

## Draft Contract on Public Procurement

The final version of the terms of the Contract can be specified and elaborated in the process of signing the Contract with the winning bidder of the tender.

### Contract N---

Batumi

----- (date)

On the one hand, the Ministry of Finance and Economy of the Autonomous Republic of Adjara, represented by ----- (hereinafter referred to as the "Procuring Entity"), and on the other hand, -----, represented by ----- (hereinafter referred to as the "Supplier"), as a result of the electronic tender (Electronic Tender Announcement NAT-----, CVP 45200000) we conclude this Contract on Public Procurement on the following:

### **1. Subject and Value of the Contract**

- 1.1. Procurement Object shall be: Construction/installation works on Mount Chirukhi, Shuakhevi municipality in accordance with the terms specified in this Contract and Appendix N1 (Terms of Reference);
- 1.2. The total value of the Contract shall be ----- GEL.
- 1.3. An integral part of this Contract shall be the Terms of Reference - Appendix N1, the Price Table - Appendix N2 and the Schedule - Appendix N3;
- 1.4. The value of the Contract shall include all expenses of the Supplier related to the performance of the work provided for by the Contract, as well as taxes and fees provided for by the legislation of Georgia payable by the Supplier.

### **2. Control Over the Fulfillment of the Contract**

- 2.1. The Procuring Entity or its representatives shall be authorized to exercise technical control to ensure their compliance with the terms specified in the Contract.
- 2.2. Nothing in this article shall release the Supplier from any other obligations under this Contract.
- 2.3. On the part of the Procuring Entity, control over the fulfillment of the obligations undertaken by the Supplier under the Contract shall be controlled by the working group of the Ministry of Finance and Economy of the Autonomous Republic of Adjara (to be specified upon signing the Contract).

### **3. Terms, Conditions and Place of Delivery of the Procurement Object**

- 3.1. The term for the completion of construction work shall be the period from the date of signing the Contract until no later than October 1, 2024.
- 3.2. The Supplier shall perform the work within the terms specified by the Contract, in accordance with the tender documentation, in compliance with the requirements of all necessary regulations, standards and procedures in force in Georgia.
- 3.3. The Supplier shall ensure the supply of mechanical and electrical equipment (hereinafter referred to as "Equipment") provided for in this Contract in accordance with the Technical Specifications described in Appendix 1.
- 3.4. Equipment shall be packaged in a standard manner suitable for long distance sea and land transportation before delivery to their destination to avoid damage under normal conditions, and shall be accompanied by installation and maintenance instructions and technical drawings.
- 3.5. The equipment shall remain the property of the Supplier until it is handed over to the Purchasing Entity, until the signing of the final acceptance certificate.
- 3.6. All risks and obligations associated with the construction shall be transferred to the Contractor, after the signing of the final acceptance certificate confirming the commissioning and installation of the public facility.

- 3.7. The Supplier shall ensure the performance of all survey and construction and installation works and assemblage/installation of equipment, fitting and regulation of equipment, including the commissioning and adjustment of the facility, including a full load test and training of the Contractor's personnel, as described in Appendix 1 ( hereinafter "the Works").
- 3.8. The Supplier shall provide appropriate on-the-job training for the assigned service and technical personnel during commissioning and adjustment works in accordance with the conditions described in Appendix 1. During the installation phase, the Supplier shall instruct the service and technical team on site on the operation and maintenance of the equipment and work. This instruction shall be conducted in Georgian and English, in the form of practical exercises at the workplace. The Supplier shall undertake to invite qualified personnel to Georgia who will be able to conduct both practical and theoretical training modules. The training shall be followed by informal testing. The test results shall be approved by the Contractor.
- 3.9. In the event that the Contractor expresses substantiated claims or comments regarding the quality or scope of obligations fulfilled by the Suppliers, the Supplier shall undertake to eliminate the deficiencies at its own expense within the terms agreed by the parties. Within 1 month after the elimination of deficiencies, the parties shall sign an acceptance certificate (with the participation of an expert agency), which shall confirm the fulfillment of all obligations assumed by the Suppliers under this Contract. All costs associated with the return of devices, their replacement and the costs of specialist services shall be reimbursed by the Supplier.
- 3.10. Installation and test run shall be carried out by the Supplier's specialists with the participation of persons specified in the technical documentation. The costs of examination /inspection/expert's assessment shall be borne by the Supplier;
- 3.11. The Supplier shall ensure compliance with applicable construction safety regulations;
- 3.12. The Supplier shall obtain all kinds of documents, including permits and agreements required for smooth conduct of the construction process (arranging street sidewalk structure, temporary power and water supply, block the street if necessary, temporary use of sewer and drainage channels, transport schemes for delivery/removal of supplies to and from the construction site, if necessary, etc.).
- 3.13. Place of consignment - Shuakhevi municipality, Chirukhi mountain, Adjara, Georgia.

