



Ufficio di Yangon

Prot. n. AICSY-OUT-471-2018-06.28

PROJECT : "MONITORING AND VISIBILITY OF ITALIAN DEVELOPMENT
COOPERATION INITIATIVES IN MYANMAR - AID 10493"

SERVICE CONTRACT

(Hereinafter referred to as "**the Contract**")

between

The Italian Agency for Development Cooperation - Yangon Office

(Hereinafter referred to as "**the Contracting Authority**")

Represented by the Director Eng. Maurizio Di Calisto,

41-7B, Inya Myaing, Shwe Taung Gone, Bahan Township, Yangon

and

NetSmart Company Limited

(Hereinafter referred to as "**the Service Provider**")

Represented by Khin Thandar,

5-B, 18 Kyauk Kone Street, Yankin Township, Yangon

(Hereinafter referred to as individually "**the Party**" and collectively "**the Parties**")

WHEREAS

That with Decree of the Steering Committee n. 155 dated November 2, 2015, the Directorate General for Development Cooperation of the Italian Ministry of Foreign Affairs and International Cooperation (as per former law 49/87) authorized the allocation of *in loco* funds for the Project "Monitoring and visibility of Italian development Cooperation initiatives in Myanmar- AID 10493";

That pursuant to Article 32, paragraph 1, of Italian law no.125 dated 11 August 2014 and Article 25, paragraph 4, of the Ministry Decree no. 113 dated 22 July 2015, starting from the 01.01.2016 all the rights and obligations relevant to the Project "Monitoring and visibility of Italian development Cooperation initiatives in Myanmar- AID 10493" and any relevant Contract Agreement shall be transferred to the Italian Agency for Development Cooperation in Rome (hereinafter referred to as "**AICS Rome**") and to the relevant competent Foreign Office (hereinafter referred to as "**AICS Yangon Office**");

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That as per the last version of the General Operational Plan approved by the Italian Agency for Development Cooperation, the Project foresees, among other, the provision of the services for “Setting-up a monitoring system designed to project results analysis and to processing the Initiatives of the Italian Agency for Development Cooperation in Myanmar”, as detailed in the budget line n. 1;

That the Contracting Authority intends to engage an IT company as a Service Provider, to develop and implement the above-mentioned monitoring system;

That the Service Provider is ready and willing to accept this Service Contract with the Contractor on the below Terms and Conditions.

THE PARTIES AGREE AS FOLLOWS

ART. 1 – SCOPE OF THE CONTRACT

- a) In the framework of the project “Monitoring and visibility of Italian development Cooperation initiatives in Myanmar- AID 10493”, the Contracting Authority awards to the Service Provider, who hereby accepts, the purchase and configuration of the NAS backup system (hereinafter the “**Service**”) within the “Setting-up a monitoring system designed to project results analysis and to processing the Initiatives of the Italian Agency for Development Cooperation in Myanmar” for the project activities of the Italian Agency for Development Cooperation – AID 10493.
- b) The scope of this Contract is thus to provide the installation and configuration of a Backup system for implementing the AICS Yangon Office Database SQL and NAS Management System.
- c) The following Annex are an integral part of the present Contract:
 - Annex I;
- d) About the performance of the Service under this Contract, the Service Provider shall neither seek nor accept instructions from any authority external to the Contracting Authority.

ART. 2 – ACTIVITIES CARRIED OUT BY THE CONSULTANT

- a) The activities carried out by the Service Provider are described in Annex I, where related costs are also specified.
- b) The days and hours of work of the Service Provider’s personnel shall respect the Myanmar laws, regulations and customs and the requirements of the services.
- c) While executing the Contract, the Service Provider will interact with the Contracting Authority providing regular updates, when needed, to the Director of the Italian Agency for Development Cooperation - Yangon Office and to the experts delegated by the Director for supervising the execution of the Contract, as well as perform the relevant interview and surveys to assess and verify the needs as set out below.
- d) Based on the tasks listed in the Annex I, the Service Provider is expected to provide through its personnel the following services:



1. The purchase of the Acronics Backup 12.5 Server License;
 2. The Backup software configuration.
- e) The Contracting Authority shall notify the Service Provider of its decision concerning the received Service, and duly provide motivations and justifications in case the Service shall be rejected, or in case amendments are requested.

