

DRAFT CONTRACT
**MODERNISATION OF THE VESSEL TRAFFIC MANAGEMENT SYSTEM OF
THE FREEPORT OF VENTSPILS**

Ventspils, ____ 201__

The Freeport of Ventspils Authority, represented by its Manager I. Sarmulis, acting on the basis of by-laws of the Freeport of Ventspils Authority, hereinafter referred to as the **CONTRACTING AUTHORITY**, of the one part, and

_____, represented by its _____, acting on the basis of _____, of the other part, hereinafter referred to as the **CONTRACTOR**, but hereinafter referred to as the **CONTRACTOR** and the **CONTRACTING AUTHORITY**, jointly – **PARTIES** or **CONTRACTING PARTIES**

having regard to:

- *the results of the open tender “MODERNISATION OF THE VESSEL TRAFFIC MANAGEMENT SYSTEM OF THE FREEPORT OF VENTSPILS”, ID. NO. VBOP 2015/198CEF,*
- *the decision No. _____ of _____ the Freeport of Ventspils Authority,*

expressing their free will, without fraud or duress, conclude this contract (hereinafter referred to as the Contract):

1. Subject-matter of the Contract

1.1. The **CONTRACTING AUTHORITY** shall order and the **CONTRACTOR** shall, according to the **CONTRACTING AUTHORITY**'s requirements, the requirements defined in tender “MODERNISATION OF THE VESSEL TRAFFIC MANAGEMENT SYSTEM OF THE FREEPORT OF VENTSPILS”, ID.NO.VBOP 2015/198CEF (hereinafter referred to as the Tender), the tender submitted for the Tender by the **CONTRACTOR**, the Contract, incl. the requirements defined in its Annexes, undertake to modernise the Vessel Traffic Management System of the Freeport of Ventspils (hereinafter referred to as the VTMS), incl.:

- Development of the VTMS modernisation project and its coordination with the Contracting Authority and the necessary state and municipal authorities,
- Dismantling, pickup and disposal of the equipment and hardware to be dismantled,
- Manufacturing, delivery, installation and commissioning of new equipment and hardware,
- Training of the **CONTRACTING AUTHORITY**'s staff to work with the newly installed equipment and hardware,
- Provision of technical support and warranty,

(hereinafter referred to as the Work/s) in the Vessel Traffic Service Management Centre of the Freeport of Ventspils Authority at Kr. Valdemara 14, Ventspils and at

the sites supervised by it in the territory of the Freeport of Ventspils Authority (hereinafter referred to as the SITE), but the CONTRACTING AUTHORITY shall undertake to accept the performed Works, if they have been performed according to the terms and conditions of the Contract, and to pay for them according to the procedure laid down in this contract.

2. Contract amount and settlement procedure

2.1. The contract amount shall be EUR _____ (_____), which consists of the Cost of Works of EUR _____ and VAT 21% EUR _____ (hereinafter referred to as the Contract Amount) according to the Financial offer cost estimate (Annex No. 2).

2.2. This Contract Amount includes costs of all the Works, materials, mechanisms and other payments to be made by the CONTRACTOR, guided by terms and conditions of this Contract. The Contract Amount shall include all the CONTRACTING AUTHORITY's payments to the CONTRACTOR and no additional payments shall be envisaged in the course of performance of the works.

2.3. For the Works to be commenced, the CONTRACTING AUTHORITY shall pay the CONTRACTOR an advance payment of 20% from the Contract Amount set forth in Clause 2.1 of this Contract, i.e. EUR _____ (_____).

2.4. The advance payment can be received after signature of the Contract by both PARTIES, if the CONTRACTOR submits to the CONTRACTING AUTHORITY an invoice and an unconditional guarantee issued by a bank or an insurance company regarding the repayment of the advance payment in **a form acceptable to the CONTRACTING AUTHORITY.**

2.5. The repayment guarantee of the advance payment shall be in effect until the advance payment is repaid. The advance payment amount can be reduced in proportion to the repaid advance payment, subtracting it from the amounts specified in CONTRACTOR's issued invoices. The advance payment should be repaid in proportion to the performance of the Works.

