

LICENSE, MAINTENANCE AND SUPPORT SERVICES STATE PROCUREMENT AGREEMENT  
№ 00/00

This agreement is composed based on tender documentation of buyer (Gncc) and proposal of the tenderer (0000000).

Electronic tender Requisites: № 0000000; Date of the Tender: - 00.00.2017; State Procurement portal:  
[www.procerement.gov.ge](http://www.procerement.gov.ge)

All tender documentation, including any specifications, anexes uploaded in the electronic system are part of the contract and in case of conflict of terms tender documentation shall prevail

This License, Maintenance and Support Services Agreement (the "Agreement") is made on \_\_\_\_\_, 2017 (the "Effective Date") between ("000000"), and Georgian National Communications Commission, with principal offices at Ketevan Tsamebuli Ave/ Bochorma Str. 50/18, Tbilisi 0144, Georgia, ("GNCC").

Whereas:

A) GNCC is tasked with maintaining an automated network measurement system to support qualification of regulation conformance;

B) Supplier is the sole and exclusively owner of software and hardware that is branded "MyConnection Server" as described in Exhibit "A" of this Agreement (the "Software/Hardware");

C) Supplier is willing to grant GNCC a license to the Software, to provide hardware, to provide hardware maintenance and professional services as described in Exhibit "A" under the terms and conditions set forth herein.

Now therefore, the parties agree to the following:

## CLAUSES

**1. Definitions.** Capitalized terms shall have the meanings set forth in their instance of first use or as set forth in this Section.

"Documentation" means those published user manuals, operating instructions and other technical specifications and documents supplied to GNCC by Supplier relating to the Software and Hardware

"Effective Date" means the date of execution of this Agreement as set forth above.

"Enhancements" means any modification to the Software to add features or functions not previously included in the Software.

"Hardware" means the network measurement appliances listed in Exhibit "A"

"Intellectual Property Rights" means all (i) copyrights (including, without limitation, the exclusive right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works),

copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author's rights, algorithms, data, rights in packaging, goodwill and other intellectual property rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of any domestic or foreign jurisdiction; and (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets and know-how.

“Services” means the maintenance and support services that Supplier shall provide to GNCC and which are further described in Exhibit “B” of this Agreement. The Parties agree that GNCC may request additional services which will be documented in additional Exhibits which will be part of this Agreement.

“Specifications” mean the performance specifications of the Services and the Software as set forth in the respective Exhibit of this Agreement.

“Software” means the executable software product known as “00000000000”.

“Updates” means any modifications to the Software to rectify or provide fixes to design faults, discrepancies, defects or other conditions commonly referred to as “bugs”.

## 2. License.

2.1. Grant of License. Subject to the terms and conditions of this Agreement, Supplier grants GNCC a two year, non-exclusive and non-transferable license to “use” the Software (the “License”). For the purposes of this Section 2, “use” shall mean:

- (a) The right to install and operate the Software in accordance with the Documentation; and
- (b) to make the necessary copies of the Software for emergency, backup, archival and disaster recovery purposes, provided that each such copy of Software made by GNCC contains a full reproduction of all proprietary markings, trademark and copyright notices appearing in the original provided by Supplier.

2.2. Documentation Rights. Subject to the terms and conditions of this Agreement, Supplier hereby grants to GNCC a two year, non-exclusive, non-transferable license to make a reasonable number of copies of the Documentation for its own internal purposes and for purposes of instructing and training its employees, provided that GNCC shall copy or reproduce all proprietary markings, trademark and copyright notices in all full or partial copies of the Documentation.

2.3. Restrictions. Except as expressly provided to the contrary in this Agreement, GNCC may not itself assist or permit any third party to:

- (a) copy, modify, reverse engineer, decompile or disassemble the Software or create the source code, except as and to the extent expressly authorized by applicable law;
- (b) distribute, rent, lease or lend the Software, or engage in any other form of commercial exploitation of the Software (other than contemplated by Section 2.1 of this Agreement) or use the Software outside of the scope of the License granted hereunder or in a manner not contemplated by the Documentation, or
- (c) remove any proprietary notice of Supplier or any third party so identified on the Software and Documentation or any copy thereof.

