



AGREEMENT
ARCHEOLOGICAL
IN THE PROTECTION ZONE OF
DAUGMALE HILLFORT

BETWEEN

RB RAIL AS
MINISTRY OF TRANSPORT OF THE REPUBLIC OF LATVIA
AND
SIA ARCHEO ARHEOLOGI

RB146-RBR-AGR-Z-00001

Agreement number: 1.19/LV-2023-26
Procurement procedure ID No. RBR 2023/4

Riga

2023



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This Agreement for archeological survey in the protection zone of Daugmale hillfort, together with all Annexes thereto (the "Agreement"), is entered into in Riga, on the date indicated on the timestamp of last signature of the document (the "Effective Date") by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register under registration No 40103845025, legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Principal"), represented by Chairperson of the Management Board Marko Kivila on the basis of the Regulation on Representation Rights, dated 14 April 2023

Ministry of Transport of the Republic of Latvia, registration No 90000088687, registered address at Gogoļa iela 3, Riga, LV-1050, Latvia (the "Beneficiary"), represented by the Principal, on the basis of Power of Attorney No 01-04/22, issued by Ministry of Transport on 17 April 2023, on the one side,

and

SIA "ARCHEO arheologi", a limited liability company registered in the Latvian Commercial Register under registration number 40203117125, having its registered address at Gaismas iela 5-12, Ķekava, Ķekavas novads, Latvia (the "Contractor"), represented by Management Board Member Uldis Kalējs acting on the basis of Statute, on the other side,

WHEREAS:

- (A) this Agreement is entered into under the Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) the Principal is acting as a Central Purchasing Body for the Beneficiary and has organised procurement procedure "Archeological survey in the protection zone of Daugmale hillfort" (identification No RBR 2023/4) (the "Procurement Procedure") whereby the Contractor's tender proposal (the "Contractor's Proposal") was selected as the winning bid;
- (C) this Agreement is co-financed from the Connecting Europe Facility (CEF) Grant agreement No. INEA/CEF/TRAN/M2015/1129482.

1. Definitions and Interpretation

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.
- 1.2. *Interpretation.*
 - (a) The headings contained in this Agreement shall not be used in its interpretation.
 - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
 - (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
 - (d) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - (i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and
 - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Rail Baltica railway and the Project.

- (e) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- (f) The words "include" and "including" are to be construed without limitation.
- (g) Unless indicated otherwise, all references to "days" shall mean calendar days.
- (h) The words in this Agreement shall bear their natural meaning, except for any definitions in accordance with *Annex A: Definitions and common terms*.

1.3. *Order of Precedence.* In the event of any discrepancy or inconsistency between the documents forming part of this *Agreement*, the following order of precedence shall apply:

- (a) this Agreement document;
- (b) explanations (clarifications) of the procurement documentation;
- (c) Procurement documents with the annexes (including Technical specifications);
- (d) clarifications of the Contractor's Proposal;
- (e) Contractor's Proposal;
- (f) all other Annexes of the Agreement.

2. Services

2.1. *Engagement.* The Principal hereby engages the Contractor to provide and perform the Services for the purposes of the Project, as further described and according to the specification contained *Annex B: Technical Specification* to this Agreement, and the Contractor hereby accepts such engagement. The Services shall consist of:

2.1.1. the initial phase services (the "Initial Phase Services"), which shall include:

- 2.1.1.1. development of the inception report (the "Inception Report") and survey programme (the "Programme") in accordance with the Agreement, including *Annex B: Technical Specification*, Technical Conditions and requirements of the National Heritage Board of Latvia (the "NHB"), and the Principal. Development of the Programme inter alia includes an obligation of the Contractor, to obtain the consents and coordinate the Programme with the owner of each property located in the area of the protection zone of Daugmale hillfort in accordance with *Annex B: Technical Specification* ("Involved Properties"), i.e., from the owners of the properties where archeological surveying should be performed in accordance with the Agreement;
- 2.1.1.2. fieldwalking and metal detector survey of Zone B (as specified in *Annex B: Technical Specification*) to develop the Programme and determine necessary amount of probes and trial trenches in the Zone B;
- 2.1.1.3. coordination and acceptance of the Programme by the Principal;
- 2.1.1.4. coordination and acceptance of the Programme by the NHB;
- 2.1.1.5. coordination and acceptance of the Inception Report by the Principal;
- 2.1.1.6. receipt of the permit from the NHB to perform the archeological surveying works in accordance with the Programme.