#### **4. Insurance and Guarantees**

- 4.1. The supplier shall be responsible for the delivery of the equipment (destination: Shuakhevi municipality, Chirukhi mountain, Adjara, Georgia);
- 4.2. Prior to signing an acceptance certificate, the Supplier shall secure the appropriate insurance required for the completed project, such as supplier-related public liability insurance, fire risks, etc.
- 4.3. The Supplier shall be responsible for full delivery, including any transit charges and appropriate insurance.
- 4.4. The Supplier shall be responsible for packaging suitable for ground transportation.
- 4.5. The Supplier shall be responsible for the insurance necessary for the transportation and delivery of the Equipment to its point of destination (Shuakhevi municipality, Chirukhi mountain, Adjara, Georgia).
- 4.6. The Supplier shall be liable and bear all expenses incurred in connection with any illness or injury of any of the Supplier's personnel.
- 4.7. The Supplier shall guarantee that the equipment is made of first-class materials, of first-class workmanship, is brand new and unused and, after the installation, it shall comply with all applicable standards and quality requirements, provided for in this Contract and the attached documents, as well as the EU Directive on cable cars, respectively - CEN standards, the design shall ensure continuous operation at maximum speed and capacity.
- 4.8. The warranty period of the equipment, except for spare parts, shall be 2 (two) years from the signing of the final acceptance certificate. This warranty shall cover replacement of an acknowledged defective part with a brand new one or its repair at a workshop (recommended or acceptable to the Procuring Entity) as

soon as possible. Replacement or repair of parts under warranty shall not entail the extension of the warranty period. Delivery, assembly and installation of spare parts shall be carried out promptly within a reasonable time.

- 4.9. All replaced defective items or parts shall be returned to the Supplier at the Supplier's expense.
- 4.10. The warranty shall be void and the Supplier shall be released from any liability: (a) if the Procuring Entity has replaced parts with parts of a different origin without authorization, or if the lift has been modified or altered in any way without the Supplier's authorization; (c) if the damage is caused by negligence, misuse, improper maintenance; (d) if a log of operations and inspections is kept on time; (e) if incidents are caused by natural causes, including but not limited to avalanches, landslides or soil settlement, excessive accumulation of snow or ice, earthquakes or hurricanes.
- 4.11. The Supplier's liability shall be clearly limited by the warranty set forth above. Upon delivery of the Equipment, the Procuring Entity shall be solely responsible for the occurrence of any incident and shall also be responsible for providing the necessary insurance.

## **5. Health and Safety Issues**

- 5.1. The Supplier shall be responsible for the safe performance of work and health protection at the construction site in accordance with applicable law and project documentation.

## **6. Issues of Environmental Protection, Cultural Heritage and Social Impact**

- 6.1. In accordance with the current legislation of Georgia, the Supplier shall be responsible for all possible negative impacts that the current work may have on the environment, social environment, cultural heritage and community.
- 6.2. The Supplier and subcontractor (if any) shall comply with the requirements and provisions of applicable laws and provisions regarding environmental, social, cultural heritage and community impact issues (which, in turn, include, but are not limited to, pollution prevention, protection of cultural heritage sites and other emergency measures).
- 6.3. During the entire period of work and at the time of their completion, as well as when eliminating deficiencies, the Supplier shall take all measures to protect the territory adjacent to the construction site, the social environment, cultural heritage and the population from negative impacts.

## **7. Environmental Pollution**

- 7.1. After the performance and completion of the work, the Supplier shall ensure the removal of construction debris and waste generated during the construction process. The Supplier shall comply with the Procuring Entity's requirement to carry out similar cleaning activities in the course of work.
- 7.2. Upon completion of the work, the Supplier shall immediately remove from the construction site the equipment, materials, scaffolding, temporary structures and similar structures belonging to the Supplier and the subcontractor (if any).
- 7.3. The Supplier shall also protect soil and water from contamination caused by, but not limited to, spills, leaks or spills of fuel, motor lubricants, paints, primers, solvents, as well as waste, debris and other materials in the possession or control of the Supplier or subcontractor, and shall undertake to remove it and indemnify and hold harmless the Procuring Entity (the "Indemnified Party") from and against all claims, demands, costs, litigation, damages and other costs arising from the wrongful acts and/or omissions of the Supplier, negligence or violation of the rights of third parties by the Supplier.
- 7.4. The Supplier shall provide separate collection (hazardous and non-hazardous), tracking, temporary safe disposal and transfer of waste generated as a result of the performance of work for sterilization and processing by an appropriately authorized organization that has a permit for environmental impact.
- 7.5. Any damage or loss caused by the Supplier to the property of third parties during the construction work shall be immediately restored by the Supplier to its original condition and/or replaced with a similar one

and or reimbursed at the appropriate cost. This condition shall be subject to agreement between the Supplier and the affected third party/parties.

## **8. Rule of Delivery and Acceptance of the Procurement Object**

- 8.1. The work shall be considered accepted after signing the acceptance certificate.
- 8.2. The acceptance certificate shall be issued after the submission of an opinion approved by the company conducting inspection and the conformity assessment, including the opinion on the compliance of the object with CEN standards.
- 8.3. The delivery and acceptance of the work performed shall be carried out by the working group of the Ministry of Finance and Economy of the Autonomous Republic of Adjara (to be specified when signing the Contract).
- 8.4. The date of submission of acceptance certificates and related documents shall be the date of their delivery to the official address of the Procuring Entity.

## **9. Payment**

- 9.1. Payment shall be made in stages, within 10 (ten) working days after the submission of the acceptance certificates and the tax invoice (if any), signed between the Supplier and the representative of the Procuring Entity.
- 9.2. After signing the acceptance certificate of project works, the Supplier shall have the right to submit to the Procuring Entity a preliminary request in writing for an advance payment.
- 9.3. The Supplier shall provide the Procuring Entity with a bank guarantee. The guarantee shall be provided in national currency - lari, by a banking institution licensed by the National Bank of Georgia, or by a foreign banking institution, reinsured by a banking institution licensed by the National Bank of Georgia. The guarantee may also be provided by an insurance company licensed by the LEPL Insurance State Supervision Service of Georgia. The bank guarantee shall be unconditional and irrevocable in its content and shall entitle the Procuring Entity to receive an amount identical to the advance payment from the institution that issued the bank guarantee in the amount identical to the advance payment on first demand without any verification and submission of documentation by the Procuring Entity. The guarantee shall be submitted in the following form: printed on the title page (letterhead) of the institution that issued the guarantee, signed by an authorized person and stamped; The term of validity of the bank guarantee shall exceed the term for the performance of work provided for by the contract by 60 calendar days.
- 9.4. The Procuring Entity shall make the advance payment within 10 (ten) working days after the Supplier submits the bank guarantee and the advance tax invoice;
- 9.5. In the event of an extension of the term of the Contract (regardless of by whom and for what reason the specified period was extended), the Supplier shall extend the term of the unconditional and irrevocable guarantee within 10 (ten) business days from the date of the written request by the Procuring Entity in such way as to ensure compliance with the time period specified in clause 9.3;
- 9.6. In the event of termination of the Contract, the Procuring Entity shall be entitled to compensate the unused portion of the advanced amount from the advance bank guarantee.
- 9.7. The advance payment to the Supplier shall not exceed 50% of the total Contract value.
- 9.8. In case of detection of deficiencies in the work provided for by the Contract, as well as in the event that the Procuring Entity imposes a penalty or a fine on the Supplier, the Procuring Entity shall not make

payment until the deficiency is completely eliminated and the imposed penalties/fines (if any) are paid to the budget, and/or the amount shall be deducted from the amount payable.

- 9.9. The cost of zipline rope shall be charged in accordance to the length of rope actually used (length of rope multiplied by the unit price set by the bidder).

#### **10. Contract Performance Bank Guarantee**

- 10.1. To ensure the performance of the Contract, the Supplier submits a **Bank Guarantee** issued by ----- dated-----.
- 10.2. The amount of the guarantee shall be 5-10% of the total value of the contract, namely ----- GEL. The submitted Bank Guarantee shall be valid until ----- (including).
- 10.3. The Bank Guarantee specified in clause 10.1 of the Contract shall provide for an unconditional and irrevocable obligation of the bank the full amount of the Bank Guarantee to the Procuring Entity. The Contract Performance Bank Guarantee shall be used to compensate for any damage that may be caused to the Procuring Entity in connection with non-performance or improper performance of the terms of the Contract, or in the event of termination of the Contract, or in connection with the failure to eliminate defects or deterioration in quality found after the completion of the work performed, as well as in case of application of a penalty by the Procuring Entity and in other cases provided for by the Contract.
- 10.4. Payment made by the Contract Performance Bank Guarantee shall not release the Supplier from the obligation to compensate for damage (losses) caused to the Procuring Entity by non-performance of the Contract and and from payment for the damage (losses) not covered by the Guarantee.
- 10.5. In the event of a postponement (extension) of the term of the Contract (regardless of by whom and for what reason the specified period was postponement), the Supplier shall extend the term of the Bank Guarantee within 10 business days from the date of the written request by the Procuring Entity in such way as to ensure compliance with the time period specified in clause 6.3 of the tender documentation (the term of validity of the Contract Performance Bank Guarantee shall exceed the period of completion of work by at least 25 months);
- 10.6. In case of non-fulfillment or improper fulfillment by the Supplier of the obligation under this Contract, the Procuring Entity shall be entitled to use the Bank Guarantee both in the event of termination or non-termination of the Contract with the Supplier.

#### **11. Prices**

- 11.1. Change to the price parameters of the Contract shall not be allowed if this change results in increasing the total value of the Contract, or in deteriorating Contractual terms for the Procuring Entity, except for the cases provided for in Article 398 of the Civil Code of Georgia.
- 11.2. In case of occurrence of the provisions provided for in Article 398 of the Civil Code of Georgia, it is inadmissible to increase the total value of the Contract on Public Procurement by more than 10%.

#### **12. Amendments to the Contract**

- 12.1. Deviations or changes to the terms of the Contract shall not be allowed, unless they are agreed and signed by both parties.
- 12.2. If, due to any unforeseen reasons, it becomes necessary to change the terms of the Contract, the initiator of the changes shall notify the other party in writing of the relevant information.
- 12.3. Any change that increases the price of the Contract or worsens the conditions for the Procuring Entity shall not be allowed, except for the cases provided for in Article 398 of the Civil Code of Georgia, taking into account the requirements of the Law of Georgia on Public Procurement and this provision.
- 12.4. Any changes to the terms of the Contract shall be signed as an Appendix to the Contract, which shall be considered an integral part of the Contract.

### **13. Transfer of Rights**

- 13.1. The Supplier may not transfer obligations under this Contract to a third party, in whole or in part, without the prior written consent of the Procuring Entity.

### **14. Subcontractors**

- 14.1. At any stage of the contract, the Supplier may ensure the performance of work with the involvement of the subcontractor(s);
- 14.2. The right to perform work by the subcontractor(s) is granted to the Supplier only on the basis of a notice of the conclusion of an agreement with the Procuring Entity. To obtain such right, the Supplier shall present a signed contract with the subcontractor(s);
- 14.3. Delivery of work to be performed by the subcontractor(s) and, accordingly, handing over of work shall be ensured by the Supplier;
- 14.4. Payment for the cost of work performed by the subcontractor(s) shall be made in accordance with the conditions stipulated by this Contract with the Procuring Entity;
- 14.5. None of the subcontracts entered into under this Contract shall release the Supplier from its obligations assumed under this Contract.

### **15. Non-fulfillment of Contract Terms**

- 15.1. In the event that the Supplier fails to fulfill its obligations under the Contract, the Supplier shall be charged a penalty in the amount of 0.02% of the total value of the Contract for each day of delay.
- 15.2. In case of termination of the Contract/refusal to provide services by the Supplier, the Supplier shall be charged a penalty of 5% of the total value of the Contract.
- 15.3. If the Supplier violates the terms of the Contract, the Procuring Entity, in accordance with Article 16 of this Contract, shall be entitled to terminate the Contract and use the Contract Fulfillment Bank Guarantee provided by the Supplier.

### **16. Grounds for Termination of the Contract**

- 16.1. In accordance with the legislation of Georgia, the Procuring Entity may terminate the Contract ahead of schedule if the Supplier fails to fulfill (violates) the obligations under this Contract, including: 1. the Supplier could not or did not comply with the requirements set out in the defect elimination notice; 2. the supplier carries out the work in violation of the conditions specified in the project documentation; 3. the amount of penalty payable by the Supplier exceeds 5% of the total Contract value; 4. the Supplier fails to extend the period of validity of the Performance Guarantee and/or Advance Bank Guarantees, the validity of which shall be equal to the period specified in clauses 9.3 and 10.5 of the Contract; 5. if it becomes aware that the data and documents confirming the information provided by the Supplier about its condition, qualifications and experience turn out to be false; 6. in case of insolvency, bankruptcy proceedings or other similar proceedings against the Supplier; 7. the Supplier, due to its own faulty actions, failed not fulfill the work set out in the schedule, and the Supplier, due to its own faulty actions, failed to fulfill the obligations assumed under the schedule within the period specified in the notification after receiving the relevant notification from the Procuring Entity;
- 16.2. the buyer and the Supplier may, by mutual agreement, terminate the Contract at any stage of its validity.
- 16.3. In the event of termination of the Contract, the Supplier shall immediately stop work, ensure the safety of the facility and leave the facility within a reasonable time agreed between the Supplier and the Procuring Entity.
- 16.4. In the event of termination of the Contract by the Procuring Entity due to non-fulfillment or untimely fulfillment of obligations assumed by the Supplier, the Supplier shall be obliged to reimburse the

Procuring Entity and third parties for all losses and damages within one month from the date of termination of the Contract.

### **17. Force Majeure**

- 17.1. Non-fulfillment of the terms of the Contract by any of the parties to the Contract shall not entail the application of penalties and non-return of the Contract Performance Guarantee, if the delay in the execution of the Contract or the failure to fulfill its obligations is a consequence of force majeure circumstances.
- 17.2. For the purposes of this Article, "force majeure" means circumstances which are insurmountable to the parties and beyond their control, which are not related to the errors and negligence of the Procuring Entity and/or Supplier and which are of an unforeseen nature. Such a circumstance may be caused by war or natural disasters, epidemics, quarantine and embargoes on the supply of goods, a sharp reduction in budget allocations.
- 17.3. In the event of occurrence of force majeure circumstances, the contracting party for which fulfillment of the obligation has become impossible shall immediately notify the other party in writing of such circumstances and their causes. If the notifying party does not receive a written response from the other Party, it should, at its discretion and to the best of its ability, continue to carry out its contractual obligations and try to find such alternative ways to fulfill its obligations that will be independent of the impact of force majeure circumstances.

### **18. Resolution of Disputes**

- 18.1. The Procuring Entity and the Supplier shall make every effort to amicably resolve, through direct negotiations, all disagreements and disputes arising between them in relation to the Contract or any other component related to it.
- 18.2. If, within 30 (thirty) days from the start of such negotiations, the Procuring Entity and the Supplier fail to resolve the dispute by agreement, either party may apply to the Batumi City Court to resolve the dispute in accordance with the current legislation of Georgia.

### **19. Applicable Law**

- 19.1. The Contract is concluded in accordance with the legislation of Georgia and shall be interpreted in accordance with the legislation of Georgia.

### **20. Fees and Taxation**

- 20.1. A foreign Supplier (non-resident) shall be responsible for paying all taxes, fees and other payments related to the performance of work on the territory and outside of Georgia.
- 20.2. The local Supplier shall be responsible for paying taxes, fees and other payments established by the legislation of Georgia, unless otherwise provided by the Contract..

### **21. Validity of the Agreement**

- 21.1. This Contract shall be valid from the date of signing this Contract to ----- inclusive.

### **22. Additional Provisions**

- 22.1. Neither party shall have the right to transfer to a third party its rights and obligations without the written consent of the other Party.
- 22.2. The Contract is drawn up in Georgian, any correspondence related to the Contract shall be in Georgian.
- 22.3. Any notification by one party to the other, according to the Contract, shall be sent by letter or by e-mail (to be specified upon signing the Contract). The parties shall notify each other of changes in the specified addresses no later than 5 working days after such changes. Notices and announcements to the other party

shall be deemed to have been properly sent if they were sent to the addresses and emails specified below, unless there was a notification of their change.

22.4. Any changes or additions to this Contract shall enter into force only after they are made in writing and signed by the parties.

**23. Legal Addresses and Details of the Parties**

<i><b>The Procuring Entity</b></i>	<i><b>The Supplier</b></i>
<b>Ministry of Finance and Economy of the Autonomous Republic of Adjara</b>	
<b>Tel: (422) 27-35-10</b>	
<b>Address: 119, M. Komakhidze street, Batumi</b>	
<b>Identification code - 245429200</b>	