror or an authorized officer:
- (b) "I certify that I have examined the information provided above, including the legal name, address, and Revenue Canada identifier, (c) or (d) as applicable, and that it is correct and complete, and fully discloses the identification of this Offeror."

B.30 Credits for non-performance by the offeror

For NIMS Group C

- (i) In the event the Offeror fails to perform the services or fails to meet the service level and availability specified in the Standing Offer, the Offeror agrees to pay to Canada the applicable credits detailed below. It is not the intention of Canada to enforce the remedies for situations resulting from an excusable delay as defined in article 12 of 9601 General Conditions.
 - (A) Maximum Time to Replace Service Credits stipulated in article 5.1.2 in **Appendix N.**
 - (B) Maximum Time On-site Service Credits stipulated in article 5.2.2 in **Appendix N.**

- (a) The Offeror shall calculate service credits on a monthly calendar basis. The Offeror shall apply the credits in the billing cycle within two (2) months following the month in which the credit were incurred.
- (b) The Parties agree that the aforesaid amount is their best pre-estimate of the loss to Canada in the event of such a failure, and that it is not intended to be, nor is it to be construed as, a penalty.
- (c) Canada shall have the right to hold back, drawback, deduct or set off from and against the amounts of any monies owing at any time by Canada to the Offeror, any credit(s) owing and unpaid under this article.
- (d) Nothing in this article is to be interpreted as limiting the rights and remedies which Canada or the Minister may otherwise be entitled to under this Standing Offer.

B.31 Disclosure of Information

The Offeror agrees to the disclosure of its standing offer unit prices or rates by Canada, and further agrees that it will have no right to claim against Canada, the Identified User, their employees, agents or servants, or any of them, in relation to such disclosure.

B.32 Shrink-wrap License

Canada does not accept, nor will it be bound by, any terms and conditions contained in a shrink-wrap license, or any other software license, express or implied, which is contained within or on the packaging of the software, regardless of any notification to the contrary. This Standing offer, including any terms and conditions incorporated by reference and any amendments made to it, forms the entire agreement between Canada and the Offeror.

B.33 Disabling Codes

- (a) If the Licensed Software contains any features, functions or characteristics ("**Disabling Code**") that might, without use of appropriate passwords, authorization codes, or similar information cause the Licensed Software to become unusable by the licensee, the Offeror shall provide to Canada, in advance, and on an ongoing basis, all such appropriate passwords, authorization codes, or similar information that Canada requires to continue to use the Licensed Software, provided that Canada is not in default under the this Standing offer with respect to its use of the Licensed Software. The Offeror shall deliver such passwords, authorization or similar information regardless of whether this Standing offer has otherwise expired (if the license is perpetual) and regardless of whether Canada is currently receiving maintenance or support in respect of the Licensed Software.
- (b) To the extent that the existence or characteristics of any Disabling Code is not known to the Offeror , but becomes known at a future date during the Standing offer Period, the Offeror agrees that it will apply maintenance and enhancements to such Disabling Code, to correct or remove such Disabling Code from the Licensed Software.

B.34 Title to Intellectual Property Associated with Licensed Software

Title to the Licensed Software and the intellectual property in any information and materials provided by the Contractor with the Licensed Software or provided or created by the Contractor in respect of any software maintenance, software development or support or consulting services

shall not be owned by or transferred to Canada, but shall be licensed to Canada in accordance with the terms and conditions set out in this Standing Offer .

B.35 9601-6 Notwithstanding Clause

- (a) Notwithstanding anything herein to the contrary, under this Standing Offer , Supplemental General Conditions 9601-6 (except for Section 1, Interpretation) shall not apply in any way to Commercial-Off-the-Shelf ("**COTS**") Software or Foreground Information or Background Information related to COTS Software.
- (b) For the purpose of this provision, "**COTS Software**" shall mean any computer code (including Firmware, and materials comprising any software product), whether in source or object code format, that is licensed on a commercial or free basis to other parties, and includes any pre-release or beta version of any such software product.
- (c) Maintenance, Upgrades, Updates, corrections, patches, bug fixes and software service support releases and enhancements to or in respect of COTS Software shall be deemed to be COTS Software.
- (d) COTS Software supplied under any call-up will be governed by the license terms in this Standing Offer applicable to such software. Nothing in this Standing Offer shall be construed as affecting the terms under which software is licensed under any other Standing Offer .

