

# **Purchase Contract**

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This Purchase Contract (hereinafter the “**Contract**”) is made on \_\_\_\_\_ by and between the following parties:

1. **Digital Broadcasting Agency**, legal entity of public law, under the Ministry of Economy and Sustainable Development, represented by acting chair Nino Kubinidze (hereinafter the “**Purchaser**”)

And

2. [Name and Reg. No \_\_\_\_\_, country of incorporation \_\_\_\_\_, seat \_\_\_\_\_ ] (hereinafter the “**Supplier**”)

The Purchaser and the Supplier under this Contract are separately referred to as the “**Party**” and together as “**Parties**”.

#### **RECITALS:**

- A. **Whereas**, Georgia undertook obligation under the laws of Georgia and international conventions to complete full digital broadcasting switchover by 17 June 2015;
- B. **Whereas**, under the Action Plan for Digital Broadcasting Switchover (“**Action Plan**”) prepared by the Ministry of Economy and Sustainable Development (“**MoESD**”) and approved by the Prime Minister of Georgia by Decree No. 206, dated 14 February 2014, analog and digital broadcasting shall be in the simulcast mode starting from 17 March 2015 and three months thereafter.
- C. **Whereas**, one multiplex platform and respective sets of frequencies are transferred to the TeleRadioCenter Ltd. gratuitously, for the latter to ensure that TV channels of the Public Broadcaster are transmitted through digital broadcasting by 17 March 2015;
- D. **Whereas**, the Purchaser is charged with obligation to provide Set-Top-Boxes (“**Product**”) to socially vulnerable population of Georgia gratuitously and with this purpose announced tender to select the supplier of the Product;
- E. **Whereas**, the Supplier on [date] submitted its bid offer and by [title and date of the decision on procurement process] has been selected and awarded the contract to supply the Product;
- F. **Whereas**, the Supplier has been provided with detailed specifications and requirements of the Product (“**Specifications**”), and supplier does not have any questions as to quality and functional requirements that the Product shall satisfy.
- G. **Whereas**, the Supplier has provided the Purchaser with satisfactory laboratory certificates issued by Labwise Ltd.

**NOW, THEREFORE** the Parties agree on the following terms:

## **1. Product, Quantity and Purchase Price**

- 1.1. The Supplier shall deliver and transfer title on the Product conforming to all requirements provided under Specifications and Purchaser shall accept the Product in accordance with the present Contract.
- 1.2. Each Product shall include the following:
  - DVB-T2 Set-top Box
  - Packaging
  - Power cord
  - Remote control (with suitable batteries),
  - Component Video Cable with stereo audio RCA cable
  - HDMI cable
  - Warranty slip
  - One (1) copy of complete technical documentation with each device (set-top box) that features information on installation, set up, operation, use and maintenance in Georgian, Russian and English language
- 1.3. Quantity of the Product shall be in the range of 110,000 - 220,000 pcs. [The exact quantity shall be determined upon the receipt of the bids.]
- 1.4. Supplier shall deliver 2% extra quantity of Products as a warranty (on top of the Quantity of the Products stated under Clause 1.3 and at no cost for the Buyer).
- 1.5. Purchase price is [in figures] [in words] [currency] ("Purchase Price").
- 1.6. The Purchase Price includes any taxes, charges or other fees required to be paid in [source country] in order to export the Product.
- 1.7. The Purchase Price does not include any customs duties, taxes, charges or other fees, which may be levied outside the [source country]. Should such latter items become due, they would have to be borne by the Purchaser.

## **2. Payment Terms**

- 2.1. Payment shall be made by the Purchaser in [currency] as follows:
  - a) 20% of the Purchase Price as advance payment ("Advance Payment") supported by the bank guarantee provided by the Supplier;
  - b) 50 % of the Purchase Price upon Delivery of the Product
  - c) 30 % of the Purchase Price upon installation/commercial use of the Product.
- 2.2. The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, the Products Delivered and documents as provided under this Contract.

