

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

FOR

**F5 Networks - Load Balancer Equipment  
and Software Maintenance Services**

Date issued: **November 25, 2013**

Solicitation Closes: **December 9, 2013**

Solicitation File # : **201304305**

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 Premium Maintenance and Support for existing F5 Networks Equipment and Software.

**2. DELIVERABLES**

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

<b>F5 Networks Equipment and Software Maintenance</b>					
<b>F5 Networks PN:</b>	<b>Product Description</b>	<b>Covered Product/Customer</b>	<b>Appliance SN</b>	<b>QTY</b>	<b>UOM</b>
F5-SVC-VPR-PRE-L1-3	VIPRION SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-VPR-GTM	chs402909s	12	months
F5-SVC-VPR-PRE-L1-3	VIPRION SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-VPR-GTM	chs402897s	12	months
F5-SVC-BIG-PRE-L1-3	BIG-IP SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-BIG-GTM	ZPIVAMLW	12	months
F5-SVC-BIG-PRE-L1-3	BIG-IP SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-BIG-GTM	ZYIFHMGK	12	months
F5-SVC-BIG-PRE-L1-3	BIG-IP SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-BIG-GTM	ZYMTZTFG	12	months
F5-SVC-BIG-PRE-L1-3	BIG-IP SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-BIG-GTM	ZSQXICTO	12	months
F5-SVC-BIG-PRE-L1-3	BIG-IP SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-BIG-GTM	f5-oayw-mqga	12	months
F5-SVC-BIG-PRE-L1-3	BIG-IP SERVICE: PREMIUM, (LEVEL 1-3)	F5-ADD-BIG-GTM	f5-oykk-lcdl	12	months
F5-SVC-EM-VE-PREL13	EM VE SERVICE: PREMIUM, (LEVEL 1-3)	F5-EM-VE	ZXTPGKCI	12	months
F5-SVC-VPR-PRE-L1-3	VIPRION SERVICE: PREMIUM, (LEVEL 1-3)	F5-VPR-LTM-B2100	bld404436s	12	months

CMHC reserves the right to add additional products for the purposes of ongoing system requirements through-out the term of any ensuing Agreement.

**3. PRICE QUOTATION**

The proponent must submit a fixed (firm) price relative to all of the services and deliverables outlined in Section 2 (Deliverables) of this RFQ in the blank table listed in Schedule “B” which will form part of any ensuing Agreement. CMHC acknowledges that any product(s) not specified at contract award but added during the term of any ensuing Agreement to meet ongoing system requirements may incur additional costs to CMHC and revenues to the successful proponent. There is no guarantee that CMHC may need additional product(s) added.

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.

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#### 4. SUBMISSION INSTRUCTIONS

Proponents are required to submit their **signed** quote to EBID@cmhc-schl.gc.ca, by **December 19, 2013 2:00 pm EST**. The subject line of the transmission must state: **RFQ 201304305**.

**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 **December 19, 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.

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,

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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.

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## Schedule A

### Draft Agreement



CMHC FILE No. 201304305

**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 **Premium Maintenance and Support for existing F5 Networks Equipment and Software** to CMHC as described in Schedule A – List of Products (Premium 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 one (1) year commencing on \_\_\_\_\_, 2013 and ending on \_\_\_\_\_, 2014.

#### **2.2 Assessment of Performance**

CMHC may conduct one or more interim assessments of the Contractor's Work performed during a given period and based on this assessment, CMHC may advise the Contractor in writing of their decision to continue or terminate this Agreement in accordance with Article 4.1 or 4.7.

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**Article 3.0 - Financial**

**3.1** In consideration of the carrying out of the delivery of 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.

**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 thirty (30) business days from delivery of invoice for payment without interest charges. The Contractor cannot invoice prior to performance of the Support Services 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 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 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 201304305 / 126720** and be forwarded to CMHC at the following address:

***Company: To be determined***

***Address: : To be determined***

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

### **4.1 Contract Termination**

Notwithstanding articles 2.1 and 2.2, 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 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 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 Support Services, provided that the Contractor shall at all times remain responsible for the provision and quality of the Support Services in a manner which fully recognizes and respects the confidential nature of 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**

1. This section applies despite any other provision of the Agreement. Any reference in this section to damages caused by the Contractor also includes damages caused by its employees, as well as its subcontractors, agents, and representatives, and any of their employees. This section applies regardless of whether the claim is based in contract, tort, or another cause of action. The Contractor is not liable to CMHC with respect to the performance of or failure to perform the Agreement, except as described in this section and in any section of the Agreement pre-establishing any liquidated damages. The Contractor is only liable for indirect, special or consequential damages to the extent described in this section, even if it has been made aware of the potential for those damages.
2. First Party Liability:
  - (a) The Contractor is fully liable for all damages suffered by CMHC, including indirect, special or consequential damages, caused by the Contractor's performance or failure to perform the Agreement that relates to:
    - (i) any infringement of intellectual property rights;

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- (ii) physical injury, including death.
  
  - (b) The Contractor is liable for all direct damages caused by the Contractor's performance or failure to perform the Agreement affecting real or tangible personal property owned, possessed, or occupied by CMHC.
  
  - (c) Each of the Parties is liable for all direct damages resulting from its breach of confidentiality under the Agreement. Each of the Parties is also liable for all indirect, special or consequential damages in respect of its unauthorized disclosure of the other Party's trade secrets (or trade secrets of a third party provided by one Party to another under the Agreement) relating to information technology.
  
  - (d) The Contractor is liable for all direct damages relating to any encumbrance or claim relating to any portion of the Work for which CMHC has made any payment. This does not apply to encumbrances or claims relating to intellectual property rights, which are addressed under (a) above.
  
  - (e) The Contractor is also liable for any other direct damages to CMHC caused by the Contractor's performance or failure to perform the Agreement that relates to:
    - (i) any breach of the warranty obligations under the Agreement, up to the total amount paid by CMHC (including any applicable taxes) for the goods and services affected by the breach of warranty, and
  
    - (ii) any other direct damages, including all identifiable direct costs to CMHC associated with re-procuring the Work from another party if the Agreement is terminated by CMHC either in whole or in part for default, up to an aggregate maximum for this subparagraph (ii) of two times CMHC's total financial liability as set out in Section 3 of the Agreement.

In any case, the total liability of the Contractor under paragraph (e) will not exceed CMHC's total financial liability (as defined above) for the Agreement or \$1,000,000.00, whichever is more.

- (f) If CMHC's records or data are harmed as a result of the Contractor's negligence or willful act, the Contractor's only liability is, at the Contractor's own expense, to restore CMHC's records and data using the most recent back-up kept by CMHC. CMHC is responsible for maintaining an adequate back-up of its records and data.

### 3. Third Party Claims:

- a) Regardless of whether a third party makes its claim against CMHC or the Contractor, each Party agrees that it is liable for any damages that it causes to any third party in connection with the Agreement as set out in a settlement agreement or as finally determined by a court of competent jurisdiction, where the court determines that the Parties are jointly and severally liable or that one Party is solely and directly liable to the third party. The amount of the liability will be the amount set out in the settlement agreement or determined by the court to have been the Party's portion of the damages to the third party. No settlement agreement is binding on a Party unless its authorized representative has approved the agreement in writing.
  
- b) If CMHC is required, as a result of joint and several liability, to pay a third party in respect of damages caused by the Contractor, the Contractor must reimburse CMHC by the amount finally determined by a court of competent jurisdiction to be the Contractor's portion of the damages to the third party. However, despite paragraph (a), with respect to special, indirect, and



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consequential damages of third parties covered by this section, the Contractor is only liable for reimbursing CMHC for the Contractor's portion of those damages that CMHC is required by a court to pay to a third party as a result of joint and several liability that relate to the infringement of a third party's intellectual property rights; physical injury of a third party, including death; damages affecting a third party's real or tangible personal property; liens or encumbrances on any portion of the Support Services; or breach of confidentiality.

- c) The Parties are only liable to one another for damages to third parties to the extent described in this paragraph 3.

#### **4.6 Liquidated Damages**

No specific remedy expressed in this 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 ten (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.
- 6) the Contractor is in breach of any of the confidentiality and proprietary provisions set out in this Agreement.

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 this Agreement or out of termination, payment will be made within thirty (30) business days of the date of the invoice from CMHC to the Contractor for the value of all 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.

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#### **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 Support Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the 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 this Agreement, or is in default in any other manner under this 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 Support Services rendered pursuant to this Agreement, which moneys may be set off by CMHC against any expenses that it may incur in remedying a default or failures as described above.

#### **4.10 Force Majeure**

In the event that the Contractor is prevented from fulfilling its obligations under the terms of the Agreement by a force majeure (an event or effect that cannot be reasonably anticipated or controlled), the Contractor shall provide immediate written notice by registered mail describing the event(s) that constitute(s) a force majeure. Without limiting 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.