B.36 Intellectual Property Infringement

- (a) If a third party claims that equipment or software that the Offeror provides under the Standing Offer infringes any intellectual property right, the Offeror, if requested to do so by Canada, will defend Canada against the claim at the Contractor's expense. In this regard, the Offeror will pay all costs, damages and legal fees that a court finally awards, provided that Canada:
 - (i) promptly notifies the Offeror in writing of the claim;
 - (ii) co-operates with the Offeror in, and allows the Offeror full participation in, the defence and related settlement negotiations;
 - (iii) obtains the Contractor's prior approval to any agreement resulting from settlement negotiations held with the third party.
- (b) The Offeror shall participate in any claims, action or proceeding arising under Sub-article (a) and no such claim, action or proceeding shall be settled without the prior written approval of the Offeror and Canada.
- (c) If such a claim is made or appears likely to be made, Canada agrees to permit the Offeror to enable Canada, at the Offeror 's expense, to continue to use the equipment or software or to modify or replace it with equipment or software which has published specifications equal or superior to the equipment or software being replaced. If the Offeror determines that none of these alternatives is reasonably available, Canada may elect, at the Offeror's expense, to independently secure the right to continue to use the equipment or software, or Canada may require the Offeror to accept the return of the equipment or software and to refund all monies paid to the Offeror under the Standing Offer for the equipment and software, as well as all amounts paid for services and license and development fees.
- (d) The provisions under this article do not apply in situations where the Offeror was instructed by Canada to purchase a specific item of equipment or software from a specific source on behalf of Canada. In this case, the Offeror shall ensure that its

subcontract for the equipment or software states that "If a third party claims that equipment or software that the subofferor supplies under the Standing Offer infringes any intellectual property right, the subcontractor, if requested to do so by either the Offeror or Canada, will defend the Offeror and Canada against that claim at the subcontractor's expense and will pay all costs, damages and legal fees that a court finally awards." In the event that the Offeror is unable to incorporate this into its subcontract, then it shall advise Canada of the situation and not proceed with the subcontract without receiving written notice from Canada that the level of intellectual property right infringement protection is acceptable.

- (e) Without prejudice to Canada's right to terminate the Standing Offer or any resulting call-up for default prior to completion of the work, the above represents the Contractor's entire obligation to Canada regarding any claim of infringement.
- (f) The Offeror has no obligation regarding any claim based on any of the following:
 - (i) Canada's unauthorized modification of the equipment or software, or Canada's unauthorized use of the equipment or software in other than its published specified operating environment;
 - (ii) the combination, operation or use of the equipment or software with any software, data or apparatus that the Offeror did not provide under the Standing Offer, or which combination, operation or use the Offeror did not authorize or approve in advance, if infringement would not have occurred but for such combination, operation or use.

B.37 Limitation of Liability

1. Liability of Canada and the Offeror to Third Parties: Each Party to this Standing Offer and any resulting Call-up/Contract agrees it is responsible to any third party for injury or losses that the third party may suffer to the extent such Party to any resulting Call-up/Contract caused them, where the third party has a cause of action directly against that Party in respect of the injury or losses. The Parties agree that with respect to such third party claims against the Offeror, the Offeror shall be responsible for damages arising out of the injury or losses to the extent that it caused them, including those situations where Canada may be required to pay the damages caused by the Offeror as a result of joint and several liability. With respect to third party claims where the third party does not have a cause of action directly against the Party causing the damage, this Section (1) does not prevent or restrict in any way Canada's right to pursue and enforce any rights that it may have against the Offeror. In the event of any conflict between this Section (1) and any other Section of this Article, this Section (1) shall prevail.
2. Extent of Contractor's Liability for Damages: Regardless of the basis on which Canada may be entitled to claim damages from the Offeror (whether in contract, tort or any other cause of action), the Offeror is liable to Canada only for the following:
 - (a) all damages and costs resulting from intellectual property right infringement as set out in the Article entitled "Intellectual Property Infringement" (Article B.37);
 - (b) all damages for physical injury, including death, caused by the Offeror, its employees, agents or subcontractors;
 - (c) all direct damages for loss of or physical harm to tangible property and real property caused by the Offeror, its employees, agents or subcontractors;
 - (d) all damages for breach of confidentiality;

- (e) all damages arising from claims for liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada, provided that this Subsection does not apply to claims of intellectual property infringement which claims are covered in Subsection (a) above; and,
- (f) any other direct damages caused by the Offeror , its employees, agents or subcontractors in relation to this Standing Offer , including reprourement costs as defined below, and restoration of records to the extent that the Offeror fails to comply with Section 4 below, up to an aggregate maximum for this Subsection 2 (f) of the greater of 75 % times the total estimated cost, or \$2,000,000.

However, if the Call-up/ Contract is primarily for the provision of maintenance services or for the license of software, and the payments under the Call-up/Contract are to be made on a recurring basis such as an annual or monthly fee, then the aggregate maximum for this Subsection 2 (f) will be the greater of the total estimated cost times 75% divided by the total time period of the Call-up/Contract in whole years, or \$2,000,000.00.

3. The Offeror shall not be liable to Canada for the following:

- (a) damages of third parties claimed against Canada except those referred to in Subsections 2(a), (b), (c), (d) or (e) above;
- (b) harm to Canada's records or data, except for the restoration set out in Section 4 below, and subject to the limitation set out in Subsection 2(f) above; or
- (c) special, indirect or consequential damages (other than the payments referred to in Subsection 2(a) above, and the damages referred to in Subsection 2(b) above), even if the Offeror is made aware of the potential for such damages, including lost profits and lost savings.

4. Canada is responsible for maintaining adequate backup of its records and data to enable their restoration if needed for any reason. If Canada's records or data are harmed by the Contractor's or a subcontractor's negligence or willful act, the Offeror is responsible for restoring Canada's records and data to the same state as in the last available backup copy.

5. For the purposes of this Article:

- (a) total estimated cost shall mean the dollar amount shown on the first page of the Call-up/Contract in the cell titled "Total Estimated Cost";
- (b) reprourement costs shall mean all identifiable direct costs incurred by Canada to reprocur the Work with another offeror , including deinstallation and return of the Work to the Offeror , administrative costs of selecting another offeror or retendering all or part of any resulting Call-up/Contract, as applicable, and any increase in the price payable by Canada for the other Work having equivalent functionality, performance and quality; and,
- (c) the term "Contract" shall apply to stand-alone contracts, and to each call-up, purchase order and other contractual document, irrespective of its title, issued under a Standing Offer.

B.38 Insurance

(a) **Contractor's Responsibility**

- (i) It shall be the sole responsibility of the Offeror to decide whether or not any other insurance coverage, in addition to the insurance requirements stipulated in the bid solicitation and resulting standing offer, is necessary for its own protection or to fulfill its obligations under the standing offer. Any such insurance shall be provided and maintained by the Offeror at its own expense.
- (ii) The insurance provisions contained herein shall not limit any insurance required by federal, provincial or municipal law.
- (iii) To meet the insurance requirements of the Standing offer, the Offeror shall forward to the Contracting Authority, upon the execution of the Standing offer, or within ten (10) days thereof; a Certificate of Insurance containing reasonable detail of the insurance coverage, exclusions, deductibles and conditions applying to such policies and confirming that the insurance is in force to meet these requirements or, at the request of the Contracting Authority, a certified true copy of all applicable insurance policies.

(b) **Commercial General Liability (CGL)**

Commercial General Liability insurance shall be effected by the Offeror and maintained in force throughout the duration of the Standing offer, in an amount usual for a standing offer of this nature, but, in any case, for a limit of liability NOT LESS THAN \$2,000,000.00 per accident or occurrence.

(c) **CGL Endorsements**

The following endorsements must be incorporated into the conditions of the Contractor's Commercial General Liability insurance policy:

- (i) Additional Insured Endorsement: Canada is included as an additional insured, but only with respect to liabilities that may arise from the contractor's own negligence, in the performance of the standing offer.
- (ii) Notice of Cancellation Endorsement: The Insurer agrees to provide the Contracting Authority thirty (30) days written notice of policy cancellation.
- (iii) Cross Liability Endorsement: Without increasing the limit of liability, the policy shall protect all insured parties to the full extent of coverage provided. Further, the policy shall apply to each Insured in the same manner and to the same extent as if a separate policy had been issued to each.
- (iv) Joint and Several Liability Endorsement: The policy shall respond to liability arising from negligence of the insured offeror, any Insured, or joint negligence of Insured parties.
- (v) Contractual Liability Endorsement: The policy shall, on a blanket basis or by specific reference to this standing offer, extend to assumed liabilities with respect to contractual insurance provisions.

- (vi) **Contingent Employer's Liability Endorsement":** To protect the offeror for liabilities arising in the management and administration of statutory and contractual entitlements of their employees.
- (vii) **Employees and Volunteers as Additional Insured:** All employees and volunteers, on behalf of the offeror , shall be included as additional insured.
- (viii) **Voluntary Medical Payments, \$5,000 per person, \$25,000 per accident:** To provide, without contestation, for expenses incurred in instances of minor accidental bodily injuries.
- (ix) **Products and Completed Operations Broad Form:** While not limited to, the endorsement should include service, assembly and repair activities as well as material, parts or equipment furnished in connection with the work performed by the Offeror or on it's behalf.
- (x) **Independent Contractors Liability Endorsement (if any):** Unless otherwise insured elsewhere, and evidence thereof is secured by the Offeror , all subcontractors are included as Insured by the policy.
- (xi) **Non-Owned Automobile Endorsement:** To protect the offeror for liabilities arising by their use of vehicles owned by other parties including Canada.

B.39 TERMINATION FOR CONVENIENCE

Regardless of the Period stipulated in the Call-up and notwithstanding the Termination for Convenience provisions contained in Article 27 of 9601, Canada reserves the right to terminate any NIMS services being provided by the Offeror under any resulting Call-up for convenience on 30 calendar days' written notice, at no cost to Canada. In the event of any such termination, Canada's liability to the Offeror shall be limited to the payment of the unpaid service(s) that have accrued up to and including the date of termination.

B.40 Representations and Warranties

The Offeror has made statements in the offer that has resulted in the award of this Standing offer in relation to its experience and expertise. The Offeror represents and warrants that all such statements are true and acknowledges that Canada has relied on such statements in awarding this Standing offer to the Offeror .

B.41 Verification of Certifications

In the offer the Offeror submitted in response to the solicitation that resulted in this Standing offer, the Offeror provided certain certifications to Canada. The Offeror represents and warrants that all such certifications are true on the date of this Standing offer and shall remain true throughout the Standing offer Period. Canada is entitled to verify such certifications throughout the Standing offer Period. If the Offeror does not comply with any certification, or it is determined that any certification made by the Offeror in its offer is or was untrue, whether made knowingly or unknowingly, Canada shall have the right, pursuant to the default provisions of this Standing offer, to terminate the Standing offer for default.

B.42 Substitution of Offeror

- (a) This Standing Offer is not assignable or transferable and any purported assignment or transfer is void and of no effect. However, Canada may agree to issue a substitute Standing Offer where:
 - (i) a request to the Contracting Authority to issue a substitute Standing Offer is made by the original Offeror or a court appointed representative of either the original Offeror or the Lead Member of the original joint venture Offeror; and
 - (ii) the proposed substitute Standing Offer is for the same goods and services, on the same terms and conditions, and at the same prices as the offer submitted by the original Offeror.
- (b) Whether to agree to issue a substitute Standing Offer is within the sole discretion of Canada.

B.43 Conflict of Interest

- (a) The Offeror, during and after the period of performance of the Standing Offer agrees that:
 - (i) it must not bid for any contract to be let as a result of a solicitation where any work performed by the Offeror under this Standing Offer creates a real or apparent conflict of interest or unfair advantage over other potential suppliers for any resulting contract(s), and must not participate as a subcontractor or consultant in the preparation of any other Contractor's tender or proposal for such a resulting contract; and
 - (ii) it must not bid for any contract where the Offeror, in its work performed under this Standing Offer, is required to assist Canada in evaluating the bids or in overseeing performance of a resulting contract, and must not participate as a subcontractor or consultant in the preparation of any other Contractor's tender or proposal for such a resulting contract; and
- (b) If its work under the subject Standing Offer involved access to information that would for any reason create a real or apparent conflict of interest or unfair advantage over other potential suppliers for any resulting Standing Offer, the Offeror must not bid for any of that resulting Contract or participate as a subcontractor or consultant in the preparation of any other Contractor's tender or proposal for any resulting contract;
- (c) Canada will disqualify any bid from the Offeror (or any entity that either controls or is controlled by the Offeror or, together with the Offeror, is under the common control of a third party, as well as such third party) for Standing Offer as described in this clause, in respect to which Canada determines, at its sole discretion, that the Offeror's involvement in this Standing Offer, whether direct or indirect, has resulted in a real or apparent conflict of interest or unfair advantage over other suppliers for the work subject to the solicitation.

B.44 Joint Venture

To witness their agreement with the terms and conditions of this standing Offer, Her Majesty and the Offeror (by its agent, the Lead Member of the joint venture Offeror)

have signed the cover page of this standing offer. To witness that each member of the joint venture Offeror is a party to this Standing Offer and is jointly and severally and solidarily liable for the performance of all the Work, each member of the joint venture Offeror, including the Lead Member, has signed below.

[Insert Full Legal Name of Lead Member]

By its Authorized Signatory,

Print Name of Authorized Signatory: _____

Print Title of Authorized Signatory: _____

[Insert Full Legal Name of Second Member]

By its Authorized Signatory,

Print Name of Authorized Signatory: _____

Print Title of Authorized Signatory: _____

[Insert Full Legal Name of Third Member - add or subtract as many signature blocks as necessary so that each member of the Joint Venture is signing the Contract]

By its Authorized Signatory,

Print Name of Authorized Signatory: _____

Print Title of Authorized Signatory: _____

Note to Offerors: This clause will be deleted if the Offeror awarded the DISO is not a joint venture.