ART. 3 – CONTRACT AMOUNT

- a) The Service Provider undertakes to execute and to complete the services indicated in the Annex I and the related Contract amount is of Myanmar Kyats 2,277,030 (two million, two hundred and seventy-seven thousand, and thirty Myanmar Kyats), as indicated in the above-mentioned Annex I.
- b) The Contract amount is fixed and includes all the activities, consultancies, personnel, vehicles, flights, equipment and supplies, travelling and/or any other charge, even if not specifically mentioned in this Contract, which is necessary to complete all the actions foreseen for the Service, both in terms of quality and quantity.
- c) The Service Provider declares that all the general, particular and local circumstances and that any factor that could affect or influence both the material cost for the Service provision, for the required results and deliverables as well as the cost for the human resources, consultancies, expertise and transport charges, or any duties connected to the Service execution have been duly considered.
- d) Furthermore he/she declares to have considered the possible increases of prices during the execution of the Service, and to renounce any claim in this regard.
- e) The Service Provider is solely responsible for the payment of service, tax, insurance and all other taxes and government dues as may be applicable. In no case the Contracting Authority will be responsible to pay taxes for this Service Contract.

ART. 4 - TERMS OF PAYMENT

- a) Payment will be made by the Contracting Authority by bank transfer to the Myanmar Kyats bank account specified by the Service provider in Annex I, and will be executed by one instalment based on the completion of the Service, object of the present Contract, as detailed in Annex I. The payment will be therefore carried out by one single instalment of the amount of Myanmar Kyats 2,277,030.
- b) These amounts will be reduced in the case that the Contracting Authority decides, incontestably to suspend the Contract activities. In that case, the Contracting Authority shall promptly notify the Service Provider (with at least 15 days' notice) the latter being entitled to receive only the amount related to the expenses incurred up to the time of suspension.
- c) The payment concerning the execution of the present Contract will be made upon presentation of an invoice for the instalment. The invoice shall be duly dated, stamped and signed by the Service Provider.



- d) All the above-mentioned documents shall be addressed to the Italian Agency for Development Cooperation (AICS) - Yangon Office – Project AID 10493.

ART. 5 - DURATION OF THE CONTRACT AND PENALTIES

- a) The duration of the Contract, concerning the execution and the completion of the Service is 1 (one) month starting from the signature of this Contract.
- b) The duration of the Contract may be extended for a short period following a written request presented by the Service Provider to the Contracting Authority.
- c) The Contracting Authority will evaluate the request and will inform the Service Provider whether an extension period could be granted.
- d) Without prejudice to the application of other remedies laid down in the Contract, the Contracting Authority will retain the right to apply the following penalties in the observance of the fulfilment of the activities foreseen in the present Contract and whenever they will be only and exclusively ascribed to the responsibility of the Service Provider.
- e) If the Service Provider fails to carry out the activities indicated in the present Contract and its Annex, the Contracting Authority shall, without prejudice to its other remedies under the Contract, deduct from the Contract price, as liquidated damages, a sum equivalent to 0.2% of Contract value for each day of delay until actual delivery, up to a maximum deduction of 10% of the Contract value.

ART. 6 – LIABILITY

- a) The Contracting Authority accepts no liability for damage to persons or property related to the performance by the Service Provider of the activities specified in this Service Contract.
- b) The Service Provider shall execute the Contract with due care, efficiency and diligence in accordance with the best professional practice and shall comply with any administrative orders given by the Contracting Authority.
- c) The Service Provider shall supply, without delay, any information and documents to the Contracting Authority upon request, regarding the conditions in which the Contract is being executed.
- d) The Service Provider shall respect and abide by all laws and regulations in force in the Beneficiary Country and shall ensure that its personnel, their dependents, and its local employees also respect and abide by all such laws and regulations.
- e) The Service Provider shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Service Provider, its employees and their dependents of such laws and regulations.
- f) To perform these tasks, the Service Provider shall comply with all the legislation in force in the Country in the field of medical, insurance and safety measures.
- g) The employment relationship between the Service Provider and its staff employed by it to carry out the activities and any offspring from this litigation does not involve in any way the Contracting Authority.