### **3. Services description.**

Supplier will provide GNCC the following Services:

- a) Updates and enhancements. Supplier shall provide GNCC any Updates or enhancements to the Software and Documentation.
- b) Telephone Support. Supplier shall provide telephone support between 8:00 and 20:00 hours GMT, Monday through Friday, excluding federal holidays, state holidays and locally observed Supplier's holidays, to assist GNCC in using the Software, Hardware, Updates and Enhancements and with any problem derived therefrom by calling to 1(703)953-2171 or via Web <http://www.myconnectionserver.com/supportrequest.html>.

After hours, holiday, and weekend help may be available for an additional fee, which shall be previously authorized by GNCC. GNCC may request after hours, holiday and weekend help calling to Supplier's technical support telephone system, which will be forwarded to the technical staff on call.

- c) Services not included. The parties acknowledge and agree that the Services only include those items set forth in this Section 3. The parties further acknowledge and agree that the Services do not include the following services:
  - 1) Training. GNCC training will be provided by Supplier, which shall be provided in accordance with Exhibit "A". Training services fees are also detailed in Exhibit "A" to this Agreement.
  - 2) Installation and testing. GNCC may require Supplier's installation services for all Updates and Enhancements (if purchased) and testing services, which shall be provided by Supplier subject to the availability of Supplier's qualified personnel and the payment of additional fees by GNCC. Installation and testing fees shall be previously authorized by GNCC in an Exhibit to this Agreement.
  - 3) Consulting Services. Pre-approved Consulting time is detailed in Exhibit "A".

### **4. Fees and Terms of Payment**

4.1 Fees. GNCC shall pay Supplier for the Software, Hardware, Maintenance and Services in the amounts set forth in the Exhibit "A" hereto.

4.2. Payment for the appliances indicated in the Price list (Annex N1) positions 2.1; 2.2; (7 pcs of network measurement & quality test appliances) will be made no later than 10 (ten) banking days after installation of the servers in Tbilisi, Georgia, based on acceptance act signed from both sides and represented invoice from the tenderer.

4.3. Payment for the software licenses indicated in the Price list (Annex N1) positions 1.1; 1.2; (4 licenses of MCS management and network testing software) will be made no later than 10 (ten) banking days after installation of the software in Tbilisi, Georgia, based on acceptance act signed from both sides and represented invoice from the tenderer.

4.4. Payment for the Network Test Mobile Application will be made no later than 10 (ten) banking days after tenderer makes the application available for the purchaser, based on acceptance act signed from both sides and represented invoice from the tenderer.

4.5. Payments for the 24 month services and cloud service in London, UK will be made quarterly, based on acceptance act signed from both sides and represented invoice from the tenderer. Invoice will be sent on the first day of third month of each quarter, payable by last day of third month.

4.6. Payments for the 2-Days Classroom Training for 2 Seats will be made based on acceptance act signed from both sides and represented invoice from the tenderer.

4.7. **Payments for Professional Services, including assistance with configurations, test profiles, test result reviews, etc. will be made based on acceptance act signed from both sides and represented invoice from the tenderer. Professional services, if needed, will invoiced at the end of each month in which services are rendered, with payment due within 10 banking days.**

4.8 Payment shall be made in USD, equivalent amount of Gel indicated in the contract, exchange rate by the day of payment according to [www.nbg.gov.ge](http://www.nbg.gov.ge) (national bank of Georgia).

#### **4.9 Pre-Payment (Advance payment).**

4.9.1 20% of the Purchase Price as advance payment (“Advance Payment”) supported by the bank guarantee provided by the Supplier; sk

4.9.2 If the Supplier wishes to receive advance payment equal amount unconditional and irrevocable bank guarantee should be represented to purchaser (Beneficiary) no later than 7 days after contract award date. The validity term of the guarantee shall exceed the term of the respective Agreement at least by 1 month. If the bidder doesn't represent bank guarantee for the given period prepayment method is not applicable.

**5. Supplier's Obligations.** The foregoing shall be, including but not limited to, Supplier's obligations to deliver the Hardware, Software and provide the Services according the specifications and delivery and performance time tables set forth on Exhibit “A” to this Agreement and/or as agreed to by the parties for Consulting services.

5.1 Supplier presented the unconditional and irrevocable bank (performance) guarantee in the amount of 000000. Issuing bank “.....”The bank, guarantee N000000000. Validity period 000000.

5.2 In the event of fundamental breach of contractual obligations from supplier's side, GNCC is authorized to address guarantee / bank for the reimbursement.