2.3. Payments shall be made promptly by the Purchaser in accordance with this Contract, but in no case later than forty five (45) calendar days after submission of a valid invoice by the Supplier. In the event that the Purchaser fails to make any payment by its respective due date or within the period set forth in the Contract, the Purchaser shall pay to the Supplier interest at the rate of 0.5 percent of the outstanding amount per Week until the full payment of the delayed amount. Such interest for the late payments is subject to a maximum of ten percent (10%) per annum of the amount of the overdue payments.

2.4. The Purchaser shall remit all payments by direct bank transfer to the Supplier's account within [Bank name]. Banking details:

**Account No.:**

**Bank Code No.:**

**SWIFT-Code:**

**Remark:**

2.5. The Supplier shall provide an Advance Payment Bank Security not later than 10 Business Days from signing this Contract equal in the amount and currency to the Advance Payment and valid until the Delivery of all the Products.

2.6. The Advance Payment Bank Guarantee shall be in the form and substance satisfactory to the Purchaser and substantially in the form as provided under Annex 1.1

2.7. The Supplier shall provide Performance Bank Guarantee in the amount of 5% of the Purchase Price, unconditionally securing all obligations of the Supplier under this Contract, within 10 Business Days from signing the present contract, in the form as provided under Annex 2. The Performance Bank Guarantee shall be valid until 30 April 2015.

### **3. Delivery**

3.1. Unless otherwise agreed between the Parties, the term of delivery shall be DAT Tbilisi (Incoterms 2010).

3.2. A copy of the invoice and delivery note shall be included with the shipment, and Supplier shall inform Purchaser of the time of dispatch. The Supplier shall notify the Purchaser of the shipment by fax at [numbers] or E-Mail at [email]. This notification shall be given within 48 (forty eight) hours of handover of the shipment to the freight forwarder. The notification must contain the following:

- Dispatch date
- Number of the delivery note
- Contents of the shipment
- Number of packages, gross and net weights
- Value of the shipment
- Flight number
- Contract number

The dispatch documents shall be sent to the Purchaser by e-mail. The invoice and delivery note shall be sent to the Purchaser by e-mail to the address: [recipient email address]

- 3.3. The Purchaser will notify the Supplier of the correctness of the invoice and delivery note and the further procedure. The shipment shall be hold until the supplier receives the notification. The Purchaser will provide the notification within 1 (one) working day after receiving the dispatch documents.
- 3.4. Each shipment shall comprise the following dispatched documents:
  - customs invoice in duplicate, specifying the contents of the shipment;
  - delivery note in duplicate specifying the gross and net weights;
  - Certificate of Origin
  - Airway Bill or respectively Bill of Lading
- 3.5. Customs clearance shall be effected by the Purchaser within 5 (five) working days of the arrival of the Product at the customs office and receipt of the shipping documents.
- 3.6. The Supplier shall bear all the costs related to the export and delivery of the Product to the customs of Georgia. The Purchaser shall be responsible for all the costs related to the import and customs clearance of the Product.
- 3.7. Products shall be packaged in a way that protects them from physical injury and malfunction. Packaging shall be able to withstand rough handling, extreme temperatures and corrosion during shipping and delivery to the specified address.
- 3.8. When calculating the size and weight of packages, the Supplier shall take into account the distance to end user and the lack of equipment to handle heavy loads. No more than 10 units shall be packaged together.
- 3.9. The Supplier shall be responsible for any damage during transportation caused by improper packaging.
- 3.10. The packaging of set-top-boxes (cardboard) shall feature Buyer's previously submitted design, as well as the serial number of the box.
- 3.11. Packaging shall be closed by a seal.
- 3.12. The packaging of collective lots shall include the bar codes with the serial number/factory data of the individual boxes (i.e. each collective lot shall carry 10 individual bar codes on the outside, representing the boxes included in the lot).
- 3.13. The Supplier must provide one extra bar code sticker per set-top-box, carrying the serial number of the set-top-box.
- 3.14. At the time when the Purchaser receives the Product or parts thereof, the Purchaser shall immediately within 3 working days inspect the packages delivered for obvious external damage as well as other visible damages to the Product. In the event the Product has any damage confirmed by the freight forwarder, the Purchaser shall notify the Supplier. The Supplier shall replace the damaged

item(s) promptly. In the event that the Supplier has not replaced the damaged item(s) within 30 (thirty) days of being notified, The Purchaser shall have the right to terminate this Contract.

3.15. In the event there is not visible damage on the Product, the Purchaser and the Supplier sign the Act of Acceptance, which provides for detailed description of the Products accepted. The date the Act of Acceptance is signed is the date of delivery ("the Delivery"). Upon signing the Act of Acceptance the title and risk of loss on the Products is transferred to the Purchaser.

3.16. For the avoidance of doubt, acceptance of the Delivery and signing of the Act of Acceptance does not prevent the Purchaser to make claims with respect to quality and defects of the Products.

3.17. The Supplier shall deliver the Product in accordance with this Contract by 30 January 2015 ("Deadline"). In the event that the Supplier fails to Delivery the Product by the Deadline. The Supplier shall pay to the Purchaser interest at the rate of 0.5 percent of the value of the outstanding quantity of the Products per Week until the Delivery of the Products in full.

3.18. The Products may Delivered in not more than 5 shipments by the Deadline.

3.19. The Supplier shall produce the RoHS Certification and CE Certification of the devices, evidencing that the product has met EU consumer safety, health and environmental requirements, by the date of the first delivery.

3.20. The Supplier shall produce the Antenna Ready Certification of the devices.

#### **4. Quality Control**

4.1 The Purchaser shall be entitled to conformity inspection within 7 business days after the Acceptance of the Products. The Purchaser shall perform test measurements on a randomly picked sample from the cargo, taking into consideration the fulfilment of Technical Specifications and the results of the tests carried out on the sample units. Functionality tests will be based on agreed software version.

4.2 The Purchaser shall notify the Supplier regarding the date, time and place of inspection at least 2 business days before the inspection. Failure of the Supplier to attend such inspections, may not exclude its responsibility.

4.3 The Purchaser shall promptly notify the Supplier of any non-compliance, in which case Supplier shall have eight (8) calendar days to decide on the course of action:

- Repair the goods free-of-charge within 30 calendar days in the place agreed by both parties.
- take back the shipment, at Supplier's cost, and send new shipment of equal volume within thirty (30) calendar days.

4.4 Quality control procedures shall always be documented in writing (measurement logs). If quality control is concluded with positive results, the Purchaser shall issue an official Certificate of Acceptance to Supplier within 24 hours.

#### **5. Warranty**

5.1. The Supplier warrants that:

- a. The Products are new and unused;
  - b. Technical information and documents are accurate and complete.
  - c. Products are free of faults and errors resulting of poor design, inadequate materials, manufacturing problems, or any acts of omissions of Supplier, that may arise during normal use.
- 5.2. The warranty period for the each piece of Product shall commence from the date of installation of the Product with the end-user.
- 5.3. In the case of defects of the Product arising within 12 (twelve) months of the commencement of the warranty period, the Supplier shall - to the exclusion of all further claims linked to such defect - at his discretion repair, replace or correct any defective part and/or otherwise remedy the defect free of charge within a reasonable period of time. In particular, the Supplier shall make its commercially reasonable efforts to resolve the problems arising from the defects within 10 Business Days if the defect has caused the interruption of the performance of the Product. All claims shall be notified to the Supplier promptly. Notwithstanding the foregoing all claims shall be notified to the Supplier in any event not later than 30 (thirty) calendar days after the end of the warranty period. Any claims not notified within such time are expressly excluded.
- 5.4. Liability for faults does not cover natural wear and tear nor damage arising after the installation date of the Product owing to faulty or negligent handling, excessive strain, non-compliance with the operating and maintenance regulations, chemical attack, electrical influences or modifications to the Product made by the Purchaser.
- 5.5. All liability for consequences of any inexpert alterations or repairs carried out by the Purchaser or a third party shall be waived.
- 5.6. In the event of repair or replacement of a defective part of the Product, the warranty period for this part shall be extended by the time in which it could not be used owing to the defect.
- 5.7. No complaints or claims under warranty shall affect the right of the Purchaser to indemnification for losses and damages arising out of the Supplier breaching its warranty obligations.

## **6. Force Majeure**

- 6.1. The Parties shall be released from their responsibilities for partial or complete fulfilment of their contractual obligations in the event of force majeure, but solely as provided in this Article.
- 6.2. *Force majeure* is defined as circumstances which arise after the Contract has been signed and which are caused by events unforeseen by and beyond the reasonable control of the Parties, including but not limited to strike, lockout, war, fire, flood, and natural catastrophes.
- 6.3. The Parties are obliged to fulfil the Contract, with the delivery deadlines and other deadlines postponed by the duration of the force majeure event or within a reasonable period of time taking all circumstances into account, whichever is longer. In the event that the force majeure event lasts more than 3 (three) months each Party shall have the right to terminate this Contract according to Article 17 of this Contract.

6.4. In the event of force majeure, the Parties are obliged to notify each other by fax or e-mail of the start and the estimated end of force majeure event without undue delay and submit the documentary evidence of such circumstances.

## **7. Termination of the Contract**

7.1. The Contract may be terminated by mutual Contract of the both Parties.

7.2. The Purchase may terminate the Contract unilaterally in the event of Supplier's default ("Supplier's Default"). Supplier's Default under this Contract shall include :

7.2.1. Delivery of defective Product and failure to replace it within the terms as provided under this Contract;

7.2.2. Failure to Deliver the Products within the Deadline and within the reasonable additional time given for Delivery;

7.2.3. Failure by the Supplier to provide Advance Bank Guarantee and/or Performance Bank Guarantee within the terms under this Contract;

7.2.4. If it is obvious and evident to the Purchaser that Supplier will not be able to Deliver the Products within the Deadline;

7.3. In the event the Purchaser exercises its right to terminate the Contract (or part of it) under this Clause, the Supplier shall promptly refund all money paid to it by the Purchaser with respect to the terminated part of the Contract, together with interest at an annual rate of EURIBOR plus 6% (six percent) from the time of Supplier receipt of the terminated part of the Product, and the Supplier shall be relieved of any further obligation to the Purchaser with respect to the terminated part of the Contract.

7.4. The supplier is authorized to terminate and withdraw in part or in whole from the Contract if the Purchaser is in default of his payment obligations in accordance with this Contract for a period longer than 15 (fifteen) working days.

## **8. Governing Law and Dispute Resolution**

8.1. The Contract shall be governed by and interpreted in accordance with the laws of Georgia.

8.2. If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the Parties shall seek to resolve any such dispute or difference by mutual consultation. If the Parties fail to resolve such a dispute or difference by mutual consultation, within twenty eight (28) days after one party has notified the other in writing of the dispute or difference, then the matter may be referred to the London Court of International Arbitration (LCIA) and Arbitration Proceedings shall be

conducted in accordance with the Rules of LCIA. These rules, in the version in force at the time of the request for arbitration, will be deemed to form part of this Contract and are incorporated herein.

## **9. Other Provisions**

### **9.1. Assignment**

Neither the Purchaser nor the Supplier shall, without the express prior written consent of the other, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or thereunder, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

### **9.2. Independent Supplier**

The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the Parties to the Contract.

Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees or representatives engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Purchaser.

### **9.3. Severability**

If any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Contract will remain in full force and effect. Any provision of this Contract held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

### **9.4. Notices**

All notices, consents, waivers, and other communications under this Contract must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), or (b) when received by the addressee, if sent by a nationally recognized commercial delivery service (receipt requested), in each case to the following addresses (or to such other addresses as a Party may designate by notice to the other Parties).

#### **For Purchaser:**

To the Attention of: \_\_\_\_\_

Address:

Email:

**For Supplier:**

To the Attention of: \_\_\_\_\_

Address:

Email:

**9.5. Entire Contract**

This Contract supersedes all prior Contracts between the Parties with respect to its subject matter (including any preliminary Contracts) and together with Specifications and Request For Quotation (RFQ) constitutes a complete and exclusive statement of the terms of the Contract between the Parties with respect to its subject matter. In the event there is a conflict between this Contract and RFQ, the former shall have priority.

This Contract may not be amended except by a written contract executed by the Parties. Each Party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

**9.6. Waiver**

The rights and remedies of the Parties to this Contract are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Contract or the documents referred to in this Contract will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege, unless specifically referred to under this Contract. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Contract or the documents referred to in this Contract can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Contract or the documents referred to in this Contract.

**9.7. Counterparts**

This Contract is made in two equal counterparts. The Parties may make translations of this Contract, however in any case the English version of this Contract shall prevail.

**For and on behalf of the Purchaser:**

**For an on behalf of the Supplier:**

Signed:  
Date:  
In the capacity of:

Signed:  
Date:  
In the capacity of:

Annex 1: **ADVANCE PAYMENT BANK GUARANTEE**

Advance Payment Bank Guarantee	
Contract:	Date: <b>[date ]</b> <b>[name and number of Contract ]</b>
To: <b>[name and address of Purchaser]</b>	
Dear Sir or Madam:	
We refer to the Contract ("the Contract") signed on <b>[date ]</b> between you and <b>[name of Supplier ]</b> ("the Supplier") concerning supply of Set-Top-Boxes.	
Whereas, in accordance with the terms of the said Contract, the Purchaser has agreed to pay or cause to be paid to the Supplier an Advance Payment in the amount of <b>[ amount in numbers and words, for each currency of the Advance Payment ]</b> due to the Supplier.	
By this letter we, the undersigned, <b>[ name of Bank ],</b> a bank (or company) organized under the laws of <b>[ country of Bank ]</b> and having its registered/principal office at <b>[ address of Bank ],</b> (hereinafter, "the Bank") do hereby jointly and severally with the Supplier irrevocably guarantee repayment of the said amounts upon the first demand of the Purchaser without cavil or argument in the event that the Supplier fails to commence or fulfill any of its obligations under the terms of the said Contract, and in the event of such failure, refuses to repay all or part (as the case may be) of the said Advance Payment to the Purchaser.	
This Guarantee shall remain in full force from the date upon which the said Advance Payment is received by the Supplier until the date of Delivery of all the Products. Any claims to be made under this Guarantee must be received by the Bank during its period of validity.	
For and on behalf of the Bank	
Signed:	
Date:	
In the capacity of: <b>[ title or other appropriate designation ]</b>	
Common Seal of the Bank	

Annex 2: **PERFORMANCE SECURITY BANK GUARANTEE**

Performance Security Bank Guarantee  
(unconditional)

Date: **[ date ]**  
Contract: **[ name or number of Contract ]**

To: Digital Broadcasting Agency, under the Ministry of Economy and Sustainable Development of Georgia.

Dear Sir or Madam:

We refer to the Contract Agreement (“the Contract”) signed on **[date]** between you and **[name of Supplier]** (“the Supplier”) concerning supply of SeT-Top-Boxes.

By this letter we, the undersigned, **[name of Bank]**, a bank (or company) organized under the laws of **[country of Bank]** and having its registered/principal office at **[address of Bank ]**, (hereinafter, “the Bank”) do hereby jointly and severally with the Supplier irrevocably guarantee payment owed to you by the Supplier, pursuant to the Contract, up to the sum of **[amount in numbers and words ]**.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Supplier to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Supplier to dispute or question such demand. Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed under this Letter in respect of any demand duly made under this Letter prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the date of expiration of the guarantee, as governed by the Contract. Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation. Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made under this Letter after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed under this Letter, whichever is the earlier. All notices to be given under this Letter shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released, or discharged by mutual agreement between you and the Supplier, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent, or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event, or condition that by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, non-conditional in all respects.

For and on behalf of the Bank

Signed:  
Date:  
in the capacity of: **[title or other appropriate designation ]**

Common Seal of the Bank