In the event CMHC receives notice from the Contractor of a force majeure CMHC may, to the extent it deems necessary, secure the services of other qualified contractors without compensation or obligation to the Contractor.

(b) Where 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 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, or at a reduced amount, or suspend payment completely.

Notwithstanding the provisions contained in this Article, if closure is continued beyond one (1) calendar week, payment under this Agreement may be suspended in full immediately, on further written notice to the Contractor, until reopening permits the Support Services to continue.

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

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

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#### **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 this 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 Agreement. 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**

##### **(a) Ownership and Moral Rights**

All materials and documents which are the property of CMHC at the commencement of the Term, or any renewal term, shall remain the property of CMHC. All material, reports, data sets and other Support Services product produced under this Agreement will become the sole property of CMHC upon coming into existence. 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 Support Services product and the waiver of the Contractor's moral rights therein. The Contractor shall have no right to use the materials, reports, data sets or resulting Support Services product for any purpose other than those reasonably necessary for the performance of the Support Services under this Agreement.

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All rights in any pre-existing intellectual property of the Contractor or any third parties incorporated into any deliverables and any changes thereto would continue to be owned by the Contractor or such third parties. The Contractor grants CMHC a non-exclusive, perpetual, non-transferable, royalty-free right to use any Contractor intellectual property incorporated into the deliverables solely for CMHC's own internal use in conjunction with the use of the deliverables.

**(b) Intellectual Property Infringement**

1. The Contractor represents and warrants that, to the best of its knowledge, neither it nor CMHC will infringe any third party's intellectual property rights in performing or using the Support Services, and that CMHC will have no obligation to pay royalties of any kind to anyone in connection with the Work.
2. If anyone makes a claim against CMHC or the Contractor concerning intellectual property infringement or royalties related to the Support Services, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against CMHC, according to *Department of Justice Act*, R.S. 1985, c. J-2, the Attorney General of Canada must have the regulation and conduct of all litigation for or against CMHC, but the Attorney General may request that the Contractor defend CMHC against the claim. In either case, the Contractor agrees to participate fully in the defence and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.
3. The Contractor has no obligation regarding claims that were only made because:
  - (a) CMHC used the Support Services or part of the Support Services with a product that the Contractor did not supply under the Agreement (unless that use is described in the Agreement or the manufacturer's specifications); or
  - (b) the Contractor used equipment, drawings, specifications or other information supplied to the Contractor by CMHC (or by someone authorized by CMHC); or
  - (c) the Contractor used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Contractor has included the following language in its own contract with the supplier of that equipment or software: "[Supplier name] acknowledges that the purchased items will be used by CMHC. If a third party claims that equipment or software supplied under this Agreement infringes any intellectual property right, [supplier name], if requested to do so by either [Contractor name] or CMHC, will defend both [Contractor name] and CMHC against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Contractor's responsibility and, if the Contractor does not do so, it will be responsible to CMHC for the claim.
4. If anyone claims that, as a result of the Support Services, the Contractor or CMHC is infringing its intellectual property rights, the Contractor must immediately do one of the following:
  - (a) take whatever steps are necessary to allow CMHC to continue to use the allegedly infringing part of the Work; or
  - (b) modify or replace the Support Services to avoid intellectual property infringement, while ensuring that the Support Services continues to meet all the requirements of the Agreement; or

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- (c) take back the Support Services and refund any part of the Agreement Price that CMHC has already paid.

If the Contractor determines that none of these alternatives can reasonably be achieved, or if the Contractor fails to take any of these steps within a reasonable amount of time, CMHC may choose either to require the Contractor to do (c), or to take whatever steps are necessary to acquire the rights to use the allegedly infringing part(s) of the Support Services itself, in which case the Contractor must reimburse CMHC for all the costs it incurs to do so.

- (d) Contractor certifies that it has no outstanding contract or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude the Contractor from complying with the provisions hereof, and that it will not enter into any such conflicting contract during the Term or any renewal term of this Agreement.
- (e) Contractor further certifies that it will not disclose to CMHC any confidential, secret, and/or proprietary information, which is the property of others and which Contractor is not authorized to disclose. Contractor shall be responsible for obtaining, at its expense, all rights to third party intellectual property, necessary to comply with its obligations under this Agreement.

#### **4.18 Confidentiality**

#### **MANDATORY**

(a) Under this Article, "CMHC Information" refers to any and all information, which is managed, accessed, collected, used, disclosed, retained, received, created or disposed of in order to fulfil 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 perform the Work under the Agreement.

(b) Both parties acknowledge and understand that all 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.

(c) Both parties further understand and agree to treat all Information as proprietary, confidential and sensitive unless otherwise specifically agreed to in writing by both parties. Both parties shall restrict access to Information to those persons who have a need to know this information in order to perform the Work under the Agreement.

(d) Both Parties shall ensure that Information shall remain in Canada and expressly agrees to segregate 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, both parties shall not and shall ensure that any subcontractor, reseller, agent or any other person engaged to perform any part of the Work does not release, share or otherwise divulge Information to any other person including subsidiaries, branch offices, partners or subcontractors without the prior written consent of the other party.

(e) Where disclosure of Information is required pursuant to a lawful requirement or for the purposes of complying with a subpoena or warrant lawfully issued or lawfully made by a court, person or body, one party shall notify the other party promptly after discovering the potential of disclosure of Information so that the party has the opportunity to seek a protective order or other appropriate remedy.

(f) Both parties also agree that in the event that disclosure of Information is required by a valid and applicable law, it shall, in co-operation with the other party, do all things reasonably possible to prevent

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access to Information including but not limited to taking appropriate legal action against disclosure, providing information and other assistance in order for the party to take appropriate legal action against disclosure and ensuring that disclosure is strictly limited to the information lawfully requested.

(g) Subject to the Contractor's obligations under Article 3.6, any documents provided to the Contractor or its agent in the performance of the Work described herein shall be returned, uncopied or destroyed by such party within six (6) months of the termination of this Agreement. For documents not returned to, the Contractor shall provide to CMHC specific proof under oath of their destruction.

#### **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 together with any attached schedules and the documents specified in Article 6.1 contain all of the agreements of the parties hereto and no other representations or warranties or conditions, verbal, implied or otherwise, exist between the parties. 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 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 this Agreement. All portions of the 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 this Agreement. Upon such payment, CMHC shall have no further obligation of any nature or kind to the Contractor.

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- (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.

#### **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.

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- (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 Support Services**

All 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 Support Services delivered which are not in accordance with the description or specifications stipulated in this Agreement.

In the event the delivery of 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 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 Support Services rendered pursuant to this Agreement;
- (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 CMHC shall remain the property of CMHC and all copyrights thereto are the property of 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 CMHC.



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#### 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 RFQ)
  - 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 this Agreement. 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.

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#### **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 Support Services in whole or in part, and make modifications of, changes in or additions to the specifications of the type of 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 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 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 Go Support Services to continue.

#### **4.33 No Joint Venture**

It is hereby expressly acknowledged and agreed that the Agreement in no way constitutes the creation of a partnership or joint venture between CMHC and the Contractor

#### **4.34 Severability**

If any provision of the Agreement is held by competent authority to be invalid, illegal or unenforceable, for any reason, the remaining provisions of the Agreement and its attachments will continue in full force so long as they express the intent of the parties. If the intent of either party cannot be preserved, the Agreement shall be either renegotiated or terminated by the parties.

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**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

Bill Finnagan, Senior Contracts Analyst  
Phone: (613) 748-2518;  
e-mail: [bfinnaga@cmhc-schl.gc.ca](mailto:bfinnaga@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 Quote 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>Maintenance and Support</b>				
<b>F5 Networks PN:</b>	<b>Product Description</b>	<b>Covered Product/ Customer</b>	<b>Appliance SN</b>	<b>Unit of Measure</b>
				Months
				Months
				Months
				Months
				Months
				Months
				Months
				Months
				Months
				Months
				Months
				<b>Total</b>

**1. WARRANTY**

The Contractor warrants and guarantees the Support Services provided 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. 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.

**2. PATENTS**

The Contractor warrants and guarantees that 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.

**Schedule B**

**Pricing and Payment**

**1. Pricing**

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

Maintenance and Support							
F5 Networks PN:	Product Description	Covered Product/ Customer	Appliance SN	Unit of Measure	Quantity	Unit Price	Total Extended Price
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
				Months	12		
<b>Total</b>							

**2. Payment**

Contractor shall invoice for time monthly as incurred. CMHC shall pay invoices for Support Services within thirty (30) business days of invoice receipt (as outlined in Section 3.4 of this 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 this 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.

## **Schedule C**

### **Maintenance and Support F5 Network Premium Support**

Detail coverage and support details to be included with Proponent's bid.