

# **R** E Q U E S T F O R Q U O T A T I O N

FOR

## **NetScout InfiniStream Network Monitoring Device and Support Services**

Date issued: **October 11, 2013**

Solicitation Closes: **November 1, 2013**

Solicitation File # : **201303465**

Originating Department: IT-Strategy

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Security Classification: PROTECTED

*Ce document est disponible en français sur demande*

**All requirements in this RFQ are mandatory.**

**1. SCOPE OF WORK**

Canada Mortgage and Housing Corporation (CMHC) wishes to enter into an agreement for the supply of a NetScout nGenius InfiniStream Network Monitoring Device including thirty six (36) months of Maintenance and Support.

**2. DELIVERABLES**

A complete list of goods and services are further described in the table below;

<b><u>NetScout InfiniStream 10G probe</u></b>			
<b>Hardware</b>			
<b>NetScout PN:</b>	<b>Product Description</b>	<b>Quantity</b>	<b>UOM</b>
6995/VS-3W	nGenius InfiniStream, 4-Port 10 Gigabit Configurable, 16TB	1	Unit
PFS1524-24PRT/GB-3W	nGenius 1500 Series Packet Flow Switch, 24 1GbE Ports	1	Unit
PFS1524-UPGR-LIC-3W	nGenius 1500 Series Packet Flow Switch, 4 port 10GbE Upgrade License - Upgrade 4 ports from 1Gb to 10Gb/1Gb ports on a PFS1524-24PRT/GB switch.	1	Unit
321-1279	XFP, SR, MM, 850nm, LC	2	Unit
321-1486	SFP+ MM, 10GB SR, 850nm, LC	6	Unit
321-1581	Gigabit TX Ethernet SFP (321-0434), 8-Pack	2	Unit
340-1039	Kit, Tap, 1 Line/Link Copper Ethernet 10/100/1000 Module, Redundant Power, 1U	1	Unit
340-1046	Kit, Tap, 8 Line/Link Copper Ethernet 10/100/1000 w/Redundant Power, 1U	1	Unit
321-1519	Kit, Tap Panel, 3 - Slot, Rackmount Shelf, 1U	1	Unit
<b>Maintenance and Support</b>			
<b>NetScout MasterCare Support Services</b>			
<i>Note: Please see Schedule C – Draft Agreement to obtain a clear outline of the expected service levels and categories. For the purpose of clarity the expectations have been included within the Draft Agreement as Schedule C (Maintenance and Support).</i>		36	Months

CMHC reserves the right to add additional funds (with no guarantee of volume) for complimentary Goods and/or Support Services within the final agreement for the purposes of ongoing system requirements through-out the term.

### 3. PRICE QUOTATION

The proponent must submit a fixed (firm) price relative to all of the goods/services and deliverables outlined in Section 2 (Deliverables) of this RFQ.

All prices and amounts of money are to be quoted in Canadian dollars and be exclusive of the Goods and Services Tax (GST), Harmonized Sales Tax (HST), and Provincial Sales Tax (PST), as applicable, unless otherwise indicated.

### 4. SUBMISSION INSTRUCTIONS

Proponents are required to submit their **signed** quote to EBID@cmhc-schl.gc.ca, by **November 1, 2013 2:00 pm EST**. The subject line of the transmission must state: **RFQ 201303465**.

**Please be advised that EBID has a size limitation 10 MB. It is advisable and recommended that proponents submit their quote in multiple smaller files.**

Timely and correct delivery of quotes to the exact specified quotation delivery address is the sole responsibility of the proponent. All risks and consequences of incorrect delivery of quotes are the responsibility of the proponent. CMHC will not assume or have transferred to it those responsibilities. All registered times will be in accordance with the time CMHC computer servers **receive** the submission, not the time the quotation was sent by the proponent\*. Submissions received after **November 1, 2013 2:00 pm EST** will not be accepted.

\* Please be advised that electronic transmissions may not necessarily be immediate and can experience lengthy delivery delays. Proponents should ensure that sufficient delivery time is allowed for quotations to be received.

### 5. FORMAT

Quotations may be submitted in MS Word, Lotus WordPro or Adobe Acrobat PDF in English or in French.

NOTE: In certain email programs the "Send" format may need to be specified as either "HTML" or "Plain Text". Rich Text formatted or Compressed (Zipped) documents cannot be opened by CMHC.

### 6. PROPONENT SELECTION

The policy pertaining to the selection of suppliers is based on the principle that all suppliers must be treated fairly and equally. Suppliers are defined as an individual or firm that could provide, or has provided, goods or services or construction under contract.

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CMHC utilizes the Supplier Information (SI) database, maintained by **Business Access Canada** as the Official CMHC source list. All proponents **must** be registered with **Business Access Canada** prior to submitting a proposal. The Procurement Business Number (PBN) provided by **Business Access Canada** must be included with your proposal. If you are not registered, and you wish to do so, you may access **Business Access Canada** (<https://buyandsell.gc.ca/>) or you may call their Information Line at: 1-800-811-1148). Present Suppliers not registered with Business Access Canada are required to self-register on the SI via the Business Access Canada Web site.