5.3 Bank Guarantee unconditionally secures all obligations of the Supplier under this Contract.

**6. GNCC's Obligations.** The foregoing shall be GNCC's obligations:

- a) To pay Supplier the amounts described in Section 4. And Exhibit A within the payment terms specified.
- b) To assist Supplier personnel as needed to fulfill the requirements of Services in Exhibit “A”

#### **7. Supervisors.**

7.1 Appointment of Supervisors. Each party shall designate a supervisor who will be responsible to act as contact between both parties in relation to the technical subjects arising from this Agreement, as well as the follow up of the Services performance and Software delivery. Therefore, the parties hereby designate the following persons as their respective supervisors:

SUPPLIER	GNCC
	Mikheil Jgamadze (Head of Technology and telecom infrastructure Department)
Telephone: 000000000	Telephone: +995 231 15 51 (110)

7.2 Substitution of Supervisors. Either party may change at any time their supervisor by sending to the other party prior written notice whereby the legal representative of such party appoints as supervisor a new person instead of the one designated in this Section.

**8. Proprietary Rights.** Supplier warrants and represents that it is the owner of any and all Intellectual Property Rights embodied in, relating to or used in connection with the Hardware, Software, Services, Specifications and Documentation, including without limitation any and all text, applets, sub-routines, modules, codes, data and interfaces, are and shall remain Supplier's sole and exclusive property or the property of Supplier's licensors. All rights not expressly granted under this Agreement are expressly reserved by Supplier.

**9. Warranty.** Supplier warrants that the Hardware and Software will be free from defects and conforming 9.1 to the Specifications as agreed to by the parties and the Documentation for a period of 90 (ninety) days (the "Software Warranty Period"). Therefore, in case GNCC exercises the warranty set forth in this paragraph, during the Software Warranty Period, Supplier will: (i) promptly repair any defect in the Software without cost and/or (ii) replace any defective hardware.

9.2 If a Hardware appliance (Annex N1 - positions 2.1; 2.2) fails in the normal course of business, during 24 month from contract award date, it should be replaced at no cost to GNCC (Including customs and related taxes) and the replacement should be shipped not less than within 24 hours of notification of its failure. Fees for hardware replacement are included in the software maintenance and support fee specified in Price list.

**10. Protection of Rights.** As an express condition of the Agreement, GNCC will apply to any works incorporating any portion of the Software applicable copyright and other proprietary rights notices as required by law to protect Supplier's rights in the Software and in no case will GNCC remove any trademark or trade names from the Software and/or Hardware.

**11. Property of the Work.** In the event, GNCC shall request a modification of the Software or Hardware, Supplier shall be considered the author of the Work and shall retain all common law, statutory and other reserved rights, including the copyright.

**12. Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUPPLIER'S

LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY GNCC TO SUPPLIER FOR THE SERVICES, SOFTWARE AND HARDWARE.

### **13. Confidentiality.**

13.1 Definition. “Confidential Information” means any and all information, documents, data and know-how which either party may disclose to the other party pursuant to or in connection with this Agreement. For the avoidance of doubt, the Specifications and Documentation as well as the terms and conditions of this Agreement shall be deemed the Confidential Information of Supplier.

13.2 Obligations. The Party in receipt of the Confidential Information (the “Receiving Party”) of the other party (the “Disclosing Party”) agrees that it shall use such Confidential Information solely for the purposes of this Agreement and that it shall not, at any time during or after the term of this Agreement disclose such Confidential Information, directly or indirectly, to any third party (other than employees and only on a “need to know” basis), or otherwise use such Confidential Information, without the Disclosing Party’s prior written consent. For purposes of this Agreement, where Supplier is the Receiving Party, the non-disclosure obligations contained herein shall also apply to Supplier’s Authorized Providers.

13.3 Exclusions. “Confidential Information” does not include that which: (i) is legally in the Receiving Party’s possession at the time of disclosure without the obligation of confidentiality; (ii) is or becomes part of the public domain, not as a result of any action or inaction of the Receiving Party; (iii) is approved for release by written authorization of the Disclosing Party or (iv) is independently developed by the Receiving Party without access or reference to the Confidential Information, as demonstrated by the written records of the Receiving Party. In the event the Receiving Party is required to disclose Confidential Information pursuant to a judicial or governmental order, or valid subpoena, such party will, unless prohibited by such order or subpoena promptly notify the Disclosing Party to allow intervention in response to such order.