2.6. The CONTRACTING AUTHORITY shall make payments for the respective part of the Works performed and accepted with an acceptance and delivery protocol (1) development of the VTMS modernisation project and its coordination with the Contracting Authority and the necessary state and municipal authorities in the following order of performance of the WORKS:

2.6.1. dismantling, pickup and disposal of the equipment and hardware to be dismantled;

2.6.2. manufacturing, delivery, installation and commissioning of new equipment and hardware;

2.6.3. training of the CONTRACTING AUTHORITY's staff to work with the newly installed equipment and hardware.

Payments shall be made by transferring the amount indicated in the CONTRACTOR's invoice to the bank account in a credit institution specified by the CONTRACTOR. The Contracting Authority shall pay within 30 (thirty) business days after the Parties have signed an acceptance and delivery protocol on the performance of the respective part of the Works and an invoice has been received.

2.7. The payment for the performance of each part of the Work under this Contract shall be made within 30 (thirty) business days upon the reception of correctly prepared payment documents by the Contracting Authority.

2.8. The CONTRACTING AUTHORITY shall temporarily keep 1% (one per cent) from the payment for the part of the Works performed according to the protocol (excluding VAT). The CONTRACTING AUTHORITY shall pay the deducted amount to the CONTRACTOR after all the Works have been performed in full scope and the

unconditional Warranty period guarantee has been submitted within 30 (thirty) days after the reception of the invoice concerned.

The Guarantee shall be submitted to the CONTRACTING AUTHORITY within 30 (thirty) days after the approval of the final WORKS acceptance and delivery protocol by both Parties.

Guarantee conditions:

- 2.8.1. The guarantee amount shall be 1% (one per cent) from the costs of performed Works.
 - 2.8.2. The issuer of the Guarantee shall undertake to pay the guarantee amount to the CONTRACTING AUTHORITY upon first request, if the CONTRACTOR does not fulfil its obligations under the Contract.
 - 2.8.3. The CONTRACTING AUTHORITY should state the exact obligations under this Contract, which were not performed by the CONTRACTOR.
 - 2.8.4. The guarantee shall be in effect during the entire warranty period, which is 24 (twenty four) months after the signature of the acceptance and delivery protocol.
 - 2.8.5. The guarantee should be irrevocable on behalf of the Contractor.
- 2.9. The Parties agree that before payment of any remuneration due to the CONTRACTOR for the performed Works, any part of it or any other payments, the CONTRACTING AUTHORITY shall be entitled to deduct any penalties and/or default interest calculated for the CONTRACTOR from these payments, by sending a previous written notice to the CONTRACTOR, which gives the justification and the amount of the calculated penalty and/or default interest to be deducted.

3. General Work performance conditions. Work performance deadline

3.1. The CONTRACTOR should perform the Works according to the terms and conditions of this Contract.

3.2. The Work performance deadline, according to the Calendar plan of performance of Works (appended) shall be 18 (eighteen) calendar months from the moment of signature of the Contract by both Parties:

Months 1–12	the VTMS modernisation project should be developed and coordinated with the Contracting Authority and the necessary state and municipal authorities; the equipment and hardware to be dismantled should be dismantled and disposed of; new equipment and hardware should be manufactured, delivered, installed and commissioned; staff of the Freeport of Ventspils Authority should be trained to work with the newly installed equipment and devices.
Months 13–18	the VTMS should pass the VTMS Site Acceptance Test to identify the operation of the VTMS.

The Works should be started within 5 (five) business days from the moment of signature of the Contract by both Parties.

3.3. The CONTRACTOR shall be entitled to receive an extension for the completion of the Work, if:

- 3.3.1. the CONTRACTING AUTHORITY denies access to the Site;
- 3.3.2. the CONTRACTING AUTHORITY has suspended the performance of Works due to the causes not attributable to the CONTRACTOR.

3.4. If the Work has not been performed according to the terms and conditions of this Contract due to the fault of the CONTRACTOR, the CONTRACTOR shall eliminate any faults, deficiencies or non-compliances in the performance of Works at its own expense, at the first request of the CONTRACTING AUTHORITY and within the deadline set by the CONTRACTING AUTHORITY.

4. Subcontractor work

4.1. The CONTRACTOR shall be allowed to involve subcontractors into the performance of the Works.

4.2. The Subcontractors, about which the CONTRACTOR has informed the CONTRACTING AUTHORITY and whose abilities it relies upon to certify that its qualification meets the requirements set in the notice of participation and in the documents of the procurement procedure, can be replaced only with a written consent of the CONTRACTING AUTHORITY. The CONTRACTING AUTHORITY's written consent will be provided, if the proposed subcontractor does not meet the exclusion conditions listed in Section 42 of the Public Service Providers Procurement Law.

4.3. The CONTRACTOR shall be fully responsible for the work of Subcontractors.

5. Obligations and rights of the CONTRACTOR

5.1. The CONTRACTOR shall be liable:

5.1.1. To perform the Works in good quality, in the scope and within the deadline anticipated in this Contract;

5.1.2. to guarantee quality assurance during the entire process of performance of the Works and to be responsible for this quality assurance. To perform the Works using certified materials;

5.1.3. during the entire effective period of this Contract, to perform and ensure supervision for proper performance of all the obligations under this Contract, to provide a competent and authorised Works Manager, to notify the CONTRACTING AUTHORITY about this person;

5.1.4. to ensure that all the documentation necessary for the delivery of the Works is prepared and submitted according to the terms and conditions of this Contract, existing regulatory and other special regulatory enactments, which regulate the area of performance of the Works to be performed under this Contract;

5.1.5. no later than by the delivery of the Works, at its own expense, to free the Site from the inventories, tools, construction waste, to dispose of all the packaging materials, auxiliary devices, mechanisms, waste created as a result of the performance of the Works ensuring that the cleanness and the order in the places of performance of the Works are restored to the state they were before the commencement of the Works;

5.1.6. In the process of the performance of the Works, to observe safety and fire safety rules and to perform environmental protection measures related to the work of the Site, as well as to observe all the regulations in force in the Republic of Latvia;

5.1.7. to undertake responsibility for any accidents, which occurred due to the fault of the CONTRACTOR, when performing the works under this Contract, as well as to cover losses and pay fines, which occurred as a result of CONTRACTOR's activities against third persons, the municipality and city services;

5.1.8. after the performance of the Works, to transfer executive documentation for the Works and the Works acceptance and delivery protocol to the CONTRACTING AUTHORITY. The CONTRACTOR shall receive all types of necessary certificates about the materials required for the performance of this Contract;

5.1.9. to warn the CONTRACTING AUTHORITY, if any conditions are discovered in the course of performance of the Works, which can be dangerous for health or life;

5.1.10. if it is impossible to perform the Works in good quality and in due time, because the CONTRACTING AUTHORITY has not performed all the measures necessary for the performance of the Works, to notify the CONTRACTING AUTHORITY about this, indicating, which measures and within which period of time should be performed in addition;

- 5.1.11. to inform the CONTRACTING AUTHORITY immediately about any conditions, which were discovered in the process of performance of the Works and which can affect the quality of the Works or delay the performance of the Works;
- 5.1.12. to provide training to employees of the CONTRACTING AUTHORITY about work with the VTMS, to prepare and to submit a VTMS user manual (instructions) in the official language, according to the requirement of the Technical Specification;
- 5.1.13. after the VTMS installation works, to prepare and submit to the CONTRACTING AUTHORITY a VTMS user manual and technical documentation in Latvian and English;
- 5.1.14. to ensure that all the VTMS equipment installed within the framework of this Contract is of good quality, unused and was not in demonstration, as well as it contains no used or renewed parts, all the equipment is free from any encumbrances of third persons, was not sold, given as a gift, pledged, rented out, leased to anybody, there is no dispute about its ownership and restrictions or bans to transfer it to the CONTRACTING AUTHORITY's ownership and no transactions were closed in favour of third persons, which might complicate their usage, ownership and transfer into the CONTRACTING AUTHORITY's ownership;
- 5.1.15. to ensure that all the installed VTMS equipment is of good quality, undamaged, fully functioning and delivered in the scope of supply provided by the manufacturer;
- 5.1.16. to ensure that all the installed VTMS equipment was purchased legally from its manufacturers or its authorised representatives and all the payments have been made for the purchasing, import, transportation and storage of the equipment until the equipment has been delivered and installed;
- 5.1.17. to ensure that all the liabilities with regard to the legality of the implementation and use of VTMS equipment have been fulfilled;
- 5.1.18. to fulfil other obligations arising from this Contract.

5.2. The CONTRACTOR shall be entitled:

- 5.2.1. not to initiate the performance of the Works under this Contract, but if the process of the Works has been initiated, to stop them, if the CONTRACTING AUTHORITY does not fulfil its obligations under this Contract;
- 5.2.2. The CONTRACTOR shall not be responsible for any delays during the effective period of this Contract, if they occur due to the fault of the CONTRACTING AUTHORITY.

6. Obligations and rights of the CONTRACTING AUTHORITY

6.1. The CONTRACTING AUTHORITY shall be liable:

- 6.1.1. to transfer to the CONTRACTOR all the documentation at the disposal of the CONTRACTING AUTHORITY, which is required for the process of performance of the Works;
- 6.1.2. to make all the payments envisaged in this Contract in due time;
- 6.1.3. to accept the Works performed from the CONTRACTOR by signing the Works completion acceptance and delivery protocol according to the terms and conditions of this Contract;
- 6.1.4. to fulfil other CONTRACTING AUTHORITY's obligations arising from this Contract;
- 6.1.5. The CONTRACTING AUTHORITY undertakes no responsibility for any damages or compensations to be paid in compliance with the requirements of regulatory enactments due to accidents or as a consequence thereof, or injuries to any worker or other person employed by the CONTRACTOR.

6.2. The CONTRACTING AUTHORITY shall be entitled:

- 6.2.1. to request from the CONTRACTOR a written report about the performed Works, as well as the information about further course of performance of the Works;
- 6.2.2. when necessary, to request the performance of additional Works notifying the CONTRACTOR about it in advance;
- 6.2.3. to request certifications issued by the manufacturers and independent parties, as well as to invite experts to make sure that the Works comply with the requirements of this Contract;
- 6.2.4. to terminate the Contract unilaterally, and to refuse from VTMS equipment notifying the CONTRACTOR about it 3 (three) days in advance, if the CONTRACTOR has not been able to fulfil the requirements of the plan of Factory Acceptance Test or ensure conformity of the equipment to the regulations of the Republic of Latvia, as prescribed by the Contract (Technical Specification) 3 (times).

7. Procedure of delivery and acceptance of the Works

7.1. After the performance of some part of the Work under this Contract and all the Works under this Contract, the CONTRACTOR shall draw up a Works acceptance and delivery protocol, and submit it signed to the CONTRACTING AUTHORITY (authorized person) in duplicate.

7.2. The CONTRACTING AUTHORITY shall review and sign acceptance and delivery protocols for parts of the Works, if the CONTRACTOR has fulfilled provisions of this Contract, within 3 (three) business days after their reception. When a delivery and acceptance protocol for a part of the Works has been signed, the CONTRACTING AUTHORITY shall notify the CONTRACTOR about it and shall return one copy of the protocol. Works delivery and acceptance protocols signed by both PARTIES shall be the basis for the issue of an invoice.

7.3. If the CONTRACTING AUTHORITY has objectively justified objections about the performance of the Works (for example, the Work has been performed in low quality or has not been fully completed), it shall submit a written notice to the CONTRACTOR, which states the defects found during the performance of the Works. In this case, the Parties agree on the deadline for the prevention and other related matters.

7.4. Upon completion of mounting of the VTMS equipment, the VTMS Installation Temporary Acceptance Test shall be performed, according to the Technical Specification, and a temporary delivery and acceptance protocol of VTMS shall be signed.

7.5. The final Work acceptance protocol shall be signed after all the Works have been performed in accordance with the obligations defined in this Contract, the VTMS Site Acceptance Test has been performed and an opinion has been received from the *AS Elektroniskie sakari*.

The CONTRACTING AUTHORITY shall sign the Works acceptance and delivery protocol, when all the Work defined in the Contract has been performed, incl. the equipment defined in the Contract has been supplied, unpacked, assembled, connected to power supply in the places defined in the Contract, its packaging materials have been removed and the CONTRACTING AUTHORITY together with technical specialists of the CONTRACTOR have verified the compliance of the VTMS equipment to the requirements of this Contract and their operational capability.

7.6. After the completion of the Works and the installation of VTMS all the acquired information (including the executive documentation prepared and submitted by the CONTRACTOR) shall be transferred to the CONTRACTING AUTHORITY.

7.7. Authorised representative, who will represent the CONTRACTING AUTHORITY in the process of performance of the Works, will carry out control and technical monitoring of the performance of the Works – Roberts Purins (*Roberts Puriņš*),

phone 26569571, e-mail: roberts.purins@vbp.lv; authorized representative, who will represent the CONTRACTOR in the process of performance of the Works – _____, phone _____, mobile phone _____.

8. Liability of the CONTRACTING PARTIES

8.1. Each Contracting Party shall be responsible to the other Contracting Party for the part of the works, which was performed or was not performed by its employees, contractors, suppliers or other persons involved in the performance of the Works.

8.2. Each Party shall be responsible for the losses inflicted upon the other Contracting Party as a result of negligence or erroneous actions when performing or organising the Works.

8.3. The Contracting Parties undertake to keep confidential and not to disclose to third parties any information, which has become known when performing this Agreement. The information obtained and created in the course of the Work shall be classified as information for official use only and it is not allowed to disclose the Contract and the content of related documents to third persons without a written agreement with the CONTRACTING AUTHORITY.

8.4. For any delays in the deadline (incl. warranty deadlines) specified in this Contract, the CONTRACTOR shall pay the CONTRACTING AUTHORITY the default interest of 0.2% from the Contract Amount for each day of delay, but not more than 10%.

8.5. For any delays in any payment arising from this Contract specified, the CONTRACTING AUTHORITY shall pay the default interest of 0.2% from the delayed amount for each day of delay, but not more than 10%.

8.6. The PARTIES shall be responsible to each other in accordance with this contract and applicable laws and regulations of the Republic of Latvia.

8.7. The PARTIES shall be released from responsibility for partial or complete non-performance of this Contract, if such non-performance has occurred after conclusion this Contract as a result of force majeure and/or emergency which the PARTIES could neither anticipate nor eliminate. These emergency circumstances include fires, earthquakes, other acts of God, military actions and any other circumstances similar out of reasonable control.

9. Warranty

9.1. A warranty is a certification of the CONTRACTOR that the VTMS or its components, as well as the Works performed during the warranty period will keep their usage properties, safety and performance indicated in the Contract and technical documentation of VTMS and the CONTRACTOR shall undertake to perform repairs of VTMS or replace it with equivalent equipment according to these warranty provisions.

9.2. The warranty period for the Works performed by the CONTRACTOR and the equipment shall be 5 (five) calendar years, counting from the moment of signature of the final Works delivery and acceptance protocol by both PARTIES. If any defects or other faults are found during this period, which occurred due to the fault of the CONTRACTOR, it shall eliminate them immediately, at its own expense and without any compensation.

9.3. During the warranty period the CONTRACTOR shall ensure:

9.3.1. constant operation of VTMS;

9.3.2. free repair of VTMS, as well as replacement of its components;

9.3.3. immediate consultations from a technical specialist of the CONTRACTOR by phone in English **and in Latvian** 24/7 on any day of the week, including weekends and holidays;

9.3.4. The possibility to remotely connect to the VTMS to perform diagnostics and find faults in the system's operation;

9.3.5. If faults in the VTMS's operation cannot be corrected remotely, the arrival of the CONTRACTOR's technical specialist in the VTMS Centre (Kr. Valdemara Street 14, Ventspils) to the site as soon as possible, but no later than within 3 (three) business days from the moment, when the CONTRACTING AUTHORITY has informed the CONTRACTOR about a fault or a damage in the operation of VTMS;

9.3.6. VTMS damages or faults (if impossible to correct remotely) should be corrected by the CONTRACTOR as soon as possible, but no later than within 5 (five) calendar days after the arrival of the technical specialist;

9.3.7. replacement of damaged VTMS equipment, if it was repaired more than 3 (three) times;

9.3.8. replacement of damaged VTMS equipment, if the CONTRACTOR finds that repairs are impossible.

9.4. If incorrect or low quality installation of VTMS equipment has been the cause for damages or non-compliance of the VTMS, as well as damages to the VTMS equipment were inflicted due to incorrect (inaccurate) or incorrectly translated (into the official language) instructions, the VTMS equipment is considered to be damaged due to the fault of the CONTRACTOR and the CONTRACTING AUTHORITY has the right to request warranty repairs from the CONTRACTOR.

9.5. The performance of each warranty repair is certified by a document signed by authorised representatives of the CONTRACTING AUTHORITY and the CONTRACTOR, which states the damaged equipment, the nature of the damage, problem application date and time and date and time of completion of equipment's repairs.

9.6. The CONTRACTOR guarantees that the VTMS and the works performed after their delivery (with a delivery and acceptance protocol) will have no defects, which might occur as a result of incorrect use of technologies when performing the works, as well as the defects which occurred using materials of improper quality. The CONTRACTOR guarantees that the Works performed comply with the requirements of this Contract and laws and regulations of the Republic of Latvia.

9.7. If the CONTRACTOR refuses to eliminate any defects or does not eliminate them in due time within the deadline agreed with the CONTRACTING AUTHORITY, the CONTRACTING AUTHORITY shall have the right at the CONTRACTOR's expense to recruit other CONTRACTORS notifying the CONTRACTOR about it in writing before the commencement of the Works. In this case, all the costs shall be covered by the CONTRACTOR.

10. Final provisions

10.1. Terms and conditions of this Contract are binding on the PARTIES and their legal successors.

10.2. All the disagreements related to the course of fulfilment of this Contract shall be resolved by the PARTIES in good faith through negotiations and, if no agreement is reached in this way, the disputes can be resolved in a court of the Republic of Latvia guided by laws and regulations applicable in the Republic of Latvia.

10.3. In all other matters which are not specified in this Contract, the PARTIES shall be guided by laws and regulations in force in the Republic of Latvia.

10.4. The CONTRACTING AUTHORITY shall have the right to terminate this Contract by sending a written notice to the CONTRACTOR, if:

10.4.1. The CONTRACTOR does not observe any of the deadlines for commencement and performance of the Works under this Contract, and the CONTRACTOR's delay has reached at least 15 (fifteen) calendar days;

10.4.2. The CONTRACTOR does not follow legitimate instructions of the CONTRACTING AUTHORITY or does not perform any other liabilities or obligations under this Contract, and if the CONTRACTOR has not eliminated such a non-performance within 10 (ten) calendar days after the reception of a respective written notice from the CONTRACTING AUTHORITY;

10.4.3. Liquidation of the CONTRACTOR has started or the CONTRACTOR has been announced insolvent.

10.5. If the Contract is terminated, the CONTRACTOR shall repay the advance payment, which was paid to the CONTRACTOR according to the terms and conditions of this Contract, to the CONTRACTING AUTHORITY within the deadline defined by the CONTRACTING AUTHORITY.

10.6. This Contract may be amended or terminated by written agreement of the PARTIES. In such a case the written agreement shall be attached to this Contract and it shall become an integral part thereof.

10.7. Integral parts of this Contract are:

10.7.1. Technical specification (Annex No. 1);

10.7.2. Financial offer (Annex No. 2);

10.7.3. Calendar plan of performance of Works (Annex No. 3).

10.8. This Contract is drawn up and signed in Latvian in duplicate, one copy is transferred to each PARTY. Both counterparts of the contract have equal legal force.

10.9. This Contract enters into force when signed by the Parties.

Signatures and details of the CONTRACTING PARTIES