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- h) The Service Provider shall at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the Project or the Service without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way whatsoever without its prior consent and shall make this obligation clear to the third parties.
- i) The Service Provider and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the Country.
- j) The Service Provider shall refrain from any action that may adversely affect the AICS Yangon Office and shall fulfill its commitments with the fullest regard to the interests of the Contracting Authority.
- k) The payments to the Service Provider under the Contract shall constitute the only income or benefit it may derive in connection with the Contract. The Service Provider and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the Contract.
- l) The Service Provider commits itself to provide suitable qualified personnel and adequate means necessary for the implementation and supervision of the activities agreed upon in this Contract. The Service Provider's personnel shall not be considered in any respect as being the employees or agents of the Contracting Authority.
- m) The Service Provider is fully responsible for acts and contractual terms of its personnel according to the Myanmar law in force, including the relative fiscal dispositions. In no circumstances the Contracting Authority will be responsible for the local personnel involved in the implementation of activities.

ART. 7 – SUBCONTRACTING AND TRANSFERABILITY

- a) The Service Provider is not allowed to subcontract the provision of this Service and/or to transfer the Contract to a third Party.

ART. 8 – INTELLECTUAL AND INDUSTRIAL PROPERTIES RIGHTS

- a) All reports, data and supporting records or materials acquired, compiled or prepared by the Consultant in the performance of the Contract shall be confidential and shall be the absolute property of the Contracting Authority.
- b) The Service Provider shall, upon completion of the Contract, deliver all such documents and data to the Contracting Authority.
- c) The Service Provider may retain copies of such documents and data but shall not use them for purposes unrelated to this Contract without the prior written consent of the Contracting Authority.
- d) The Service Provider shall not publish articles relating to the activities or refer to them when carrying out any service for others, or divulge information obtained from the Contracting Authority, without its prior written consent.



- e) Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

ART. 9 - TERMINATION OF THE CONTRACT

- a) This Contract may be concluded by the Contracting Authority at any time for serious technical and/or contractual non-compliance of the Service Provider. In this case the Contracting Authority shall notify such non-compliance to the Service Provider, requesting to solve it within a specified period of 7 (seven) days. After this period, if the Service Provider has not provided it, the resolution of the Contract shall become effective on the seventh day after the deadline fixed in the notice.
- b) This assignment may also be terminated by mutual consent between the parties, and / or in the event of Force Majeure.
- c) Moreover, the Contracting Authority may also, at its unquestionable discretion, suspend or permanently solve the Contract for security reasons.
- d) In all cases mentioned above, the amount corresponding to the services satisfactorily provided will be paid to the Service Provider.

ART. 10 - FORCE MAJEURE

- a) Neither party shall be considered to be in default or in breach of its obligations under the Contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date when the Contract becomes effective.
- b) The term Force Majeure, as used herein, covers any unforeseeable events, not within the control of either Party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions.
- c) A decision of the Italian Government/ the Italian Agency for Development Cooperation to suspend the Cooperation activities with the Beneficiary Country is considered to be a case of force majeure when it implies suspension of funding the Contract.
- d) If either Party considers that any circumstances of force majeure have occurred which may affect the performance of its obligations, it shall promptly notify the other Party giving details of the nature, the probable duration and the likely effect of the circumstances.

ART. 11 – CONFLICT OF INTEREST

- a) The Service Provider shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract.



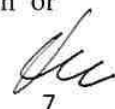
- b) Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.
- c) Any conflict of interests which may arise during performance of the Contract shall be notified to the Contracting Authority without delay.
- d) In the event of such conflict, the Service Provider shall immediately take all necessary steps to resolve it.
- e) The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Service Provider shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligations under the Contract, the Service Provider shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.

