



## Schedule 4

### AGREEMENT FORM

Procedure no. EU /11/ZI/ZZ/2011( 3<sup>rd</sup> approach), for awarding a contract in an open tendering procurement, for:

The Design , Development and Implementation of Container Positioning System at BCT site

This Supply Agreement (hereinafter referred to as the “Agreement”) was concluded on .....

#### BY AND BETWEEN

BCT – Bałtycki Terminal Kontenerowy Sp. z o.o. (BCT), having its seat in Gdynia (81-127), 60 Kwiatkowskiego Str., entered into the entrepreneurs’ register of the National Court Register, KRS No. 0000024234.  
(hereinafter referred to as the “Contracting Party ”)

and

..... hereinafter referred to as “the Contractor”

The Parties hereby agree as follows:

### § 1

#### DEFINITIONS

To standardise the terms for the purpose of this Agreement the Parties have agreed the following definitions:

1. ToR – Terms of Reference for preparation execution and implementation of Container Positioning System.
2. The Agreement – this Agreement together with the appendices, concluded between the Contracting Party and the Contractor, selected as a result of the Tender Procedure. The appendices to the Agreement shall form its integral part;
3. Container Positioning System ( CPS )– supply of all the equipment, devices, software, licenses , cables/wires/infrastructure for CPS communication devices (to connect CPS to TOS)and comprehensive installation of positioning devices, antennas, accessories, tags and readers on reloading equipment as well as configuration, standard TOS integration module and testing of the whole CPS system in compliance with Appendix 1 hereto.
4. TOS - Terminal Operating System - a set of tools supporting the management of the terminal. Currently, BCT uses products created by ‘Tideworks Technology’ company, such as Mainsail, Mainsail Online (TOS Online), Spinnaker and Traffic Control.



5. Schedule – Schedule of the performance of works conducted by both Parties during the realization of this Agreement.
6. Project Documentation - the records of all arrangements between the Parties in the course of implementation hereof, in compliance with §7, §8 and Appendix 1 hereof;
7. Technical and functional design– shall mean the design delivered by the Contractor, containing a description of the detailed concept of solutions (general technical specifications of the solution, the description and diagrams of processes, the specifications of devices and equipment, location of CPS elements,, the description of CPS functionalities, the description of tests, training sessions ( scope of user training – Appendix No. 4), the implementation schedule, the description of software, detailed schedule, supplies, plan of works, licenses, etc.);
8. Construction design/ detailed design ( if required) – shall mean the design submitted by the Contractor, containing the description of detailed solutions approved by The Contracting Party (technical description, technical specifications) and construction documentation together with any permits and decisions, enabling the execution of works;
9. Software – computer software installed on computer hardware ( all software components needed for CPS with licenses ) in compliance with Appendix 1 hereto;
10. Devices / equipment – all equipment installed in BCT and on reloading / handling equipment ( all components needed for CPS ).
11. Implementation – all and any works undertaken by the Parties with the aim of enabling independent operation of the Container Positioning System by BCT's employees. The implementation shall include in particular the services covered in this Agreement.
12. Coordinators – persons coordinating the Project, appointed by both Parties under §3(3).

## § 2

### **SUBJECT MATTER OF THE AGREEMENT**

1. The subject of the Agreement is the supply of equipment and services to BCT by the Contractor, consisting in the execution of the comprehensive Container Positioning System in the following scope :
  - the development and provision of comprehensive solution and documentation;
  - the supply of software together with licenses,
  - the supply of standard TOS integration module
  - the supply of devices, as well as the supply of all the equipment, materials and other accessories
  - comprehensive installation of all CPS elements, testing and commissioning of CPS
  - granting warranty and SLA service ;
2. Detailed arrangements, requirements and the scope of the subject hereof have been described in Appendix 1 hereto.



### §3

#### OBLIGATIONS OF THE PARTIES

1. The Parties shall provide each other with any necessary information and consultations with a view to implementing the scope of the Agreement, and also to work together in resolving any disputes which might arise in the course of implementation of this Agreement.
2. The Parties shall appoint Coordinators representing the BCT and The Contractor respectively who shall be responsible for the implementation of tasks assigned to the Parties in relation to the implementation of specific provisions of the Agreement. The relevant names and contact data shall be provided by the Parties in writing on the day of signing of the Agreement. The Coordinator can be dismissed by the appointing Party subject to prior written notification to the other Party.
3. All and any statements of the Parties in relation to the implementation of this Agreement as well as any requests for the services covered in this Agreement shall be provided in writing (including by e-mail) and addressed to the Coordinators. The Coordinators shall be entitled to act on behalf of the Parties with respect to any issues related to the implementation of this Agreement, i.e. in particular to submit statements of knowledge and take actual actions, e.g. to carry out acceptance of the implementation, submit complaints as well as other actions related to the implementation of this Agreement. The Coordinators shall not be entitled to amend or terminate the Agreement.
4. Persons authorized by BCT to take over and accept the implementation and to sign acceptance report are IT Department Director and Operations Director.
5. BCT shall provide all and any information, documents, equipment in working order, systems and rooms necessary for proper implementation of the services covered in this Agreement, and also it shall cooperate in any other manner as necessary for the implementation of this Agreement, providing Service Provider submits necessary written requests for information and data at least 7 working days in advance.
6. The Contractor shall document the execution of specific works, which are the object hereof and he shall submit reports to BCT within the time limits established by the Parties, in compliance with the schedule and Appendix 1.
7. The Contractor shall have the right to subcontract some works to third parties (subcontractors), provided that he has obtained the prior written consent of the Contracting Party. The Contractor shall be liable for the subcontractors' actions as for his own actions.
8. During the whole period of the execution of the Agreement the Contractor shall maintain a third party liability insurance, covering the damage which might be caused in relation to the execution hereof; the insured sum shall not be lower than the lump remuneration amount. The insurance conditions shall not exclude the insurer's liability for the actions to be performed by the subcontractors and for any actions executed hereunder.



9. The Contractor shall execute the Object hereof in compliance with the principles of current technical expertise, with due diligence and using high quality materials, as well as in compliance with applicable branch standards and legal provisions.

(If required) Design documentation shall describe the Object of the Contract using technical and quality characteristics, in compliance with Polish standards transposing European Harmonised Standards. Any required opinions, agreements and verifications of design solutions (within the scope compliant with the applicable provisions) as well as the statement on mutual technical co-ordination of design solutions shall be prepared by the persons holding appropriate construction authorisations in the area of design related to a specialist field, which shall ensure the inclusion of safety and health protection principles defined in appropriate legal provisions into the construction process.

10. Moreover, the Contractor's liabilities shall include:
- The site visit, aimed at the verification of the condition of sites included in the task Contract scope before the initiation of project works;
  - The execution of works in compliance with OHS ( Occupational Health and Safety) and fire-fighting provisions;
  - The maintenance of law and order at the sites where works are executed;
  - Ensuring the disposal and utilization of waste (within the Contractor's own scope and at the Contractor's cost);
  - Ensuring competent management, workforce, materials and equipment, indispensable at the stage of Agreement execution,
  - Ensuring timely and correct progress of each stage of work and reporting the progress on monthly basis;
  - The execution of all orders issued by the representative of the Contracting Party, concerning the object hereof,
  - Ensuring proper co-ordination of works performed by the Contractor with operating activities of the Contracting Party,
  - Conducting the works in compliance with environmental protection provisions.

#### §4

#### **WORKS SCHEDULE**

- The date of commencement of works: ..... 2015.
- The date of termination of works:..... 2015
- The implementation schedule for the Agreement is provided in Appendix 2 ( supplier offer).
- The Contractor shall have the right to request the amendment of the schedule of the object hereof, if for reasons independent of the Contractor, including force majeure or due to any reasons which make it impossible to comply with the technical conditions of the executed task the Contractor cannot execute the object hereof within the time limit specified in the schedule.
- Delivery and installation of any equipment or software commissioning hereof shall be agreed with BCT and executed in particular stages ( e.g. delivery and installation of particular number of devices at particular time table ).
- The initial schedule of the execution of the object hereof has been defined in appendix 3 hereto. The detailed schedule shall be defined and made available after the execution of the technical and functional design. The detailed schedule shall be attached as appendix 3a hereto.



7. In any case specified in point 4 above, the Contractor shall notify BCT in writing about the possible delay in the execution of the object hereof within 3 (three) business days from the day on which the reasons for such delay arose, under pain of losing the right to invoke such circumstances.
8. The acceptance date of specific stages of works and the date of final acceptance shall be the day on which the partial or the final acceptance protocol has been prepared and approved by both Parties. If significant defects are notified during the acceptance, the Contractor shall remove them within 14 days from the day on which been notified thereof and inform of Contractor's readiness for the new acceptance. The new acceptance shall cover only the assessment of the execution of works completed with the view to removing the defects notified during the first acceptance, unless the discovered defects exclude the possibility of using the CPS.
9. In the case of possibility of execution of construction works, they may be accepted on condition that the Contractor has submitted the representations of all subcontractors executing the construction works, in which they shall confirm that they have received due remuneration from previous period and that their claims have been fully satisfied.
10. The acceptance date of specific stages of works and the date of final acceptance shall be also the 7 (seven) days from the day on which the Contracting Party was informed of Contractor's readiness for the acceptance or new acceptance if no notes according to performed works were received from the Contracting Party. In such case the Contracting Party shall sign respective protocol of acceptance without reservations.
11. If the Contractor doesn't agree with notes of defects indicated by the Contracting Party, the Parties shall appoint the commission for resolving of such dispute. This commission shall include representatives of both Parties, consists of Coordinators of both Parties.
12. The Contracting Party obtains rights to use all the results of the works and services performed/provided by the Contractor by this Agreement, including all constructed objects, delivered systems, installed equipment, hardware, software and documents, when the final acceptance protocol is signed by the Parties and the Contractor receives all amount of remuneration foreseen in § 12 (1) of this Agreement