CMHC shall conduct the RFQ process in a visibly fair manner and will treat all proponents equitably. It is intended that the lowest cost quotation will be accepted, however, CMHC reserves the right to accept or reject any or all quotations and to verify that the supplier is able to meet the conditions outlined in the RFQ prior to awarding a contract.

Without changing the intent of this RFQ or the lead proponent's quotation, CMHC will enter into discussions with the lead proponent for the purpose of finalizing the draft contract attached hereto as Schedule A. If at any time CMHC decides that the lead proponent cannot satisfy CMHC's requirements, CMHC may terminate negotiations. If at this time CMHC feels that the secondary proponent may meet the requirements, CMHC will continue the process with the secondary proponent and so on.

Announcement of the successful proponent will be made to all proponents following the signing of a contract.

## Schedule A

### Draft Agreement



CMHC FILE No. 201303465

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN**

**CANADA MORTGAGE AND HOUSING CORPORATION**

National Office  
700 Montreal Road  
Ottawa, Ontario, Canada  
K1A 0P7

*(hereinafter referred to as "CMHC")*

**AND**

*(hereinafter referred to as "the Contractor")*

**WITNESSES THAT** in consideration of the respective covenants and agreements hereinafter contained, CMHC and the Contractor mutually covenant and agree as follows:

#### **Article 1.0 - The Work**

**1.1** The Contractor covenants and agrees to provide **NetScout nGenius InfiniStream 10 Gigabit Probe including three (3) years of Maintenance and Support** to CMHC as described in Schedule A – List of Products (*the "Goods"*) and Schedule C – Maintenance and Support (*the "Support Services"*) attached hereto.

#### **Article 2.0 - Term of the Agreement**

**2.1** This agreement shall be for a period of three (3) years commencing on \_\_\_\_\_, 2013 and ending on \_\_\_\_\_, 2016.

**2.2** Notwithstanding article 2.1 above, CMHC shall conduct on an annual basis, an assessment of the delivery of Goods and/or Support Services delivered by the Contractor over the past year. Based on this assessment, at no less than sixty (60) days prior to each year's anniversary date of signing the agreement, CMHC will advise the Contractor in writing of their decision to continue or terminate the Agreement.

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**Article 3.0 - Financial**

**3.1** In consideration of the carrying out of the delivery of Goods and/or Support Services, as described in Article 1.0, CMHC agrees to pay the Contractor an amount based on the Contractor's rates attached as Schedule B. Notwithstanding this however, CMHC's total financial liability under the terms and conditions of the Agreement shall not exceed \$ **CAD** for the term of the Agreement. Contractor's pricing provided to CMHC in their submission will form part of the Agreement and must be fixed for one year from contract award. Price increases may be negotiated for each successive renewal term.

**3.2** The amount payable to the Contractor by CMHC pursuant to article 3.1 is exclusive of all taxes, assessments, duties or other levies that may be payable under this Agreement to the Contractor, including any goods and services tax/harmonized sales tax (GST/HST) or retail sales tax (RST). No taxes, assessments, duties or other levies shall be payable to the Contractor in addition to the amount payable pursuant to article 3.1 unless specifically agreed to between the Contractor and CMHC.

**3.3** Notwithstanding article 3.2 above, GST/HST or RST, to the extent applicable and required to be collected by the Contractor, shall be collected by the Contractor on the consideration due and shown as a separate item on an invoice. Where the Contractor is required to collect the GST/HST, the invoice issued by the Contractor shall show the Contractor's GST/HST number. Where the Contractor is also required to collect the Quebec Sales Tax (QST), the invoice shall show the QST number. The Contractor shall duly remit to the Canada Revenue Agency any amounts of GST/HST collected on the consideration payable pursuant to this Contract. The Contractor shall remit to the appropriate provincial taxing authorities any amounts of RST or QST collected by the Contractor from CMHC pursuant to this Agreement.

**3.4** Invoicing - The Contractor must allow 30 days from delivery of invoice for payment without interest charges. The Contractor cannot invoice prior to performance of the Support Services and/or delivery of the Goods unless otherwise agreed in Schedule B (Pricing and Payment).

**3.5** Audit - The Contractor shall maintain proper records and accounts during the Term of the Agreement and for a period of three (3) years following the end of the Term and any renewals thereof. The Contractor agrees to allow CMHC's internal and external auditors the right to examine, at any reasonable time, any and all records relating to the services identified herein.

The Contractor agrees to provide the CMHC's internal or external auditors with sufficient original documents in order to conduct any audit procedures. Any audit may be conducted without prior notice, however the CMHC agrees to cooperate with the Contractor in the course of conducting any audit in order to avoid disruption in day-to-day operations and not to break confidentiality.

**3.6** All invoices, notices and requests for payment must make reference to this Agreement by quoting **CMHC file number 201303465** and be forwarded to CMHC at the following address:

**Company:** *To be determined*

**Address:** *To be determined*

*CMHC, at their sole discretion, reserves the right to finance the procurement of the Goods and/or Services. This section shall be populated at time of contract award.*

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## **Article 4.0 - General Terms and Conditions**

### **4.1 Contract Termination**

Notwithstanding articles 2.1 and 2.2 above, CMHC may terminate the Agreement for any reason with no penalty by giving thirty (30) days written notice, at any time during the Term of the Agreement.

Upon termination of this Agreement or upon delivery of notice of intent to terminate this Agreement, the Contractor shall promptly review all Goods and/or Support Services delivery in progress and, if this Agreement is terminated prior to the expiry of the Term, the Contractor shall nevertheless complete or arrange for the completion of any and all Goods and/or open Support Services issues in process at the time of termination.

### **4.2 Contract Administrator**

CMHC has assigned a contract administrator to oversee the Agreement (see article 5.1). The Contractor shall be expected to name a counterpart representative. The Contractor's representative will be responsible for providing scheduled status reports to the contract administrator or a designate.

### **4.3 Contract Renewal**

This Agreement is not eligible for additional renewal periods.

### **4.4 Assignment of the Agreement**

#### **MANDATORY**

The Agreement shall not be assigned in whole or in part by the Contractor without the prior written consent of CMHC, which consent may be withheld by CMHC for any reason. It is understood and agreed that the Contractor may engage other entities to assist the Contractor in providing any of the Goods and/or Support Services, provided that the Contractor shall at all times remain responsible for the provision and quality of the Goods and/or Support Services in a manner which fully recognizes and respects the confidential nature of the Goods and/or Support Services. The Contractor undertakes to advise such entities in writing that they are independent contractors, and are not employees or agents of CMHC. No assignment of the Agreement shall relieve the Contractor from any obligation under the Agreement or impose any liability upon CMHC.

### **4.5 Contractor's Indemnification**

The Contractor agrees to indemnify CMHC, and its officers for all loss, damages, costs, expenses, claims, demands, actions, suits or other proceedings of every nature and kind arising from or in consequence of the performance of this agreement, provided such loss, damages, costs, expenses, claims, demands, actions, suits or proceedings arise without negligence on the part of CMHC or its officers or employees, and whether such actions, suits or proceedings are brought in the name of CMHC or in the name of the Contractor.

### **4.6 Liquidated Damages**

No specific remedy expressed in the Agreement is to be interpreted as limiting the rights and remedies which CMHC may be entitled to under any agreement or otherwise in law.

#### **4.7 Termination For Default of Contractor**

Notwithstanding anything to the contrary in this document, CMHC may, by giving 10 days prior written notice to the Contractor, terminate this Agreement without charge with respect to all or any part of the Agreement for any of the following reasons:

- 1) The Contractor commits a material breach of its duties under this contract, unless, in the case of such breach, the Contractor, within thirty (30) calendar days after receipt of written notice of such breach from CMHC, in a manner satisfactory to CMHC in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies for any resulting damage or loss;
- 2) The Contractor commits numerous breaches of its duties under this Agreement that collectively constitutes a material breach;
- 3) A change in control of the Contractor where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Contractor are acquired, by any entity, or the Contractor is merged with or into another entity to form a new entity, unless the Contractor demonstrates to the satisfaction of CMHC that such event will not adversely affect its ability to perform the Goods and/or Support Services under this contract;
- 4) The Contractor commits fraud or gross misconduct; or
- 5) The Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or any assignment is made for the benefit of the creditors, or if an order is made or a resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any Statute for the time in force relating to bankrupt or insolvent debtors.

In the event of a termination notice being given under the provisions of this section, and subject to the deduction of any claim which CMHC may have against the Contractor arising out of the Agreement or out of termination, payment will be made within thirty (30) days of the date of the invoice from CMHC to the Contractor for the value of all Goods and/or Support Services delivered and accepted by CMHC, such value to be determined in accordance with the rate(s) specified in the Schedule B (Pricing and Payment) of this Agreement.

#### **4.8 Procedures on Termination**

Commencing six (6) months prior to expiration of this Agreement or on such earlier date as CMHC may request, or commencing upon any notice of termination or non-renewal of this Agreement, the Contractor shall provide to CMHC, the reasonable termination /expiration assistance requested by CMHC to allow the delivery of Goods and/or Support Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Goods and/or Support Services to CMHC or its designee.

#### **4.9 Non-Compliance or Default by Contractor**

If the Contractor fails to comply with a direction or decision of CMHC properly given under the terms of the Agreement, or is in default in any other manner under the Agreement, CMHC may do such things and incur such costs as it deems necessary to correct the Contractor's default, including without limitation the withholding of payment due or accrued due to the Contractor for Goods and/or Support Services rendered pursuant to this Agreement, which moneys may be set off by the CMHC against any expenses that it may incur in remedying a default or failures as described above.

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#### **4.10 Force Majeure**

In the event that the Contractor is prevented from fulfilling its obligations under the terms of this Agreement by a force majeure or act of God (an event or effect that cannot be reasonably anticipated or controlled), the Contractor shall notify CMHC in writing, within the shortest period of time. The said written notice shall be sent by registered mail and shall state the factors that constitute a force majeure or an act of God. Without limiting the application of the above, the following shall constitute cases of force majeure: war, serious public disturbances, all impediments arising from orders or prohibitions of public authority, acts of God, actions of public enemies, strikes, lockout and other labour disputes, riots, flooding, hurricane, fire, explosion or any other natural disasters over which the Contractor has no reasonable control.

The Contractor shall take all reasonable means to resume fulfillment of its obligations. If this is not possible, CMHC may to the extent it deems necessary secure the services of other qualified Contractors without compensation or obligation to the Contractor.

#### **4.11 Compliance With Laws**

The Contractor shall give all the notices and obtain all the licenses and permits required to perform the Goods and/or Support Services. The Contractor shall comply with all the laws applicable to the Goods and/or Support Services or the performance of the contract.

#### **4.12 Provincial Laws Governing Agreement**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Failure by either party to assert any of its rights under the agreement shall not be construed as a waiver thereof.

#### **4.13 Independent Contractor**

The Contractor shall act as an independent contractor for the purposes of this contract. It and its employees, officers and agents are not engaged as employees of CMHC. The Contractor agrees to so advise its employees, officers, and agents. Without limiting the generality of the foregoing, the Contractor shall retain complete control of and accountability for its employees and agents. The Contractor shall prepare and process the payroll for its employees directly, and shall withhold and/or pay all applicable employment taxes and payroll deductions required in respect of its employees. All personnel shall, at all times, and for all purposes, be solely in the employment of the Contractor.

#### **4.14 Contractor's Authority**

The Contractor agrees that it has no authority to give any guarantee or warranty whatsoever expressed or implied on behalf of CMHC and that it is in no way the legal representative or agent of CMHC and that it has no right or authority to create any obligation on behalf of CMHC or to bind CMHC in anyway.

#### **4.15 Corporation Identification**

It is agreed that the Contractor will make no use whatsoever of CMHC's name, logo or initials without the express written consent of CMHC.

#### **4.16 Intellectual Property Rights**

All material, reports and other work product produced under this Agreement will be the sole property of CMHC. The Contractor warrants that the Contractor is the only person who has or will have moral rights

in the material created by the Contractor and supplied under this Agreement and the Contractor hereby waives in favour of CMHC all of the Contractor's moral rights in the material, as provided for in the law of copyright. Upon the material coming into existence, the Contractor agrees to execute any document requested by CMHC acknowledging CMHC's ownership of the material and work product and the waiver of the Contractor's moral rights therein.

#### **4.17 Non-Disclosure of CMHC Information**

Under this section, "CMHC Information" refers to any and all information which is managed, accessed, collected, used, disclosed, retained, received, created or disposed of in order to fulfill the requirements of the Agreement, however obtained. Without limiting the generality of the foregoing, CMHC Information includes data held in any type of electronic format and information provided directly, indirectly or through third parties to the Contractor, subcontractor, reseller, agent or any other person engaged to deliver the Goods and/or Support Services under the contract.

The Contractor acknowledges and understands that all CMHC Information is subject to Canadian laws on privacy and access to information under which CMHC is bound and that CMHC considers CMHC information to be under its custody and control of all times.

The Contractor further understands and agrees to treat all CMHC Information as proprietary, confidential and sensitive unless otherwise specifically agreed to in writing by CMHC. The Contractor shall restrict access to CMHC Information to only those individuals who need to know this information in order to deliver the Goods and/or Support Services under the Agreement.

The Contractor shall ensure that CMHC Information shall remain in Canada and expressly agrees to segregate CMHC Information (whether in electronic format or in hard copy) from any other information in a database or repository physically independent from all other databases or repositories. Without limiting the generality of the foregoing, the Contractor shall not and shall ensure that any subcontractor, reseller, agent or any other person engaged to perform any part of the Goods and/or Support Services does not release, share or otherwise divulge CMHC Information to any other person including subsidiaries, branch offices, partners of the Contractor or subcontractors without the prior written consent of CMHC.

#### **4.18 Confidentiality**

#### **MANDATORY**

The Contractor agrees that all records and information obtained by the Contractor on behalf of CMHC will be kept confidential to the extent required by federal Access to Information and Privacy Legislation or provincial law.

- 1) The Contractor or its servants or agents will treat as confidential during, as well as after completion of, the contract, all information relating to the affairs of CMHC of which it acquires knowledge as a result of its engagement hereunder.
- 2) The Contractor shall, at the request of CMHC, provide an Oath of Secrecy for each of its employees or persons engaged in carrying delivering the Goods and/or Support Services, in a form prescribed by CMHC.
- 3) Any documents provided to the Contractor in the performance of the Goods and/or Support Services described herein shall be returned, un-copied to CMHC or destroyed by the Contractor within 6 months of the termination of this contract. For documents not returned to CMHC, the Contractor shall provide specific proof under oath of their destruction.

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#### **4.19 House of Commons**

No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising there from.

#### **4.20 Binding**

This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

#### **4.21 Scope of Agreement**

This Agreement contains all of the agreements of the parties hereto and no other representations or warranties, verbal or otherwise, exist between the parties except those set out herein or attached as specifications, conditions and addendum. In case of conflicts between the Contractor's documents and CMHC's documents, the latter shall govern.

#### **4.22 Income Tax Reporting Requirement**

As a federal Crown Corporation, CMHC is obliged under the Income Tax Act and Regulations to report payments made by CMHC to suppliers of goods and/or services by using a T1204 supplementary slip. CMHC must therefore obtain the necessary information from suppliers (including the Contractor's social insurance number and/or corporate identification number) in order to allow it to complete the T1204 supplementary slip. The Contractor will be required to complete and sign a Supplier - Direct Deposit and Tax Information Form (CMHC/SCHL 3085) prior to execution of this Agreement.

#### **4.23 Conflict of Interest**

#### **MANDATORY**

- (a) The Contractor and its principals, employees and agents shall avoid any conflict of interest during the term of this Agreement and shall immediately declare any existing, potential or apparent conflict and shall, upon direction of CMHC, take steps to eliminate any conflict or perception that a conflict of interest exists.
- (b) The Contractor must not provide any Goods and/or Support Services to any third party in circumstances that might reasonably give rise to a conflict of interest, including a conflict between the Contractor's duties to that third party and the Contractor's duties to CMHC.
- (c) In the event that a conflict of interest, real or perceived, cannot be resolved to the satisfaction of CMHC, CMHC shall have the right to immediately terminate the Agreement. All portions of the Goods and/or Support Services which have been completed at the date of termination shall be forwarded to CMHC and CMHC shall be liable for payment to the Contractor of an amount which, in the sole opinion of CMHC, constitutes reasonable payment for the partial performance of the Contractor's obligations under the Agreement. Upon such payment, CMHC shall have no further obligation of any nature or kind to the Contractor.
- (d) Any former public office holder must be in compliance with the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders (2006) in order to derive a direct benefit which may arise from this Agreement.

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#### 4.24 Final Report

- (a) Where a final report is to be prepared, it shall be in a form acceptable to CMHC and suitable for reproduction or publication. More particularly,
  - (i) the body of the report shall include the main factual and analytical information and policy recommendations shall be separated to minimize potential restriction;
  - (ii) policy recommendations and supporting materials (bibliographies, data, etc.) shall be attached as appendices or separate monographs; and
  - (iii) the report shall stipulate that the copyright remains with CMHC.
  
- (b) The Contractor will supply,
  - (i) the unbound original manuscript from which the copies of the final report were made, in a form suitable for reproduction (215 x 280 mm, preferred size);
  - (ii) an executive summary of the main findings and recommendations of the final report;
  - (iii) an abstract describing the contents of the final report and the nature of the study in a form suitable for distribution to interested members of the housing field;
  - (iv) six (6) copies of the final report and of the executive summary, unless otherwise directed by CMHC;
  - (v) a computer disk or other media which CMHC may prescribe, in accordance with CMHC's computer installation standards; and
  - (vi) one copy of all material of which CMHC has ownership and publication rights in the form in which it was used by the author.

#### 4.25 Publication

- (a) CMHC
  - (i) is under no obligation to publish all or part of the final report or its associated materials, reports, maps and other documents;
  - (ii) has the right to edit or publish the final report, in part or in its entirety;
  - (iii) shall be the sole judge of those parts of the final report, or those materials and reports, that it considers for publication; and
  - (iv) may, at its discretion, delete references to the Contractor in the edited version of the final report.
  
- (b) Where the Contractor wishes to publish the final report or its associated materials, the Contractor
  - (i) must request written permission from CMHC to publish all or part of the final report;

- (ii) must request written permission from CMHC to use any materials, publications and reports associated with the final report;
- (iii) must acknowledge the assistance of CMHC and, if requested by CMHC must include the following disclaimer:

“This project was funded (or: partially funded) by Canada Mortgage and Housing Corporation (CMHC), but the views expressed are the personal views of the author(s) and CMHC accepts no responsibility for them”; and

- (iv) must clearly indicate on the published material that copyright remains with CMHC.

#### **4.26 Acceptance of Goods and/or Support Services**

All Goods and/or Support Services supplied under this Agreement are subject to inspection and acceptance by CMHC within a reasonable time after receipt thereof. Before advancing any amount to the Contractor, CMHC will notify the Contractor in writing of the rejection of any Goods and/or Support Services delivered which are not in accordance with the description or specifications stipulated in this Agreement. In instances of rejected Goods, such Goods will be held at the Contractor's risk for disposition by it and subject to all charges accruing as a result of such rejection.