2.1.2. if and to the extent requested by the Principal, the second phase of the services ("Second Phase Services"), which shall *inter alia* include:

- 2.1.2.1. performance of the archeological surveying works in accordance with the Programme accepted by the NHB and the Principal and the Notice on Commencement of the Second Phase, including the probing works and excavating the trial trenches;
- 2.1.2.2. drafting and submission to the Principal of the interim progress report (the "Interim Report") pursuant to the requirements of *Annex B: Technical Specification*;
- 2.1.2.3. receipt of the confirmation from the NHB regarding compliance of the Second Phase Services with the Programme;
- 2.1.2.4. drafting and submission to the Principal of the final report (the "Report") pursuant to the requirements of *Annex B: Technical Specification*;

- 2.1.3. carrying out related and additional activities as specified or required under or in relation to the Agreement; and
- 2.1.4. result in the provision to the Principal of the Deliverables identified in accordance with this Agreement.
- 2.2. *Scope of the Services.* The Services cover all measures, including those not explicitly listed in the Agreement required for due performance of the Agreement, provision of the Deliverables in accordance with the terms and conditions of the Agreement. When achievement of the above results is not possible without performance of a measure not explicitly listed in the Agreement, then performance of such a measure is considered as a contractual obligation of the Contractor according to the Agreement without any additional payment obligations by the Principal or the Beneficiary. In any case the Services include, but are not limited to:
 - 2.2.1. obtaining and research of historical data, documents and other information etc. from public sources (e.g., archives, etc.) regarding each Involved Property;
 - 2.2.2. obtaining written consent from the owners of the Involved Properties and all other necessary third parties for performance of the Services, including for the fieldwalking, the probing and excavation of trial trenches and the Programme;
 - 2.2.3. providing advice to the Principal to the extent required for performance of the Services;
 - 2.2.4. taking other measures required for due provision of the Services and performance of the Agreement.
- 2.3. *No guaranteed scope of the Services.* The Agreement does not impose an obligation whatsoever on the Principal to appoint the Contractor to provide all of the Services, nor does it guarantee any predetermined scope, except the Initial Phase Services.
- 2.4. *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 2.5. *Licensing Requirements.* By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, authorised and licensed to provide the Services in accordance with the Applicable Law.
- 2.6. *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, reports, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered and works performed hereunder and forming part of the Services. The Contractor shall perform the Services timely and with due diligence having due regard to any applicable Milestones set out in the Agreement, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.
- 2.7. *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment for any part of the Services shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Services under this Agreement. The Contractor shall remain liable to the Principal and to the Beneficiary as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor's negligent performance of any Services furnished under this Agreement.
- 2.8. *Representatives.* The Contractor and the Principal shall appoint an officer, employee or individual to serve as its authorised representative toward supply or receipt of the Service or any part thereof (including, but not limited to, the issuance or confirmation of the Deed of Acceptance, Objection Notice), with full authority to act on its behalf in connection with this Agreement, without the rights to conclude amendments or variations to the Agreement (the "**Representative**"). The initial Representatives are identified in *Annex I: Representatives*. Any other restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing to be effective.
- 2.9. *Replacements.* The Contractor and the Principal may replace or remove any its Representative by notifying in writing the other Parties following Clause 20.3. In such circumstances, no separate amendments to the Agreement are required.

3. Total Value, Term and Milestones

- 3.1. *Total Value.* The total value of the Services provided under the Agreement shall not exceed EUR 53600,00 (fifty-three thousand, six hundred euros and 0 euro cents). The Total Value does not in any way bind the Principal to procure the Services for the entirety of the Total Value.
- 3.2. *Term and termination.* The term for the provision of the Services shall not exceed nine (9) months starting from the Commencement Date. The Agreement terminates once the Parties have fulfilled their contractual obligations arising out of this Agreement.
- 3.3. *Commencement of the Initial Phase Services.* The provision of the Initial Phase Services shall commence at the Effective Date.
- 3.4. *Commencement of the Second Phase Services.* The Contractor shall commence provision of the Second Phase Services only after receipt of the Commencement Order for the Second Phase Services from the Principal substantially in the form enclosed in *Annex E: Commencement Order for the Second Phase Services*. The Principal upon its sole discretion may (but is not obliged to) send the Commencement Order for the Second Phase Services after completion and acceptance of the Initial Phase of Services. Immediately, but no later than within three (3) Business Days after the Commencement Order for the Second Phase Services is submitted to the Contractor, the Contractor shall sign and return a signed copy of the Commencement Order for the Second Phase Services. If the Contractor does not respond within three (3) Business Days, the Commencement Order for the Second Phase Services shall be considered as confirmed by the Contractor and effective.
- 3.5. *Milestones.* The Contractor shall complete the Services and ensure that the Deliverables are furnished to the Principal on or before each Milestone in accordance with *Annex C: Schedule of Services*.
- 3.6. *Impediments and Delays.* If the Services, or any part thereof, is impeded or delayed by the Principal, the Beneficiary or any third party engaged by the Principal so as to increase the duration of the Services:
 - a) the Contractor shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed schedule of Services; and
 - b) the duration of the Services shall be increased, and any Milestones affected by the impediment or delay shall be extended accordingly.

4. Variations

- 4.1. *Variations.* Notwithstanding any provisions in this Agreement to the contrary, whenever the Contractor or the Principal reasonably consider that a variation to the Agreement or any part thereof (the "Variations") is necessary, the Contractor and the Principal shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing and signed in paper form or with qualified electronic signatures by the Parties.
- 4.2. *Variations Scope.* For the purpose of the Agreement, and at any time prior to the completion of the Services under the Agreement Variations may be issued in respect of:
 - (a) amendments to the Agreement or any part thereof to comply with the amendments or adjustments to the Applicable Laws from time to time, if any;
 - (b) amendments to *Annex B: Technical Specification* to comply with any requirements (mandatory or optional) of the state or municipal authorities or institutions of the Republic of Latvia, which are entitled to issue decrees, instructions or recommendations with respect to the Services;
 - (c) supply of additional Services or related services not previously foreseen under the Agreement;
 - (d) provisions of the Agreement, which prescribe the conclusion of Variations;
 - (e) implementation of any amendments to the Agreement as initiated or approved by the Principal during the provision of the Services during the Project implementation which are necessary due to such reasons which the Principal or the Beneficiary could not foresee in advance, including, but not limited to matters under sub-Clauses 4.2 (a)-(d).
- 4.3. *Limitations to the Variations.* In case of Variations due to supply of additional Services not previously foreseen under the Agreement, or due to reasons which the Principal or the Beneficiary could not foresee in advance under, the total value of the Agreement may not change by more than fifty percent (50%) in accordance with the fourth paragraph of the Section 61 of the Public Procurement Law of the Republic of Latvia.
- 4.4. *De minimis.* Notwithstanding anything to the contrary contained in the Agreement, the Contractor and the Principal may agree on the supply of additional services and other changes not previously foreseen under the

Agreement if they do not change the nature of the Agreement (type and purpose specified herein) and if the total value of such additional services does not concurrently reach the thresholds specified by the Cabinet of Ministers of the Republic of Latvia, starting from which the agreement notice must be published in the Official Journal of the European Union and ten percent (10%) of the total value of the Agreement.

- 4.5. *Variation Fee.* Fee for additional services as a result of Variations, if any, shall be determined taking into account the calculations under *Annex H: Contractor's Proposal*, unless the Parties have agreed otherwise. Furthermore, such fee shall be consistent with the market practice and proportionate to the Fee for Services with similar scope under the Agreement, if any.

5. Responsibilities of Principal

- 5.1. *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Services, provided that the Principal is in possession of such information.
- 5.2. *Decisions.* On all matters properly referred to it in writing by the Contractor and reasonably required for fulfilment of the Agreement the Principal shall give its decision in writing so as not to delay the Services and within a reasonable time.
- 5.3. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services, the Principal may provide notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services.

6. Responsibilities of Contractor

- 6.1. *Obligation to Act in Accordance with Principal's Comments.* In performing the Services, the Contractor shall have due regard to any comments made by the Principal or information furnished by the Principal and shall provide reasons to the Principal where it does not take into account any such comments.
- 6.2. *Deliverables' Requirements and Language.* The Contractor may be required by the Principal to provide copies or electronic editions of the Deliverables. The Contractor shall procure that each Deliverable is submitted to the Principal in the Latvian language and the Report shall be submitted to the Principal in Latvian and in English language. Such obligation to provide the bilingual Report is already included in the Fee and will not result in additional fees or compensation of Costs to the Contractor.
- 6.3. *Cooperation with stakeholders.* The Contractor undertakes to cooperate with all the relevant stakeholders, including but not limited to the relevant stakeholders mentioned under *Annex B: Technical Specification*, of the Principal that are directly or indirectly involved in the Project as may be necessary for the sufficient provision of the Services and the fulfilment of the objectives set out in the Agreement.
- 6.4. *Duty of Care and Exercise of Authority.* The Contractor shall:
- (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant standards and has received all the necessary permits and licences for performance of the Services;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents and information required to be prepared or submitted by the Contractor and works to be performed under this Agreement conform to Good Industry Practice at the time of execution;
 - (d) at all times during the term of the Agreement, ascertain and comply with all Applicable Laws and health and safety standards of the Republic of Latvia, the European Union and Good Industry Practice;
 - (e) comply, where applicable, with any reasonable requirements of the Principal (including in respect to health and safety requirements and co-operation in this respect) not otherwise provided for in this Agreement;
 - (f) notify the Principal of any Defects in accordance with Clause 9.1 of this Agreement as soon as such Defects are identified by the Contractor;

- (g) mobilise materials and equipment or any parts thereof provided by the Contractor which shall be of good quality and workmanship and fit for the intended purpose where a purpose is defined in the Agreement or, where no such purpose is defined, fits for its ordinary purpose;
 - (h) provide all necessary management, supervision, materials and equipment and other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the Agreement.
- 6.5. *Actions in case of discoveries.* In case during the performance of the Services any items with potential archeological value are discovered by the Contractor, the Contractor shall inform the Principal and the NHB and shall act in accordance with their instructions and the requirements of the Applicable Law. The Contractor shall not acquire any rights to any such items and shall not be entitled to any compensation or remuneration in this respect.
- 6.6. *Maintenance of Records.* During the term of the Agreement and during ten (10) years from expiry or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and the Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services have been carried out in accordance with the Agreement. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.
- 6.7. *Access to Documentation.* At all times during the term of the Agreement, the Beneficiary and/or the Principal shall have access to all the Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept in a generally recognised format for a period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Beneficiary and/or Principals' auditor, or expert appointed by the Beneficiary and/or Principal during the period of time specified in accordance with this Clause 6.7.
- 6.8. *Sub-Contractors and Staff.*
- (a) In carrying out the Services, the Contractor may only rely on the services of those Approved Sub-Contractors and Approved Staff listed in *Annex F: List of approved Sub-Contractors and Staff*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex F: List of approved Sub-Contractors and Staff*. The Contractor shall have an obligation to notify the Principal in writing of any changes to *Annex F: List of approved Sub-Contractors and Staff* occurring during the term of this Agreement and of the required information for any new sub-contractors or staff member which it may subsequently engage toward provision of the Services.
 - (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor shall obtain prior written consent of the Principal for the replacement of each Approved Sub-Contractor or each Approved Staff member, or each key personnel indicated in *Annex F: List of approved Sub-Contractors and Staff* and involvement of additional sub-contractors or staff members, or key personnel.
 - (c) Review and evaluation of the replacement of Approved Sub-Contractors or Approved Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.
 - (d) The Contractor shall replace the Sub-contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.
- 6.9. *Responsibility for Performance.* The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors and Approved Staff and other involved persons shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor. No subcontract shall bind or purport to bind the Principal. Nevertheless, the Contractor shall ensure that any Approved Sub-Contractor and Approved Staff shall be bound by and observe the provisions of the Agreement in so far, they apply to the respective Approved Sub-Contractor and Approved Staff.
- 6.10. *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not *engage* in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with

respect to the Services and/or the Project. In performing the Services, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Services is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.

- 6.11. *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Services, the Contractor shall, at the Principal's request, hold and/or attend meetings with the Principal, relevant stakeholders or any other third parties, at which appropriate personnel of the Contractor and the Principal and the Representatives of each Party shall be present. Upon the Principal's request the Contractor shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Business Days after each meeting. All meeting reports shall be confirmed by the Principal.
- 6.12. *Compliance with Laws.* The Contractor shall review the Applicable Laws that is applicable to the Services. In carrying out any works forming part of the Services, the Contractor shall, at all times, ensure compliance with requirements imposed by the Applicable Law and by supra-national and/or governmental authorities having jurisdiction over the Project.
- 6.13. *Information Furnished by Principal.* The Contractor shall provide prompt written notice to the Principal if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Principal or in the preparation or provision of the Services or information.
- 6.14. *Visibility Requirements.* At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:
- (a) any report, brochure, document, or information related to the Services conducted to the Principal and the Beneficiary by the Contractor or any other Person which the Contractor makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Services are financed from EU funds;
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "Funded by the European Union. Views and opinions expressed are those of the author(s) only and do not necessarily reflect those of the European Union or the granting authority. Neither the European Union nor the granting authority can be held responsible for them". The disclaimer in all official languages of the European Union can be viewed on the website https://cinea.ec.europa.eu/communication-toolkit_en; and
 - (iii) the flag of the Council of Europe and the European Union;
 - (b) the requirements set forth in Clauses 6.14(a)(i) and 6.14(a)(iii) of this Agreement should be complied with by means of utilizing the following logo:



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- (c) the Contractor shall ensure that the logo remains distinct and separate, and no other visual identity or logo may be used to highlight the EU support;
 - (d) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as of the Effective Date, the visibility requirements are available for review on the webpage https://cinea.ec.europa.eu/communication-toolkit_en.
 - (e)
- 6.15. *Reporting.* The Contractor shall, in a format and at intervals to be agreed with the Principal:
- (a) provide the Principal with regular reports and status updates on the progress of the Services.

- (b) report on any changes to the Annexes of this Agreement, including but not limited to Services Schedule, which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement; and
- (c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

In order to avoid any doubt, any change to the above-mentioned documentation can be made only pursuant to this Agreement, if agreed by the Parties, and, if the proposed changes are compliant with the Public Procurement Law of the Republic of Latvia.

6.16. *Health and safety obligations.* The Contractor shall:

- (a) ensure full compliance of the Services (including any works to be performed as part of the Services) with all applicable health and safety regulations of the Applicable Law and obligations of the Agreement. The Contractor shall keep the Principal and the Beneficiary harmless of any claims from any Person, including, but not limited to, state or municipal institutions that are in charge of controlling the compliance of the Services (including any works) with work safety regulations;
- (b) bear the responsibility and be solely liable for the life, health and safety of all persons in the places where the works are being executed (including, but not limited to, the Contractor's personnel, Approved Sub-Contractors and Approved Staff). Furthermore, the Contractor shall keep the Principal and the Beneficiary harmless of any claims from such Persons or any third party made towards the Principal or the Beneficiary in relation to any harm which may have occurred to the property, life, health and safety of the persons being involved or affected by the performance of the Services (including any works);
- (c) comply with all instructions or directives issued by the relevant state or municipal authorities or the Principal's health and safety officers.

7. Representations and Warranties

7.1. *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:

- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
- (b) it has entered into this Agreement without violating the Applicable Law, its own Articles of Association, other constitutional documents, laws or agreements of any kind to which it is a party;
- (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
- (d) it has entered into this Agreement of its own volition and in good faith.

7.2. *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal, as of the Effective Date and during the entire term of the Agreement, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Principal as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
- (b) it holds all requisite licenses, permits, authorisations, approvals and consents necessary to enable performance by the Contractor of the Services and any works forming a part of the Services according to this Agreement, including *Annex B: Technical Specification*;
- (c) it has all requisite ability to ensure the highest quality of the Services;
- (d) it will assign competent and duly qualified personnel indicated in the tender proposal to carry out the Services set out in this Agreement and applying the highest professional standard and Good Industry Practice. Moreover, whereby the Applicable Laws for the performance of any works forming a part of the Services requires the personnel to obtain a special certificate, license, permit, authorisation, qualification, the respective personnel assigned by the Contractor for the performance of such works shall be duly certified following the Applicable Laws;
- (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;

- (f) it has been registered as a VAT payer in Republic of Latvia;
- (g) at all times during the term of the Agreement, the Contractor shall ensure that it, its personnel, Approved Sub-Contractors and other involved persons are not directly or indirectly sanctioned, do not breach and/ or are not involved in circumvention of the applicable international (including OFAC) or national sanctions, or a Member State's of the European Union or North Atlantic Treaty Organization applied sanctions;
- (h) it is compliant with all of the requirements of the Contractor's Declaration as available at <https://www.railbaltica.org/procurement/procurement-regulation-supplier-qualification/> and will continue to be compliant with all such requirements during the term of this Agreement.

8. Fee and Payment

- 8.1. **Fee.** In consideration of the due provision of the Services the Beneficiary undertakes to pay to the Contractor the following fees, not exceeding EUR 53600,00 (fifty-three thousand, six hundred euros and 0 euro cents) in total (the "**Fee**"):
- (a) a fee in the total amount of EUR 17000,00 (seventeen thousand euros and 0 euro cents) (the "**Initial Phase Fee**") for duly provided and accepted Initial Phase Services,
 - (b) a fee up to the total amount of EUR 36600,00 (thirty-six thousand, six hundred euros and 0 euro cents) which will be payable only with respect to the actually ordered (in accordance with the Commencement Order for the Second Phase Services), duly provided and accepted Second Phase Services. The actual fee for the Second Phase Services (the "**Second Phase Fee**") shall be calculated pursuant to the unit prices for the probing and excavation works of the trial trial trenches indicated in the Contractor's Proposal and indicated by the Principal in the Commencement Order for the Second Phase Services (and for the sake of clarity, this fee includes all and any activities of the Contractor related to the Second Phase Services, including all the Deliverables);

It is acknowledged and agreed by the Parties that the Fee (it's respective part) shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the Services (their respective part). The Fee specified in accordance with this Clause 8.1 excludes value added tax (the "**VAT**") that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.

- 8.2. **Invoicing.** Following each Completion Date, provided that the Principal has accepted/approved the particular Deliverable of the Services which the invoice is related to, the Contractor shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than seven (7) days before the due date for payment under this Clause 8.2. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Beneficiary shall not be required to pay any amount under this Agreement with respect to any part of the Services that has not been accepted by the Principal in accordance with this Agreement.
- 8.3. **Payment.** Subject to the provisions of Clause 8.2, the Beneficiary reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein. If the *Beneficiary* uses the right to make the payments to the Contractor with set off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the date of the respective payment stating the amount, the grounds and the basis on which the Beneficiary uses its right to set off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within sixty (60) days after the date of issue of the invoice.
- 8.4. **Costs and Commissions.** Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 8.5. **Compliance with Tax Obligations.** It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Services, except value added tax. The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to the provision of the Services in the Republic of Latvia; and in accordance with Applicable Law of the Republic of Latvia. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated

with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.

8.6. *Invoice.* The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

a) Contractor's details and details about the Agreement:

Contractor	SIA "ARCHEO arheologi"
Registration No	
VAT payer's No	
Legal address	
Name of Bank	
SWIFT Code	
IBAN	
Subject:	For provided services according to the AGREEMENT FOR ARCHAEOLOGICAL SURVEY IN THE PROTECTION ZONE OF DAUGMALE HILLFORT Agreement No 1.19/LV-2023-26 (CEF Contract No INEA/CEF/TRAN/M2015/1129482, activity No B05 "Cultural heritage (including archaeological heritage) studies of relevant areas along the planned route (Phase 1) (LV)", Contract Manager: Līga Marija Putna

- b) the number and date of issue of the invoice;
- c) the name or a description of the services;
- d) the quantity of the services;
- e) the date of provision of the services or the date of receipt of full or partial payment for the services if the date can be determined and differs from the date of issue of the invoice;
- f) the price of the services exclusive of value added tax and any discounts;
- g) the taxable amount broken down by different rates of value added tax together with the applicable rates of value added tax or the amount of supply exempt from tax;
- h) the following Beneficiary's details:

Beneficiary	Ministry of Transport of the Republic of Latvia
Registration No	
VAT payer's No	
Address	
Name of Bank	
Bank Code	
Bank Account No	

The Contractor shall send the invoice to the Principal electronically to the following e-mail address: invoices@railbaltica.org. The Principal shall review the invoice to verify whether it contains all necessary requisites.

9. Remedying of Defects and Acceptance

- 9.1. *Defects.* The Principal shall notify the Contractor of each Defect as soon as the Defect is identified by the Principal, and the Contractor shall have an obligation to notify the Principal of each Defect as soon as the Defect is identified by the Contractor. Upon discovering a Defect, or upon receipt by the Contractor of a notification of Defect from the Principal, the Contractor shall have no more than five (5) Business Days to remedy the Defect (the "Cure Period"). In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:
- (a) allow the Contractor an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;
 - (b) remedy the Defect at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
 - (c) terminate the Agreement according to Section 11 Termination and Suspension.

For the avoidance of any doubt, the application of the Cure Period under this Clause 9.1 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 12.2 at the Principal's request or to compensate any Damages in accordance with the provisions of Clause 12.3 of this Agreement.

- 9.2. *Completion of Services and Deed of Acceptance.* Meeting of a Milestone occurs whenever the Contractor has completed all of the Services which the Contractor has undertaken to perform according to *Annex C: Schedule of Services* by the relevant Milestone, including the Contractor has delivered all the Deliverables related to this milestone. On meeting a Services Milestone and/or producing a Deliverable (including all Documentation and information forming part of the Deliverable) constituting all or an identifiable part of the Services, the Contractor shall issue to the Principal a Deed of Acceptance substantially in the form of Annex G: Deed of Acceptance (the "Deed of Acceptance"). The Deed of Acceptance shall include the Deliverable and adequate supporting Documentation and information relevant to the Milestone attained.
- 9.3. *Acceptance or rejection of the Deed of Acceptance.* Upon the reception of the Deed of Acceptance from the Contractor in accordance with Clause 9.2 the Principal shall review the submitted Deed of Acceptance and the specific Deliverable and any supporting Documentation and:
- (a) in the event the Principal rejects the submitted Deed of Acceptance, it shall give notice to the Contractor setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time following receipt of the Deed of Acceptance thus initiating the Cure Period and Defects remedy procedure as specified in Clause 9.1; or
 - (b) in the event no reasons for objection to the Deed of Acceptance exist, the Principal shall also sign the Deed of Acceptance, within reasonable time following its receipt. The date the Principal accepts and signs the Deed of Acceptance shall constitute "Completion Date" with respect to the relevant Milestone. The signed Deed of Acceptance may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor.
- 9.4. *Completion of Services Following Receipt of Objection Notice.* After the Defects specified by the Principal in the Objection Notice have been remedied the Contractor shall issue to the Principal a second signed Deed of Acceptance as per the procedure specified in Clause 9.2 and the Principal shall perform the review as generally provided for in Clause 9.3 of this Agreement and:
- (a) in the event no further reasons for objection to the second Deed of Acceptance exist, then the Defects remedy procedure is concluded and the provisions of Clause (b) are to be applied;
 - (b) in the event the Principal rejects the submitted second Deed of Acceptance it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Principal to execute the Clauses 9.1(a)– 9.1(c) at its own discretion.
- 9.5. *Objection Notice and Contractual Penalty.* For the avoidance of any doubt, the giving by the Principal of any Objection Notice or second Objection Notice shall be without prejudice to and shall not relieve the Contractor from the *obligation* to pay any contractual penalty or to pay Damages in accordance with the provisions of this Agreement upon the Principals request.
- 9.6. *Initial alignment.* The Contractor shall provide the Deliverables to the Principal before the respective Milestone for initial alignment. Upon receiving the Principal's comments, the Contractor shall implement the necessary

adjustments, if any, and submit the Deliverable to the Principal according to Clause 9.2 following the respective Milestone.