13.4 Survival. For avoidance of doubt, this Section 13. will survive the upcoming five (5) years after expiration or termination of this Agreement.

**14. Indemnification.** Supplier agrees to indemnify, defend and hold GNCC harmless, at Supplier’s own expense, from all costs and damages, including reasonable attorney’s fees, arising out of any claim or action brought against GNCC by a third party alleging that the Hardware and/or Software, used in accordance with the terms of this Agreement (including the Documentation) infringes any patent or copyright of a third party, provided that Supplier is:

- (a) notified promptly in writing of any such claim or action related thereto;
- (b)
- (c) given GNCC's assistance, authority and full cooperation, at Supplier’s expense, for the defense of the claim or action.

**15. Representations, warranties and covenants.** Supplier represents, warrants and covenants for the benefit of GNCC that:

- (a) Corporate Existence; Authorization. Supplier (i) is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware (ii) has the requisite power and authority, and the legal right, to execute and deliver this Agreement and to fully perform its obligations hereunder;

(iii) has taken all necessary corporate actions necessary to authorize the execution, delivery and performance of this Agreement; (iv) is not subject to any contractual or other legal obligation that will in any way interfere with the execution, delivery and performance of this Agreement by it, and (v) has authorized the individual executing and delivering this Agreement to execute and deliver it on its behalf.

(b) No Consents. No consent or authorization of, approval by, notice to, filing with or other act by or in respect of, any governmental authority or any third party is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement by Supplier.

(c) Software Licenses. Supplier has and shall continue to maintain the right to grant the Software Licenses granted herein, free and clear of all liens, restrictions, charges, claims and encumbrances. Supplier has obtained and shall continue to maintain all licenses, permits, exemptions, authorizations and consents necessary to fully perform this Agreement. Supplier warrants and represents that neither the Software nor any Software Licenses violates or infringes or will violate or infringe the civil or property rights, copyrights, trademark rights, patent rights or rights of privacy or publicity of any third party.

(d) Compliance with Law. Supplier is in compliance, in all material respects, with all laws and regulations applicable to it with respect to and/or arising out of its obligations under this Agreement.

**16. Labor Relation**. Taking into consideration that Supplier is responsible for its personnel designated to provide the Services, no labor bond shall be created between the personnel and GNCC. All such personnel will be consider employees of Supplier, therefore Supplier agrees to defend, indemnify and hold GNCC harmless from and against all damages, costs, charges, expenses (including reasonable legal fees and disbursements), proceedings, liabilities, settlements, losses, demands, claims, payments, suits, actions, recoveries and judgments of any nature and description arising out of or related to the above mentioned causes.

**17. Term**. The term of the present Agreement shall be for two (2) years as from \_\_\_\_\_ (the "Term").

**18. Material Breach**. Either party may terminate this Agreement immediately upon written notice to the other party in the event that such other party commits any material breach of any term of this Agreement and fails to cure such breach within fifteen (15) days after the receipt of written notice specifying the breach.

**19. Termination. Termination by Supplier**. Supplier may immediately terminate this Agreement upon written notice in the event that GNCC fails to pay any Fees not the subject of a good faith dispute between the parties in accordance with the terms hereof, and fails to remedy such failure within fifteen (15) days following the date that Supplier provides written notification regarding such unpaid Fees.

**20. Survival**. Sections that by their nature survive expiration or termination, or which must survive in order to give effect to their meaning and intent, shall survive any expiration or termination of this Agreement for a period of five years after the termination of this agreement.

**21. Force Majeure**

21.1 Excusable Delay. Neither party shall be liable for any delay or failure to perform its obligations under this Agreement, if such failure or delay is due to acts or circumstances beyond such party's control, including war or terrorism, national or local states of emergency, power outages and natural disasters (each a "Force Majeure").

21.2 Notification. Each party shall notify the other, as soon as practicable of any anticipated delay or failure due to Force Majeure. The performance of such party's obligations (as well as affected or dependent obligations of the other party) under this Agreement shall be suspended for a thirty (30) day period from the notification date. In the event either party can't perform its obligations in such thirty (30) day period, then the other party may terminate this Agreement.

22. Assignment. Except pursuant to a merger, acquisition or other business combination, or other transaction involving the sale of all or substantially all of the outstanding assets or capital stock of a party to this Agreement, in which such party continues in the control of its controller company, neither party may assign or transfer this Agreement, without the prior written consent of the other, such consent not to be unreasonably withheld.