ART. 12 – DATA PROTECTION

- a) The Service Provider undertakes to adopt technical and organizational security measures to address the risk inherent in processing and in the nature of the personal data concerned in order to:
 - 1. Prevent any unauthorized person from having access to computer systems processing personal data and especially:
 - i. Unauthorized reading, copying, alteration or removal of storage data;
 - ii. Unauthorized data input, unauthorized disclosure, alteration or erasure of stored personal data;
 - iii. Unauthorized persons from using data-processing systems by means of data transmission facilities;
 - 2. Ensure that authorized users of data- processing system can access only the personal data to which their access right refers.

ART. 13 - SETTLEMENT OF DISPUTES

- a) The Parties shall make every effort to settle amicably any dispute, even technical, that may arise regarding the interpretation or execution of this Contract, during the progress of the activities or after its termination.
- b) Once a dispute has arisen, a Party shall notify the other Party of the dispute, stating its position on the dispute and any solution which it envisages, and requesting an amicable settlement. The other Party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute.
- c) In the absence of an amicable settlement, a Party may notify the other Party requesting a settlement through conciliation by a third person.
- d) If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of the Italian jurisdiction or arbitration.



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- e) This doesn't mean, however, that the Contracting Authority surrenders jurisdictional immunities and entitlements enjoyed by Diplomatic and Consular missions.

ART. 14 – OFFICIAL COMMUNICATIONS

- a) Any official communication from the Service Provider concerning this Contract shall be written in English and shall be addressed to:
Italian Agency for Development Cooperation – Yangon Office,
41-7B, Inya Myaing, Shwe Taung Gone, Bahan Township, Yangon, Myanmar.

ART. 15 - FINAL PROVISIONS

- a) The Parties of this Contract declare to have read this Contract, including its Annex, and that they agree with the same in all its parts and accept it fully.
b) The provisions of this Contract may be amended only by a formal Act signed by both Parties.

In witness whereof, the Parties hereto have signed the Contract.

Yangon, 28/06/2018

FOR


Netsmart Company Limited
Co., Ltd.
The Director
Khin Thandar

FOR


The Italian Agency for Development
Cooperation - Yangon Office
The Director
Eng. Maurizio Di Calisto





NetSmart Co., Ltd.

5-B, 18 Kyauk Kone Street
Yankin Township
Yangon, Myanmar

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Fax: +95-1-8566034

info@netsmart.com.mm

www.netsmart.com.mm

The Cloud ERP Provider

To: Roberta Blandino, AICS Yangon **From:** NetSmart

Fax: **Pages:** 2

Add: 41-7B, Inya Myaing, Shwe Taung Gone, **Add:** #5-B, 18 Kyauk Kone Street,
Bahan Township, Yangon Yankin Township, Yangon

Date: June 26, 2018 **Date:** June 26, 2018

Re: Backup License and Configuration **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:**

Dear Roberta,

Thank you for the opportunity to provide this proposal. According to our discussions, we are pleased to propose our quotation for your office as per following details.

Acronis Backup 12.5 Standard Server License

MMK 1,542,030

- Powerful hybrid backup for servers. 1-time purchase includes maintenance & upgrades for 1 year.
- This is a yearly subscription product. After 12 month(s), a yearly fee is due starting with the next billing cycle. You may cancel your subscription at any time.

Backup Software Configuration (7 days)

MMK 735,000

- Consists of Design backup strategy (1 day)
 - a. Calculate backup size
 - b. Select recovery model
 - c. Select backup device
- Consists of Scheduled backups (2 days)
 - a. Analyze database changes/access frequency
 - b. Analyze off-peak period
 - c. Design backup frequency (full, differential, log)
 - d. Implementation
- Consists of Design restore/recovery strategy (2 days)
 - a. Data restore/recovery form backup media
 - b. Database restore/recovery form backup media
 - c. Logs restore/recovery form backup media
 - d. Full system restore/recovery form backup media
- Consists of Test backups/restores (2 days)



Price Summary:

No.	Description	Price (MMK)
1	Acronis Backup 12.5 Standard Server License	1,542,030
2	Backup Software Configuration	735,000
Total		2,277,030

Bank Information:



Payment Schedule: 100% when job completed.

Time Frame: 2-3 days for license processing and 7 days for configuration.

Quotation Validity: 7 days

Should you have any questions, please feel free to contact us. Looking forward to hearing from you soon.

Yours Sincerely,

Khin Thandar
Office Manager