## §5

### PRE-IMPLEMENTATION ANALYSIS

1. The analytical services shall involve verification of all the BCT's operational areas associated with the operation of CPS, taking into particular consideration processes of relevance to the BCT related to:
  - a) Analysis of processes and needs for Container Positioning System.
  - b) Design of technical and functional project, detailed concept of solution, descriptions, graphical representation of process / visualizations, etc.
  - c) Software/process used to data exchange between TOS and handling / reloading equipment



- d) Technical requirements of proper installation of the devices and accessories on handling / reloading equipment
  - e) Installation of the devices on reloading / handling equipment and testing scenarios;
  - f) Requirements for the documentation;
  - g) Requirements for civil works ( if required)
2. When performing the analytical services, the Contractor shall take into account the requirements resulting from the Technical Specification constituting Appendix 1, and BCT's Regulations.
  3. The conducted works, specified in p. 1 and p. 2 above, shall be included in the report – Pre-implementation Analysis, which shall also cover detailed offer and schedule concerning further realization of the Project. Detailed schedule will become Appendix 3a to the Agreement.
  4. The Project presented in the result of Pre-implementation analysis shall include comprehensive solution, with the purpose to prepare, execute and implement CPS on the BCT site in the scope determined in Technical Specification constituting Appendix 1 hereto.
  5. Acceptance of Pre-implementation Analysis shall have the form of acceptance report.
  6. This Project shall be prepared with due diligence and shall especially meet expectations of BCT in the scope specified in p. 1 and Technical Specification constituting Appendix no. 1 hereto.
  7. The BCT shall be entitled to terminate this Agreement at latest within 7 working days as from the date of submission of the Pre-Implementation Analysis subject to the payment of the remuneration for the services provided to the date of termination. The right referred to above shall be applicable unless the results of the Pre-Implementation Analysis are incompatible with the Contractor's quotation, i.e. unless the Contractor demands higher remuneration for the provided services than that specified in §12 of the Agreement. The BCT shall notify the Contractor in writing of whether or not it intends to continue with the implementation of the other items included in the Scope of the Agreement or else such notification shall be ineffective.



## §6

### **SUPPLY AND INSTALLATION OF DEVICES AND CONFIGURATION**

1. The Contractor shall supply all the required components of CPS in compliance with schedule and Appendix 1 hereof.
2. The Contractor shall supply and execute the comprehensive installation of CPS and fittings, such as: positioning devices, tag readers and tags, communication devices, antennas, cabling, accessories, controlling servers together with software, and network active devices standard TOS integration module in compliance with the assumptions presented in the designs and technological assumptions.
3. The Contractor shall commence the installation and configuration of the components covered in this Agreement at the BCT's site within the time limit specified in the Schedule . Within 7 working days prior to installation and configuration of CPS, the Contractor shall inform BCT about it.
4. Installation of CPS in production environment each time must be preceded by installation and configuration of the system in test environment and must be subjected to tests, checking proper functioning of the system.
5. The BCT shall ensure appropriate infrastructure / handling / reloading equipment for the installation, configuration and parameterization of CPS and such infrastructure / handling / reloading equipment shall be specified and described in the Pre-Implementation Analysis.
6. The Contractor shall notify the BCT of the completion of the CPS installation and configuration without delay and at latest within 7 working days as from the date thereof.
7. The BCT shall be entitled to check the installation, configuration and parameterization of CPS and to report any reservations within 14 working days as from the date of receipt of the notification referred to in §4.
8. In the event that the BCT reports any reservations regarding the completed installation and configuration of CPS, it shall inform the Contractor of such reservations in writing or by e-mail, and the Contractor shall implement any necessary modifications of CPS installation and configuration within the time limit agreed by the Parties, however at latest within 14 days from the day following the date of submission of the reservations.
9. As soon as the requested modifications are completed, the Contractor shall again notify the BCT thereof. The provisions set out in section 5 shall be applicable respectively.



## § 7

### **SOFTWARE DELIVERY AND INSTALLATION**

1. Contractor shall deliver software in electronic format, together with full documentation.
2. Contractor shall deliver software with licenses in accordance with Appendix 1 hereof.
3. Required software shall be installed in accordance with Appendix 1 hereof.
4. The software shall be installed in compliance with the technical and functional design, approved by BCT. Any amendments to the software which deviate from the approved design require the consent of both Parties.
5. The Parties shall perform the acceptance of the Container Positioning System by signing the acceptance protocol.
6. If the Contracting Party discovers any serious defects, notify the Contractor thereof in writing by specifying them in the acceptance protocol and the Contractor shall introduce any required modifications within the time limit agreed between both Parties.
7. After the removal of any non-compliances the Contractor shall again notify BCT of this fact, in compliance with the provisions of §4.

## § 8

### **IMPLEMENTATION**

1. Following the installation and configuration of CPS, the Contractor shall commence the implementation of CPS at the BCT's site within the time limit agreed by the Parties specified in the Schedule.
2. The completion of the System implementation shall be confirmed in writing by the BCT after the Contractor reports ready for the jointly approved acceptance procedure. Then the BCT shall carry out CPS testing for a period of 14 days.
3. Following the implementation of the requested modifications, the Parties shall carry out the acceptance of CPS in accordance with the procedure referred to in the preceding sentences by signing final acceptance protocol. The acceptance procedure shall be carried out by the Coordinators referred to in § 3 (3) and (4). The implementation acceptance protocol, signed by the BCT without reservations, shall be considered a confirmation of the completion of CPS implementation.

## § 9

### **PROJECT DOCUMENTATION**

1. The Contractor shall provide full CPS documentation, system user instructions, administrator manual and technical documentation (with comments to a given version) in the form of a printed copy and in an electronic format in Polish or in English.





2. The Contractor shall provide the documentation in compliance with technical specifications, attached as Appendix 1 hereto.
3. The Contractor shall mark the documentation submitted to BCT in a manner enabling copy identification.
4. BCT shall protect any copies of documentation which it uses against unauthorised duplication and use by any third parties.

## **§ 10**

### **SYSTEM START-UP AND TESTS**

1. Upon the completion of tasks specified in §6 to §9 The Contractor shall conduct test, checking the proper functioning of CPS and shall notify of readiness to hand over the task. This notification must be done in writing.
2. After receiving the information about the realization of tasks specified in §6 to §9, BCT will undertake testing checking the proper functioning of CPS.
3. The Contractor shall enable and carry out a presentation and tests CPS in accordance with the agreed testing scenarios. The Contractor shall also conduct training ( accepted by BCT )for CPS users in accordance with the scope of training specified in Appendix 4 to the Agreement.

## **§11**

### **FINAL ACCEPTANCE OF WORKS**

1. The final acceptance of works shall be the functional CPS system, being the subject matter hereof and shall have the form of final acceptance report - Appendix 9.
2. The Contractor is obliged to notify BCT about the acceptance date at least 7 working days in advance of the planned acceptance.
3. If as a result of the arrangements of the Parties included in the protocol it is necessary to introduce amendments or complete any missing elements, the Contractor shall make any necessary amendments/ completions within the time limit agreed between the Parties in the protocol, which shall not exceed 14 days. After having made the necessary amendments/ completions the Contractor shall once again notify of the readiness for acceptance.
4. The final acceptance protocol shall be signed after the execution of all works which are the object hereof, in compliance with the above procedure, which is the basis for the payment of any receivables in compliance with § 12.



**§ 12**

**REMUNERATION AND TERMS OF PAYMENT**

1. In exchange for the execution of works under this Agreement, BCT shall pay to the Contractor total remuneration in the amount of ..... (in words: .....) NET.
2. The amount of due VAT shall be added to remuneration amount; however, the above provision only applies to Polish providers.
3. The amount of remuneration and the time limits for payment related to the specific works stages have been presented in the following table:

Payment no.	Payment value	Payment basis
I	10%	of the Total Purchasing Price, according to applicable law provisions, shall be paid in advance within 30 working days from the moment of signing this Agreement, to bank account indicated by the Seller against Performance Bond in the amount of 10% of the Total Purchasing Price and APG (advance payment guarantee) upon the Seller's invoice( 10% of the Total Purchasing Price) must be furnished to the Contracting Party as prerequisite for payment of the advance fee. Draft of APG – Appendix 11 ;
II	20%	of the Total Purchasing Price, according to applicable law provisions, shall be paid against seller invoice, after the execution of the pre-implementation analysis, and on the basis of the acceptance protocol, signed by both Parties;
III	30%	of the Total Purchasing Price, according to applicable law provisions, shall be paid against seller invoice, after delivery of the CPS devices equipment and on the basis of the acceptance protocol, signed by both Parties
IV	20%	of the Total Purchasing Price, according to applicable law provisions, shall be paid against seller invoice ,after software and devices installation , and on the basis of the acceptance protocol, signed by both Parties;
V	20%	After testing and commissioning CPS and on the basis of the acceptance protocol, signed by both Parties. Within 30 days from signing a defect-free final acceptance protocol by both Parties.