23. Notices. Any notice under or in connection with this Agreement shall be in writing and shall be sent by overnight mail, courier, certified mail (return receipt requested), email (followed by confirmation copy by mail) or facsimile (followed by confirmation copy by mail) to the addresses set forth in the first paragraph of this Agreement or to such other address of which the recipient may have previously notified the other party in writing. Notice shall be deemed received upon personal delivery when sent by overnight mail, courier, and certified mail or upon receipt of confirmation copy when an email or facsimile is sent. All such notices, requests, demands and other communications shall be addressed as follows:

**If to GNCC:**

Address: Georgian National Communications Commission  
Ketevan Tsamebuli Ave/ Bochorma Str. 50/18  
Tbilisi 0144  
Georgia

Attention:  
Telephone:  
Facsimile:  
Email:

**If to SUPPLIER:**

Address: 1111111  
111111  
111111  
11111111  
Attention: 11111  
Telephone: 111111  
Facsimile: 11111  
Email: 1111111

24. Entire Agreement. This Agreement, including all Exhibits hereto, supersedes all proposals, oral or written, all negotiations, conversations, discussions or agreements between or among the parties relating to the subject matter of this Agreement and all past dealing or industry custom.



**25. Controlling Law.** This Agreement is governed by and shall be construed in accordance with the laws of Georgia (Republic of Georgia). The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

**26. Venue.** The parties submit to the exclusive personal jurisdiction of Georgia courts located in or having jurisdiction over \_\_\_\_\_, for purposes of any matters arising under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement through their duly authorized representatives as of the date first written above.

**GNCC**

**SUPPLIER, INC.**

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
By: Henry C. Harris  
Title: CEO

\_\_\_\_\_  
By:  
Title:

EXHIBIT "A" to the License, Maintenance and Support Services Agreement (the "Agreement").

EXHIBIT “B” to the License, Maintenance and Support Services Agreement (the “Agreement”);

**I. Maintenance and support services description.**

Supplier shall provide to GNCC “Annual Maintenance and Support Services” (the “Services”) that include:

- Telephone support which currently includes support response times Monday through Friday, ---- to ---- - GMT.
- Internet support through the Supplier Web site <http://www.----->
- Back Level version support: Supplier shall support the current software version and one version back.
- New operating system releases: Supplier will use best efforts to provide support for new versions of actively supported operating systems within 90 (ninety) days after Supplier has access to the new operating system release.

**Severity Levels and Response Times.**

Supplier shall provide the Support Services in (English and/or Georgian) according with the Severity Levels and Response Times as follows:

Severity Level	Description	Response Time from GNCC report
Severity 1 Critical	The application is inoperative.	00 () business hours
Severity 2 Major	The application is operational, but a major component is impaired.	00 (000) business day
Severity 3 Minor	The system is operational, but a minor component is impaired, or there are questions regarding the use of features, recommended configurations.	0000 business days
Severity 4 Documentation	Used for reporting deficiencies in documentation.	000 business days
Severity 5 Data Analysis requests. Customization requests	Questions regarding the connection test data, new failure requests.	000 business days

If a Hardware appliance fails in the normal course of business, it will be replaced at no cost to GNCC and the replacement will be shipped by Federal Express within 24 hours of notification of its failure.

**II. Services request procedure.**

1. GNCC shall contact Supplier by telephone at 000000000 or preferably via the Supplier online Support Request Form to report the problem.
2. GNCC shall supply the following information to Supplier:
  - Department/Company name, contact name, phone number and email address.
  - The Software involved, host operating system involved, and release levels of Supplier software and operating systems.
  - Problem description.
3. Once the problem is reported to Supplier, it shall be entered to a problem tracking database and assigned a report number.
4. Supplier shall respond to GNCC according to the Response Times set forth in Section I of this Exhibit.

**III. Fees.**

Fees for Software Support are included in the two year license. Fees for hardware replacement are included in the software maintenance and support fee specified in Exhibit A.

**IV. Term.**

Supplier shall provide the Services for two years unless extended by the parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Exhibit "B" through their duly authorized representatives as of \_\_\_\_\_.

**GNCC**

**SUPPLIER, INC.**

\_\_\_\_\_  
By:

Title:

\_\_\_\_\_  
By: Henry Charles Harris

Title: CEO

\_\_\_\_\_  
By:

Title: