

DRAFT
CONTRACT

**FOR SUPPLY OF SOFTWARE APPLICATION FOR
ONLINE REGISTRATION OF EMPLOYMENT WITHIN PRIVATE SECTOR**

concluded on ___/08/2007 in Skopje, between:

INTERNEWS NETWORK – representative office Skopje, reg.no.1343, located at Dane Krapev 18, 1000 Skopje, Republic of Macedonia, implementing the USAID funded e-Gov Project, represented by **Mr. Jerker Torngren**, Chief of Party (hereinafter: “*e-Gov Project*”).

and

_____ (*company name*), TIN _____, located at _____ (*registered seat*), Republic of Macedonia, represented by _____ (*name*), _____ (*position*) (hereinafter: “**the Contractor**”).

The Parties have agreed as follows:

Article 1 General provisions

(1) The subject of the Contract shall be the development and installation of **software application for online submission of information regarding new and terminated employment to be used by private entities signing or terminating employment contracts** (hereinafter: software application) that is described in details in the “System description for Online Registration of Employment within private sector” document (hereinafter: System Description) as published on *e-Gov Project’s* web page on 28th of June 2007.

(2) The Contractor also undertakes to provide training in accordance with the specification provided in Annex 1 of this Contract.

(3) The Contractor shall undertake the tasks specified in its bid and the Parties shall strictly comply with the terms and conditions of this Contract and the System Description.

Article 2 Time frame for each deliverable

(1) As specified in the Invitation to Bid, the Contractor is obliged to respect the following time frame for each deliverable:

Monday, 19th of November 2007 Software application shall at the latest be installed.

Friday, 30th November 2007 The Contractor shall complete the internal testing, but also introduce relevant staff members within the hosting institution to the software application.

Friday, 7th of December 2007 Possible modifications and updates need to be completed and updated version of the software application installed.

e-Gov Project shall decide within 5 (five) working days thereafter if the software application functions satisfactorily and inform the Contractor of the decision.

The source code and the supporting documentation of the final version of the software application shall be delivered on a CD in 3 (three) sets to *the e-Gov Project* within 2 (two) working days after the final acceptance.

During December 2007 The Contractor shall take part in 20 test registration/cancellation of employments.

During January 2008 The Contractor shall be available 8 (eight) hours per days during workdays to provide help-desk function.

(2) The Contractor may request approval for alteration of the time frame for each deliverable stating the justification and proposing new dates.

(3) The Contractor shall have the right to propose during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the software application (interchangeably called “change”), provided that such change falls within the general scope of the software application, does not constitute unrelated work and is technically practicable.

(4) *e-Gov Project* has no obligation to accept any alteration requested or change proposed by the Contractor, but will decide from case to case.

Article 3 Price

(1) The agreed price for the software application and the training is \$____ (_____US dollars).

(2) The amount specified in paragraph (1) is including VAT.

Article 4 Methods of payment

(1) The *e-Gov Project* shall make the payments for the software application and the training as follows:

- a) 20% of the total contracted price, including VAT, on signing of the Contract;

- b) 60% of the total contracted price, including VAT, will be paid when the *e-Gov Project* has decided that the software application functions satisfactorily and the source code has been delivered to the *e-Gov Project*; and
- c) the remaining 20 % of the total contracted price, including VAT, will be paid on Friday, 1st of February 2008 if the *e-Gov Project* considers that the Contractor has properly met its obligations regarding the help desk function during January 2008.

The percentages specified above might be subject of adjustments if there are basis for activation of the penalty clause of this Contract.

(2) All payments will be done within 8 (eight) days of the receipt of an invoice from the Contractor for the respective amount. Payments shall be made by *e-Gov Project* in denar equivalent to the average exchange rate of the National Bank of the Republic of Macedonia on the day of the payment.

(3) Payments shall be transferred to the bank account provided by the Contractor. The Contractor will carry the cost of any bank fees related to the payments. The Contractor must provide an invoice before any payment is made. All invoices shall be quoted in denar equivalent to the average exchange rate of the National Bank on the day of invoicing with the VAT specified. The invoice shall also specify the equivalent dollar amount.

Article 5 Delivery, Installation and Final acceptance

(1) The software application shall be delivered and installed at the premises of an institution, which will be additionally determined and Contractor informed at the latest three weeks prior to the date specified in Article 2, paragraph 1, line 1 of this Contract.

(2) The Contractor shall bear all risks relating to the software application until final its acceptance.

(3) *e-Gov Project* shall issue a written notice for the final acceptance of the software application on the same day the acceptance was granted. The notice will state the date on which the Contractor completed its obligations under the Contract regarding the development of the software application.

Article 6 Ownership of the software license

(1) *e-Gov Project* shall receive the developed software application without any restrictions regarding number of users or their identity. *e-Gov Project* shall have the unrestricted, royalty-free, non-exclusive and irrevocable right to use and to modify the source code of the software application and may pass on this right to USAID and/or any other state institution without any restrictions.

(2) The Contractor may not without specific consent from the *e-Gov Project* display its name on any website or any other product directly related to the software application.

(3) The Contractor hereby represents and warrants that the software application or elements of the software application, including any license agreements, does not and will not infringe any Intellectual Property Rights held by any third party and that the Contractor has all necessary rights, or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for *e-Gov Project* exclusively to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Contractor shall secure all necessary written agreements, consents and transfers of rights from its employees and other persons or entities whose services are used for development of the software application.

(4) The transfer of any Intellectual Property Rights for software application or elements of the software application does not include the transfer of any third-party development tools and development components license.

Article 7 Warranty obligations

(1) The Contractor confirms the undertaking of all warranty obligations at no additional cost. Under the warranty the product should be kept functional at the level of functionality when initially developed and accepted by the e-Gov Project.

(2) The Contractor shall warrant that the software application is of the most recent models and incorporate all latest improvements in software design and tools. The Contractor shall further warrant that the software application or its elements have no defect arising from design, materials or workmanship.

(3) The Contractor will be responsible for making good any defect in or damage to any part of the product which may appear or occur during the warranty period and which results from faulty workmanship or development of the software, or any act or omission of the developer.

(4) The Contractor will be committed to, at its own cost, urgently make good the defect or damage. In emergencies, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the e-Gov Project will have the right to carry out the work at the expense of the Contractor.

(5) Possible malfunctions due to actions taken by the user of the software application will not be covered by the warranty.

(6) The source code delivered by the Contractor will be signed with digital signature as a proof of origin and must be properly documented and packed in a form which will make it easy for the recipient organization to use for maintenance and further development or upgrade of the software application. If modifications are made to the source code by any other than the Contractor the warranty obligations for the Contractor will expire correspondingly.

(7) The warranty shall remain valid for period of 2 (two) years after final acceptance of the software application by *the e-Gov Project*.

Article 8 Upgrade

The Contractor shall be prepared to upgrade the developed product on request by *e-Gov Project*. The Contractor shall be separately remunerated for such additional work. If no agreement can be reached between the *e-Gov Project* and the Contractor, *e-Gov Project* retains the right to use any other software developer for any upgrades or other modifications.

Article 9 Additional obligations

(1) The Contractor shall perform the Contract with due care and diligence including, where specified, the design, delivery and installation to site and testing the software application and carrying out of any other work including the remedying of any defects in the software application.

(2) The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the performance of the Contract.

(3) Contractor acknowledges that it is an independent Contractor and is not an agent or employee of INTERNEWS NETWORK, INC. for the purposes of fulfilling this Contract. All work shall be performed entirely at Contractor's own risk.

(4) The Contractor shall treat all documents, software, reports, data and other materials received by or developed for *e-Gov Project* as private and confidential. S/he shall not, save in so far as may be necessary for the purposes of the Contract's execution, publish or disclose any particulars of the Contract without the prior consent in writing of *e-Gov Project*. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the Contract, the decision of *e-Gov Project* shall be final. These provisions will continue to be effective after the termination of this Contract.

Article 10 Breaches of the Contract

(1) A Party shall be in a breach of the Contract if it fails to fulfil any of its obligations under the Contract.

(2) Where a breach of contract occurs, the injured Party shall be entitled to the following remedies:

- a) arbitration; and/or
- b) termination of the contract.

Article 11 Termination and/or Withdrawal

(1) *e-Gov Project* reserves the right to withdraw and/or terminate the Contract if legal or any other issues outside the scope of this tender render the software application infeasible for implementation.

(2) Any withdrawal of the Contractor after signing the Contract, except in case of *force majeure*, will be subject to the penalty provisions of this Contract.

(3) *e-Gov Project* may, after giving the Contractor 7 (seven) days notice, terminate the Contract in any of the following cases:

- a) the Contractor substantially fails to perform his obligations under this Contract, and especially if it is not able to meet the agreed deadlines for development and installation of the software application;
- b) the Contractor fails to comply within a reasonable time with a notice given by *e-Gov Project* requiring him to make good any neglect or failure to perform his obligations under the Contract which seriously affects the proper and timely performance of the works;
- c) the Contractor is bankrupt or is winding up its activities for closure, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- d) the Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata* or the Contractor has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity;
- e) any other legal disability hindering performance of the contract occurs; or
- f) the *e-Gov Project's* funding is significantly delayed or suspended by its funder, USAID.

(4) The Contractor may, after giving 14 (fourteen) days notice to *e-Gov Project*, terminate the contract if *e-Gov Project*:

- a) fails to pay the Contractor the amounts due under the terms specified in this Contract;
- b) consistently fails to meet its obligations after repeated reminders; or
- c) suspends the delivery of the software application for more than 30 (thirty) days, for reasons not specified in the Contract.

Article 12 Penalties

If the Contractor fails under his own responsibility to meet the deadlines for the deliverables specified in Article 2, paragraph 1 of this Contract, *e-Gov Project* shall, without formal notice and without prejudice to its other remedies under the Contract, be entitled, for every day which elapse between the expiry of the agreed date and the actual date of completion, to liquidated damages equal to 0.5% of the value of the software application up to maximum 50% of the total contracted price.

Article 13 Dispute settlement

(1) Disputes or conflicts of any kind arising from this Contract shall not be settled by the Court.

(2) The Parties shall make every effort to settle amicably any dispute, which may arise between them. Once a dispute has arisen, the Parties shall notify and meet each other and present their positions on the dispute, as well as present any solution, which they consider possible.

(3) Should the attempt to reach an amicable settlement fail within 15 (fifteen) days from the commencement of the procedure, either Party shall be free to proceed to the next stage and submit the dispute to the Arbitration within the Economic Chamber of the Republic of Macedonia. There shall be 3 (three) arbitrators of whom each party

shall select one and the two arbitrators so selected shall select the third. To the extent permitted by law, the decision of the arbitrators shall be final and shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accountings presented to the tribunal. Unless otherwise ordered by the arbitrators, each party shall bear its own costs and fees, including attorney's fees and expenses.

Article 14 Applicable laws

Macedonian laws shall apply in all matters covered by the provisions of the Contract and in case of dispute settlement.

Article 15 Severability

The provisions of this Contract shall be severable, and the invalidity of any provision or portion thereof shall not affect the enforceability of the remaining provisions of this Contract.

Article 16 Amendments

Changes to the terms of this Contract shall be made by an Annex to the Contract agreed and signed by both Parties.

Article 17 Suspension, Ineligibility and Voluntary Exclusion

In accepting this Contract, the Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this contract by any U.S. government department or agency.

Article 18 Certification of Non-Terrorism Activities

Contractor hereby certifies that s/he has not provided and will not provide material support or resources to any individual or entity that it knows, or has reason to know, is an individual or entity that advocates, plans, sponsors, engages in, or has engaged in terrorist activity, including but not limited to the individuals and entities listed in the Annex to Executive Order 13224 and other such individuals and entities that may be later designated by the United States under any of the following authorities. Contractor further certifies that s/he will not provide material support or resources to any individual or entity that it knows, or has reason to know, is acting as an agent for any individual or entity that advocates, plans, sponsors, engages in, or has engaged in, terrorist activity, or that has been so designated, or will immediately cease such support if an entity is so designated after the date of this agreement.

Article 19 Communications

Any written communication relating to this Contract between *e-Gov Project*, on the one hand, and the Contractor on the other, must state the Contract title and must be sent by post, fax, e-mail or by hand.

Article 20 Language and number of copies

This Contract is composed in English in 3 (three) originals, 2 (two) originals being for *e-Gov Project* and 1 (one) original being for the Contractor.

For the *e-Gov Project*

For the Contractor

Mr. Jerker Torngren
Chief of Party

(name)
(position)