4. The remuneration shall be paid by bank transfer to the Contractor's account no. .... (bank name) specified on the invoice within 30 days from the day on which a correctly issued VAT invoice has been received. The condition for the advance payment is



the submission of the AFG (Advance Financial Guarantee) document, which shall secure the percentage value of payment specified on the invoice). A template of the AFG document has been attached appendix 11 hereto.

5. The payment shall be considered made on the day on which it has been debited from the bank account.
6. The Contractor shall be entitled to the remuneration amount for specific works stages only after he has completed the full stage of works, specified in point 3 of this paragraph.
7. Term of payment is the same for all invoices indicated in point 3 of this paragraph - within 30 days since invoice delivery.

### **§ 13**

#### **PERFORMANCE GUARANTEE**

4. Within 14 days of the conclusion hereof, the Contractor shall provide BCT with the Performance Bond (bank or an insurance guarantee), corresponding to 10% of the whole Agreement amount. The Performance Bond shall remain valid for the duration of the execution period of the Agreement no. ZZ- -2014, i.e. until the defect-free final acceptance protocol has been signed by BCT representatives: BCT Operations Officer and the IT Department Manager. The Performance Bond document shall be returned to the Contractor after signing the defect-free final acceptance protocol.
5. Warranty Bond – the Contractor shall provide a bank or an insurance guarantee by the day of signing the defect-free final acceptance protocol, which shall be valid in the period of months from the date of signing the defect-free final acceptance protocol and which shall correspond to the amount of 10% of net remuneration, specified in § 12 (1); such guarantee shall be provided with the view to securing any reasonable guarantee claims, which might be lodged by BCT.

### **§ 14**

#### **WARRANTY PERIOD AND SUPPORT**

1. The Contractor shall offer warranty in relation to the subject hereof for the period of at least 36 months from the date on which the Parties have signed the defect-free final acceptance protocol of the subject hereof.
2. The Contractor guarantees that he shall prepare the documentation and execute the services hereunder according to his best knowledge and in compliance with the highest standards.
3. The Contractor shall provide the warranty document in compliance with the provisions of §13.
4. The Contractor shall offer warranty (in relation to the equipment, devices, software, construction works( if required) and support services/ maintenance service) in the period of at least ..... months, in compliance with appendix 6 hereto.
5. The Contractor shall sign warranty service and support agreement (in relation to the devices,



software and support services / maintenance service) in the post-guarantee period ( for at least 24 months ), in compliance with appendix 6a hereto.

6. The list of persons authorised to notify defects has been attached as Appendix 5a hereto.

## **§ 15 CONFIDENTIALITY**

1. The Parties shall treat any information concerning the conditions hereof and any data concerning the enterprise as strictly confidential and they shall not disclose such information or data to any third parties without the prior written consent of the other Party, in compliance with the principles defined in the Act against Unfair Competition, both during the Agreement term and after its execution or termination.
2. The data and information specified in section 1 above shall not be used for any other purpose than defined herein, and they shall not be published without the prior written consent of the other Party.
3. The obligation defined in sections 1 and 2 above does not apply to information which is commonly known and to any information disclosed upon the request of the court, the Prosecutor's Office, tax entities, entities of book-keeping, audit entities and lawyers of the Parties.

## **§ 16 LIABILITY OF THE PARTIES**

1. In the case of any delay for reasons attributable to the Contractor or for reasons under the Contractor's control, exceeding the time limit for task execution (..... months) by 30 or more days, the Contractor shall pay the penalty in the amount of 2% of total remuneration for each subsequent week of delay, however not more than 10 % of total remuneration.

The Parties' liability under this Agreement shall be limited to lower of the amounts either (i) factual and direct losses suffered by the damaged Party or (ii) Agreement value referred to in article 12.1. In no case the Parties shall be liable for any indirect or consequential damages, losses, or liabilities or the other Party's lost profits.

2. The Contractor shall provide the third party liability insurance policy before the day of Agreement conclusion, with the insurance amount of at least 1,7 million USD for one and all insurance events and maintain the policy for the duration of the Agreement.

## **§ 17 FINAL PROVISIONS**

1. Within the limits defined by mandatory provisions of law, the invalidity of any provisions hereof shall not affect the validity of the remaining contractual provisions. In such circumstances the Parties shall replace any invalid provisions with the provisions with the same commercial effect.
2. The Parties represent that they shall aim at the amicable resolution of any disputes, concerning the contents and the execution of this Agreement. If an amicable solution cannot be reached, the



dispute shall be resolved court according to rules provided by applicable law by the court competent for BCT.

3. Any amendments hereto shall be made in writing under pain of nullity.
4. This Agreement shall constitute the entire agreement between the Parties in relation to the matters specified herein and no other conditions, oral or written, shall apply in relation hereto. This Agreement supersedes any previous arrangements, representations or agreements between the Parties, concerning the scope hereof.
5. None of the Parties shall have the right to assign this Agreement, in whole or in part, without the written consent of the other Party. Any such attempts shall be considered null and void. The Parties shall not refuse their consent without a valid reason.
6. Any matters not regulated by this Agreement shall be governed by the appropriate provisions of Polish law, and especially by the provisions of Polish Civil Code.
7. This Agreement has been made in two counterparts, one for each Party.
8. In the case of any discrepancies between the provisions hereof and the provisions appendices hereto, the provisions of the Agreement shall take precedence.
9. After the expiry of this Agreement ZZ- -2014, the Guarantee Service and Support Agreement, attached as appendix 6a hereto in compliance with § 13 (5) shall take precedence. The Guarantee Service and conditions of the Support Agreement applies only to the results of works and services which are fully paid up- according to Appendix 6a



## §18

### APPENDICES

The following appendices form an integral part of this Agreement:

- Appendix No. 1 - Technical Specification of the Project
- Appendix No. 2 - Contractor's offer
- Appendix No. 3 - Initial Schedule
- Appendix No. 3a - Detailed Schedule
- Appendix No. 4 - The scope of user training
- Appendix No. 5 - List of Coordinators
- Appendix No. 5a - Persons authorized to request services under the warranty
- Appendix No. 6 - Warranty and service conditions of CPS (during the warranty period)
- Appendix No. 6a - Guarantee and service conditions of CPS (after the warranty period)
- Appendix No. 7 - Performance bond
- Appendix No. 8 - Warranty bond (to be provided after signing the defect-free acceptance protocol)
- Appendix No. 9 - Acceptance protocol template
- Appendix No. 10 - Insurance policy with the proof of payment of the last premium
- Appendix No. 11 - AFG (advance financial guarantee) document.



**APPENDIX 3**  
**to the Agreement ZZ - .....- 2013**

The Design , Development and Implementation of Container Positioning System at BCT site

**INITIAL SCHEDULE OF WORKS**

**1. STAGE I – January / February 2015**

- The initiation of works on documentation.
- Initial arrangements with the Contracting Party, concerning requirements and pre-implementation analysis, technical and functional project/design.

**2. STAGE II – March / April 2015**

- The execution of pre-implementation analysis and detailed schedule of the Container Positioning System ( CPS ).
- Provision of technical and functional project / design.

**3. STAGE III – June 2015**

- Delivery, configuration of the of the devices / equipment.

**4. STAGE IV – July / August 2015**

- Implementation of CPS system
- Testing of all elements of CPS system.
- Software and devices installation and testing

**5. STAGE V – September / October 2015**

- Commissioning, operating trials, training.
- Final acceptance, documentation updates and delivery, etc.
- The acceptance of the whole system and signing of the final acceptance protocol.



**INFRASTRUKTURA  
I ŚRODOWISKO**  
NARODOWA STRATEGIA SPÓJNOŚCI



**UNIA EUROPEJSKA**  
FUNDUSZ SPÓJNOŚCI



## **Appendix 4**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

### **The scope of user training**





**INFRASTRUKTURA  
I ŚRODOWISKO**  
NARODOWA STRATEGIA SPÓJNOŚCI



**UNIA EUROPEJSKA**  
FUNDUSZ SPÓJNOŚCI



## **Appendix 5**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

### **List of Coordinators**

**Michał Janik**

**BCT IT Department  
Coordination of EU Projects  
IT Specialist  
[mjanik@bct.gdynia.pl](mailto:mjanik@bct.gdynia.pl)  
+48 795501401**

**Andrzej Puławski**

**BCT IT Department  
IT Manager  
[apulawski@bct.gdynia.pl](mailto:apulawski@bct.gdynia.pl)  
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**INFRASTRUKTURA  
I ŚRODOWISKO**  
NARODOWA STRATEGIA SPÓJNOŚCI



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**Appendix 5a**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

**Persons authorized to request services under the warranty**

**Michał Janik**

**BCT IT Department  
Coordination of EU Projects  
IT Specialist  
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**Andrzej Puławski**

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+48 695652970**



**Appendix 6**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

**Support and Service Agreement**

**1. Agreement.** This support and service agreement shall be binding during the guarantee period of the whole CPS system (attached as Appendix 6 to the Agreement ZZ..... binding during ..... guarantee months). The guarantee shall start on the date on which the final acceptance protocol has been signed, in compliance with §11 (4) of the Agreement.

**2. Updates.**

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**3. Technical assistance**

3.1 Contact persons

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3.2 Service conditions

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3.3 Software



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**3.4 Devices and equipment**

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**3.5 Implementation / installation works**

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**3.6 Other**

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**4. Payment conditions**

4.1 Service payments. In the period of.....months from the entry into force hereof, the Provider shall offer CPS system support under the remuneration received for the execution of the Agreement ZZ.....



**Appendix 6a**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

**Support and Service Agreement ( post warranty period)**

**1. Agreement . This agreement supersedes the ..... Agreement for entire CPS system ( appendix 6 to CPS Agreement) at the end of .....months warranty period. This date shall be deemed the effective date for the terms of this agreement ( Appendix 6a to the Agreement ZZ.....**

**2. Updates.**

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**3. Technical assistance**

3.1 Contact persons

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3.2 Service conditions

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.....

3.3 Software



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.....  
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3.4 Devices and equipment

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.....  
.....  
.....  
.....

3.5 Implementation / installation works

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.....  
.....

3.6 Other

.....  
.....  
.....

**3. Payment conditions**

4.1 Service fees - For the first ..... years following the effective date of this Agreement , BCT shall pay Suppliers the CPS support fee listed below in equal yearly installments with the first installment due within thirty (30) days of the effective date and subsequent yearly installments on or before the last day of each subsequent calendar month.

4.2 Support and service fees is no more than EUR € **40 000** ( annual rate)

4.3 Support and service fee of EUR €..... ( annual fee ) payable annually In yearly payments of EUR €.....

4.4 Automatic renewal

This Agreement shall be valid one year (365 days) after the day this Agreement comes into force (the next day after end of warranty period of the works).

This Agreement shall stay to be valid for next one year (365 days) if any Party doesn't inform other Party about intention to not renew this Agreement. Such intention to not renew this Agreement shall be sent no later than 30 (thirty) days before date of end of term of this Agreement.

The Contractor shall have right to request for increase of support and services fee each next year of execution of this Agreement.



Such increase may be in amount of annual inflation rate of..*Contractor's country* on each year. The Contractor may provide such request with intention to extend the term of Agreement for the next year (also – as the condition for extension), no later than 30 (thirty) days before date of end of term of this Agreement.

#### 4.5 Suspension and Termination

This Agreement may be terminated before end of its term:

- by mutual agreement of the Parties;

- by unilaterally written statement of the Contractor if the Contracting Party fails to perform its payment obligations more than 50 (fifty) days;

The Contractor shall have right also to suspend execution of the obligations assumed by this Agreement if the Contracting Party fails to perform its payment obligations more than 30 (thirty) days.

#### 4.5 Other

.....  
.....  
.....  
.....



**Appendix 7**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

**FORM OF PERFORMANCE BOND**

**Performance Guarantee no. xxxx**

To BCT – Bałtycki Terminal Kontenerowy Sp. z o.o. (BCT),  
Gdynia (81-127), 60 Kwiatkowskiego Str.,  
KRS No. 0000024234,

We have been informed that. (hereinafter called the Provider), have concluded a Contract no. ZZ- with you on regarding in the amount of (in words: .....

It has been agreed that a performance guarantee is to be established covering 10% of the above-mentioned Contract value and is valid for the period of months from contract signing plus defect resolution or up to ..... 2015

At the request of the Provider we, name of insurer , hereby irrevocably undertake to pay you any amount up to (in words: upon receipt of your first written demand with following wording:

*We hereby claim payment of xxx under your guarantee no. xxxxx*

*We confirm that has not performed its obligations in conformity with the terms of the Contract . is in default under the following clause(s) of the Contract no.*

For the purpose of identification your written demand have to be presented through the intermediary of a first rate bank confirming that the signatures are legally binding upon your firm.

Our guarantee is valid until submitting bank warranty and signing final acceptance protocol. Our guarantee expires in full and automatically, should your written request for payment not be in our possession by that date, irrespective of whether the present document is returned to us or not. Your request for payment and your declaration must be received by us on or before that date of 2015 , otherwise the performance bond automatically expires.

We will reduce the guarantee maximum by any such amount, as we have had to pay in order to meet your claim(s) duly made and presented under the guarantee.

This guarantee is governed by ..... Law.





**Appendix 8**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

**DRAFT**  
**Warranty Bond**

No. ....

As a security of fulfilling by .....  
(entrepreneur's name and address)

hereinafter referred to as the Company, liabilities under warranty stemming from the agreement ..... no. .... of ..... concluded with you, hereinafter referred to as the Agreement, hereinafter referred to as the Agreement, we, (*name of bank*), acting upon the order of the Company, irrevocably and unconditionally undertake to pay you any sum up to the amount of ..... (say: ..... ) upon your written payment demand, duly signed, and your written declaration that the Company did not fulfil its liabilities under warranty stemming from the Agreement.

For the purpose of identification, your written request for payment, and your statement, should be presented to us .....  
(form in which the claim will be presented)

through ..... (bank's name)  
This bank shall confirm that the signatures placed on the request for payment belong to the persons authorized to contract financial obligations on your behalf.

Our guarantee is valid for 36 *months* from the date of final acceptance of the Equipment by BCT and TDT based on Taking Over Certificate TOC, which means that your request for payment and your declaration must be received by us on or before that date.....

and expires automatically and completely if:

- 1) your request for payment, together with the documents attached to the request and your declaration, are not delivered to us within the period of validity of the bond,
- 2) you release us from all obligations stipulated in the bond before its period of validity expires,
- 3) benefits paid under this bond reach the value of the bond,
- 4) this guarantee is returned to us during the period of its validity,

This Warranty Bond should be returned to us after the period of its validity is over.

The obligation under this warranty bond expires the moment the period of the bond's validity expires, even if it is not returned to us. This guarantee is governed by Polish Law. Place of jurisdiction is Gdańsk. This warranty bond is not transferable.

(company's seal and signatures on behalf of the Bank)



**Appendix 9**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

Gdynia, .....  
date

**PARTIAL / FINAL PROTOCOL\* No .....**

of acceptance of completed work in BCT – Baltic Container Terminal Ltd.

by company:.....

Address:.....

**1. Agreement No .....**

**2. Scope of work:**

.....  
.....  
.....  
.....  
.....

**3. Contractor reservations:**

.....  
.....

**4. Contracting Party reservations:**

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.....  
.....  
.....

.....  
Stamp and signature of Contractor of Contracting Party  
Stamp and signature of Contractor



**Appendix 11**

**to the Agreement ZZ.....**

The Design , Development and Implementation of Container Positioning System at BCT site

....., seated in Poland.....  
(Bank's seal)

.....  
(Beneficiary)

..Warsaw, xx.xx.2013.....  
(place and date of issue)

**DRAFT**

**ADVANCE PAYMENT GUARANTEE**

NO. ....../.....

We have been informed that on ..... you concluded an agreement No. ....  
....., hereinafter referred to as Agreement, with  
.....  
(entrepreneur's name and address)

.....  
hereinafter referred to as Company.....hereinafter referred to as Agreement. Under this Agreement the Company is supposed to receive an Advance Payment Guarantee APG (advance payment guarantee) upon the Seller's invoice must be furnished to the Buyer as prerequisite for payment of the advance fee.

(subject matter of the agreement)

.....  
in the amount of ..... % of the total amount of the Agreement,....., which is i.e. USD /€ (in words in USD/€ : .....), hereinafter referred to as Advance Fee Guarantee .

Advance Payment Guarantee should be returned .....

on the following terms: .....

.....  
Should the Company fail to fulfil the obligations ensuing from the Agreement and refuse to return the advanced payment , we, ( name of bank) , acting for .....

irrevocably agree, regardless of the validity and legal effects of the Agreement, to pay you every amount up to ...USD/ €..... (say:

.....) upon your first written payment demand, duly signed, with the following documents enclosed:

- 1) .....
- 2) .....



and your written declaration that the Company has not performed the Agreement and has not returned the advanced payment , although it was obliged to do so.

For the purpose of identification, your written request for payment together with the aforementioned documents justifying your claim, attached to the request, and your declaration, must be presented to us.....

.....

(form in which the claim will be presented)

through .....seated in Poland.....

(bank's name)

This bank shall confirm that the signatures placed on the request for payment belong to the persons authorized to contract financial obligations on your behalf. The document comes into effect together the Seller's invoice must be furnished to the Buyer as prerequisite for payment of the advance fee.

Our Advance Payment Guarantee is valid till..... which means that your request for payment, together with the aforementioned documents attached to the request and your declaration, must be received on or before that date,

and expires automatically and completely if:

- 1) your request for payment, together with the documents attached to the request and your declaration, are not delivered to us within the period of validity of the bond,
- 2) you release us from all obligations stipulated in the bond before its period of validity expires,
- 3) benefits paid under this bond reach the value of the bond,
- 4) this bond is returned to us during the period of its validity,
- 5) the Advance Payment Guarantee is returned as documented to us date established at the Agreement in clause .....

This Advance Payment Guarantee is not valid with respect to any change in the Agreement if such a change has not been approved by the Bank.

The obligation under this Advance Payment Guarantee expires the moment the period of the Advance Payment Guarantee 's validity expires, even if it is not returned to us. This guarantee is governed by Polish Law. Place of jurisdiction is Gdańsk.

This Advance Payment Guarantee is not transferable.

.....  
(business seal and signature on behalf of the Bank)