In the event the delivery of the Goods and/or Support Services is not acceptable to CMHC, CMHC may take such action as it deems necessary to correct the Contractor's default, including, without limitation, the following:

- (a) direct Contractor to replace and/or rework the Goods and/or Support Services or part of the section which was not completed to CMHC's satisfaction;
- (b) withhold payment due or accrued due to the Contractor for Goods and/or Support Services rendered pursuant to this Contract;
- (c) set off any expenses incurred by CMHC in remedying the default or failures of Contractor against payment for payment due or accrued due to the Contractor;
- (d) terminate this Agreement for default and /or seek indemnification from the Contractor for losses suffered by CMHC as a result of such default.

#### **4.27 Ownership**

- (a) The quarterly reports and any other reports prepared exclusively for the Corporation shall remain the property of the CMHC and all copyrights thereto are the property of the CMHC and neither the Contractor nor its servants or agents shall divulge, release or publish any such documentation.
- (b) Any and all other information relating to CMHC and obtained by the Contractor during the course of execution of its duties under this Agreement shall remain the property of the CMHC and shall not be used in any way or disclosed to anyone without the prior written consent of the CMHC.

#### 4.28 Insurance

- (a) The Contractor will provide and maintain Commercial General Liability insurance for a limit of \$2,000,000 per occurrence for bodily injury, or damage to property including loss of use of such property. This policy shall include the following extensions:
- cross liability including severability of interest clause
  - blanket contractual liability
  - CMHC to be added as additional insured
  - broad form completed operations (required if contractor is doing physical work, e.g. painting, welding, flooring, etc.)
  - non-owned automobile
  - employer's liability (or confirmation that all employees are covered by WSIB)
  - contractor's liability to include operations of independent contractors (if not provided then each subcontractor must provide a Certificate of Insurance confirming that they have liability insurance as detailed in the RFP)
  - thirty (30) days prior written notice of cancellation to Risk Management Consultant, 700 Montreal Road, Ottawa, Ontario K1A 0P7
- (b) The Contractor will provide and maintain Professional Liability insurance for a limit of not less than \$1,000,000. The policy will provide thirty (30) days prior written notice of cancellation to Risk Management Consultant, 700 Montreal Road, Ottawa, Ontario K1A 0P7. Coverage is to include Contractors employees and Contractors contract employees (if applicable) as named insureds.
- (c) The Contractor will provide a Certificate of Insurance at least five (5) days prior to the Agreement commencement date confirming the above insurance policies and evidencing that coverage has been placed with an Insurer licensed to do business in Canada. Upon receipt of the Certificate of Insurance CMHC reserves the right to request a Certified copy of the Contractors policy for review.

It shall be the sole responsibility of the Contractor to decide whether or not any other insurance coverage, in addition to the insurance requirements stipulated herein, is necessary for its own protection or to fulfill its obligation under the contract. Any such additional insurance shall be provided and maintained by the Contractor at its own expense.

#### 4.29 Access to CMHC Property

CMHC agrees to permit access by the Contractor's employees onto CMHC premises for the purpose of fulfilling its obligations as per the terms of this Agreement. However, CMHC reserves the right to refuse entry of Contractor's personnel in cases of emergencies. CMHC also will have the right at any time to remove from and/or refuse entry to the work site any incompetent or intemperate employee who violates CMHC Safety and/or Security regulations or interferes with CMHC operations at the site.

The Contractor shall be fully responsible to CMHC for the acts and omissions (including negligence) of its subcontractors and of persons directly or indirectly engaged by such subcontractors as if such acts and omissions were those of the Contractor.

#### 4.30 Suspension of Delivery of Goods and/or Services and Changes in Specifications

CMHC may, at any time and from time to time, order a suspension of delivery of the Goods and/or Support Services in whole or in part, and make modifications of, changes in or additions to the

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specifications of the type of Goods and/or Support Services offered and methods of delivery. All directions given by CMHC in writing with respect to the foregoing shall be complied with by the Contractor. If any such suspension, modification, change or addition shall result in an increase or decrease in the cost of the Goods and/or Support Services, the Agreement price shall be adjusted accordingly provided that the Contractor shall in no event be entitled to compensation for any loss of anticipated profits and provided further that minor increases or decreases in cost shall be disregarded.

#### **4.31 Extras**

Except as otherwise provided in the contract, no payment for extras shall be made unless such extras and the price thereof have been authorized in writing by CMHC

#### **4.32 Closure of CMHC Offices**

- (a) Where Goods and/or Support Services is being provided by the Contractor pursuant to this Agreement on CMHC premises and the premises become inaccessible due to evacuation or closure because of events or circumstances beyond the control of CMHC, and where the health or safety of persons on the premises may be reasonably determined by CMHC, in its sole judgment, to be at risk, payment to the Contractor hereunder may be suspended or modified. Payment will be suspended in full after forty eight (48) hours written notice unless the Contractor provides satisfactory evidence to CMHC that the Contractor will continue to incur monetary obligations to others directly as a result of its undertakings under this Agreement and is unable to mitigate its losses due to such obligations. Based on such evidence and the extent to which the Contractor is able to mitigate, CMHC may continue payment in full (subject to clause (b) below), or at a reduced amount, or suspend payment completely.
- (b) Notwithstanding clause (a) above, if closure is continued beyond one calendar week, payment under this Agreement may be suspended in full immediately, on further written notice to the Contractor, until reopening permits delivery of the Goods and/or Support Services to continue.

**Article 5.0 - Contract Administration**

**5.1** The Contractor shall be notified in writing by CMHC's contract administrator, of the names of CMHC representatives authorized, from time to time, to assign jobs and approve payments with respect to delivery of Goods and/or Support Services carried out under this contract.

**5.2** Changes and/or additions to the terms and conditions of this Agreement shall be transmitted either by fax, e-mail or postal service to the party's authorized representative as follows:

**for CMHC;**

**Canada Mortgage and Housing Corporation**

700 Montreal Road  
Ottawa, Ontario Canada  
K1A 0P7

Tracy Corrigan, Senior Contracts Analyst  
Phone: (613) 748-2534;  
e-mail: [tcorriga@cmhc-schl.gc.ca](mailto:tcorriga@cmhc-schl.gc.ca)

**for Contractor;**

**Article 6.0 - Contract Documents**

**6.1** The Agreement documents consist of the following:

- (a) This form of Agreement as executed \_\_\_\_\_;
- (b) CMHC's Request for Proposal dated \_\_\_\_\_;
- (c) The Contractor's submitted Proposal dated \_\_\_\_\_; and

together with all written change notices issued by CMHC hereunder and such further specifications and documents as the parties may agree in writing.

**6.2** The Agreement documents are complementary and what is called for in any one shall be binding as if called for by all. The Agreement documents shall be interpreted as a whole and the intent of the whole rather than the interpretation of any particular part shall govern. In the event of a conflict between them, the Agreement documents shall have precedence among themselves in the order as listed above.

**IN WITNESS WHEREOF** this agreement has been signed by the parties hereto by their duly authorized signing officers.

	<b>CANADA MORTGAGE AND HOUSING CORPORATION</b>
_____ <i>Signature</i>	_____ <i>Signature</i>
_____ <i>Print</i>	_____ <i>Print</i>
_____ <i>Title</i>	_____ <i>Title</i>
_____ <i>Date</i>	_____ <i>Date</i>

**Schedule A**

**List of Products**

<b>Part No</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Delivery Date</b>

**1. DELIVERY DATE**

Unless instructed otherwise, delivery of the Goods hereunder shall be made free and clear of all liens and encumbrances, in the manner and to the destination stipulated, by the delivery date indicated referenced in the table above. CMHC reserves the right to refuse pre-shipment and, in addition to any other remedy or remedies which CMHC may have, CMHC reserves the right to cancel this order in whole or in part if deliveries are not made as stipulated in this Agreement. Time shall be of the essence of this Agreement.

**2. WARRANTY**

The Contractor warrants and guarantees the Goods supplied under this Agreement are fit for the particular purpose or use for which they are purchased by CMHC and will perform in accordance with specifications. The Contractor further warrants and guarantees the Goods against any and all defects in material, workmanship or design. This warranty and guarantee is in addition to any and all warranties and guarantees of the Contractor arising by operation of law and nothing contained herein shall be construed as limiting or restricting such warranties or guarantees or any right or remedy which CMHC may have.

**3. PATENTS**

The Contractor warrants and guarantees that Goods and/or Support Services delivered under this Agreement do not infringe any valid patent, copyright, trade mark or industrial design, foreign or domestic, owned or controlled by any other corporation, firm or person.

**4. DAMAGES AND SHORTAGES**

Damages or shortages of any sort caused by or ascribable to the Contractor's activities shall be made good or paid for by the Contractor as detailed below:

- (a) Goods lost or damaged beyond reasonable repair shall, at the option of CMHC, either be replaced by the Contractor with matching items in acceptable condition, or be paid for by the Contractor on the basis of a reasonable evaluation.
- (b) Damaged items that can be made good by repairs shall be so made good by expert workmen at the Contractor's expense without delay and to the satisfaction of CMHC.

## Schedule B

### Pricing and Payment

#### 1. Pricing

CMHC shall reimburse the Contractor for accepted Goods and/or Support Services in accordance to Section 4.26 (Acceptance of Goods and/or Support Services) of the Agreement at the rates outlined below for the Term of the Agreement;

Goods					
Part Number	Description	Unit of Measure	Quantity	Unit Price	Total Extended Price
Maintenance and Support					
<b>Total</b>					\$

#### 2. Payment

Contractor shall invoice for time monthly as incurred. CMHC shall pay invoices for approved Goods and Support Services within thirty (30) days of invoice receipt (as outlined in Section 3.4 of the Agreement).

Invoices should reflect detailed information including, at a minimum;

- Contractor Invoice No.
- Date of Issue
- Item description
- Unit of Measure
- Unit Cost
- Contract File Number
- Relevant Maintenance Term (*if applicable*)

**Note:** Invoices submitted which do not have the level of detail for CMHC to audit the invoice in accordance to the terms and rates outlined in the Agreement shall be returned unpaid to the Contractor. The Contractor agrees to revise the invoice and include the required detailed supporting information and reissue to CMHC.

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## Schedule C

### Maintenance and Support

#### NetScout MasterCare<sup>SM</sup> Support

##### 1. MasterCare Support Summary

NetScout's MasterCare Support services are provided from five technical support centers located around the globe for extensive technical support coverage. They are staffed with qualified support engineers who are extensively and continuously trained and certified on our products and technology and committed to quality and customer satisfaction. The MasterCare support package shall provide CMHC;

- 24x7 access to award-winning technical support from SSPA-certified NetScout support engineers;
  - Live phone support 8:00 am – 8:00 pm EST for North America and 8:00 am – 5:00 pm local time for all other regions; after hour service for Severity 1 issues by telephone only)
- One hour priority response on technical support calls;
- Access to software and firmware updates for covered products;
- Increased investment protection with advanced replacement or onsite repair of hardware;
  - Advanced replacement is not available on all hardware models. Subject to parts availability and geographical restrictions.
- Registered access to self-help on the MasterCare portal for technical answers anytime;
- Up-to-date knowledge transfer and best practices via NetScout's online learning center;
- Free subscriptions to the MasterCare newsletter and bulletins;
- 50% off unlimited registrations to NetScout's User Forum (NUF) conference.

##### 2. MasterCare Portal

CMHC shall be granted access to the MasterCare Portal (included with the MasterCare support package) providing CMHC the ability to work more efficiently. It is available twenty four (24) hours a day seven (7) days a week and provides a vast array of information, resources, and self-help tools, including:

- Online submission and tracking of support tickets and product enhancement requests;
- Download center for NetScout software and firmware, and third-party integration resources, as well as enhancements, experts/decodes and patches;
- Complete library of product documentation and online help including comprehensive information on configuring, customizing, using and migrating each product;
- White papers, technical overviews and product videos providing background information on new product features and best practices;
- Repository of Sniffer<sup>®</sup> University recorded learning modules offering additional insight into effective product use and your options for classroom training.

##### 3. Sniffer University Learning Community

CMHC shall have unlimited access to the Sniffer University Learning Community, which offers a comprehensive library of interactive learning modules and documentation designed to give you the knowledge and skills you need to better deploy and utilize the NetScout solution. Materials include:

- "What's New" summaries for product releases
  
- "Getting Started" guides for new product users

- Technical overview documents and tutorials for self-paced learning
- Product manuals for quick reference
- Technical white papers for detailed feature explanations

#### 4. Comprehensive Support

- **Preventative Support:**  
 Superior product architecture/configurations, best practices, production support and effective feedback programs.
- **Proactive Support:**  
 Problem alerts, patch and release planning, knowledge transfer and management, and advanced support through Technical Account Managers (TAM), On-Site Engineers (OSE) and Remote Site Engineers (RSE).
- **Reactive Support:**  
 24x7 availability to fast answers, fast escalations, and frequent follow-up with engineering involvement, as required. By providing comprehensive and extended product lifecycle support, MasterCare lowers the total cost of ownership and keeps the network running smoothly.

#### 5. Service-Level Guidelines

	Description	Response Time
<b>Severity 1</b>	NetScout product completely down with no workaround	1 hour or less <sup>1</sup> Daily follow up
<b>Severity 2</b>	Functional outage with no workaround	1 hour or less <sup>2</sup> Follow up 2x per week
<b>Severity 3</b>	Functional or system outage with acceptable workaround	1 hour or less <sup>2</sup> Follow up as required
<b>Severity 4</b>	Minor problem such as cosmetic or simple workaround; product question for general information request	1 hour or less <sup>2</sup> Follow up as required
<b>Severity 5</b>	Enhancement request	5 business days Follow up as required

<sup>1</sup> After NetScout normal business hours available only via phone

<sup>2</sup> During NetScout normal business hours

#### 6. Escalation Process

	Primary Support	Second Level Support	Product Specialists	Engineering
<b>Severity 1</b>	Immediate	Immediate	1 Day	Until Resolution
<b>Severity 2</b>	5 Days	5 Days	10 Days	Until Resolution
<b>Severity 3</b>	5 Days	Until Resolution		
<b>Severity 4</b>	10 Days	Until Resolution		

\* Advanced replacement is not available on all hardware models. Check [www.netscout.com/support](http://www.netscout.com/support) for details. Onsite repair may be provided by a third party and subject to parts availability and geographical restrictions. Same day service is not available in all areas. Service timing is dependent upon the time of day that NetScout initiates a call to the third party providing the onsite repair.

\*\* Live phone support 8:00 am – 8:00 pm EST for North America and 8:00 am – 5:00 pm local time for all other regions; after hour service for Severity 1 issues by telephone only.