10. Intellectual Property Rights

- 10.1. *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Beneficiary at the moment of creation regardless of whether the Services or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Beneficiary and/or the Principal shall be permitted to use and reproduce the Documentation without any approval of the other Parties and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor. For the avoidance of any doubt, such title and ownership shall confer upon the Beneficiary, without limitation, each of the following:
- (a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
 - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
 - (c) the right to licence the Documentation and information, or any part thereof, for use by others; and
 - (d) the right to transfer ownership in the Documentation and information, or any part thereof, to others.
- 10.2. *Licence from employees of Contractor.* The Contractor hereby warrants that it shall obtain from personnel, Approved Sub-contractors and Approved Staff, and grants to the Beneficiary an exclusive licence to use the personal Intellectual Property rights pertaining to the Documentation. The licence shall be valid for the time period the Intellectual Property is under legal protection.
- 10.3. *Intellectual Property in Documentation.* The Contractor represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Contractor under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Contractor, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Contractor under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 10.4. *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Beneficiary to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 10.5. *No Infringement.* The Contractor represents and warrants to the Principal and the Beneficiary that no Documentation, Deliverable and information delivered to the Principal and/or the Beneficiary under the terms of this Agreement shall infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Section 10 Intellectual Property Rights prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information.
- 10.6. *Obligation to Procure Intellectual Property Rights.* Where the Contractor is not the legal owner of any relevant Intellectual Property of the Contractor, the Contractor shall use reasonable endeavours to procure for the Principal and the Beneficiary the rights specified in accordance with this Section.
- 10.7. *Indemnification by the Contractor.* The Contractor shall defend and indemnify the Principal and the Beneficiary from and against any and all Damages arising from the use by the Principal and the Beneficiary of any Intellectual Property, to the extent use by the Principal and the Beneficiary is within the scope of the license granted to the Principal and the Beneficiary.

11. Termination and Suspension

- 11.1. *Termination for Material Breach.* Subject to the provisions of Clause 11.2 of this Agreement, each Party shall be entitled to terminate (withdraw from) this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. An event of material breach shall include, but shall not be limited to, any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Services valued at least EUR 5,000;

- (b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 9.4;
- (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in *Annex B: Technical Specification* provided that such failure is not remedied during the Cure Period;
- (d) failure by the Beneficiary to make any payment to the Contractor in accordance with this Agreement within at least thirty (30) Business Days from the date of payment falling due; or
- (e) any of the representations or warranties given by either Party under Clause 7.1 of this Agreement or any of the representations or warranties given by the Contractor under Clause 7.2 of this Agreement proving to be untrue.

11.2. *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party seven (7) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 11.2 of this Agreement shall not apply with respect to any of the events specified in Clause 11.4 of this Agreement. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 11.2 of this Agreement shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 12.2 of this Agreement or to pay Damages incurred by the other Party in accordance with the provisions of Clause 12.3 of this Agreement.

For the sake of clarity, the Corrective Period is not applied in case of material breach under Clause 11.1(b) or Clause 11.1(c), as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period or the term specified in the Objection Notice, as the case may be, and their prior application.

11.3. *Right to Terminate Immediately.*

11.3.1. Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate (withdraw) this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:

- (a) breach by the other Party of Clause 20.2 of this Agreement;
- (b) an event of Force Majeure has been continuing during more than sixty (60) days;
- (c) the other Party has passed a resolution for winding-up;
- (d) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
- (e) the occurrence of any event analogous to the events enumerated under Clauses 11.3.1 (d) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.

11.3.2. *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if:

- (a) CEF co-funding for further financing of the Services is not available to the Beneficiary fully or partly;
In such a case, the Beneficiary shall pay the Contractor the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Beneficiary is not obliged to pay contractual or any other penalty or Damages or Costs to the Contractor.
- (b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- (c) in case if the proposed time schedule described in *Annex C: Schedule of Services* is breached;
- (d) breach by the Contractor of any of the confidentiality undertakings contained under Section 15 *Confidentiality*.

- 11.3.3. *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in Article 64 of the Public Procurement Law. In such a case, the Beneficiary shall pay the Contractor the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Beneficiary is not obliged to pay contractual or any other penalty or Damages or Costs to the Contractor.
- 11.3.4. *Principal's rights to terminate without cause.* The Principal shall be entitled to unilaterally terminate the Agreement with a thirty (30) days prior written notice to the Contractor without specifying the cause for termination (based solely on the discretion of the Principal). In such a case, the Beneficiary shall pay the Contractor the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Beneficiary is not obliged to pay contractual or any other penalty or Damages or Costs to the Contractor.
- 11.4. *Right to Advance to Completion.* In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 11.2 of this Agreement, and the Agreement is terminated by the Principal, the Principal may advance the Services to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Contractor shall be liable to the Principal or the Beneficiary for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 11.4 of this Agreement shall be in addition to any and all other rights and remedies available under Applicable Law.
- 11.5. *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
 - (b) the provisions stipulated in accordance with Clauses 6.5, 6.7, **Error! Reference source not found.**, 9.1, 11.6, 12.1, 12.2, 12.3, 20.1 of this Agreement and Sections 10 (Intellectual Property), 15 (Confidentiality), 16 (Right to Audit), 17 (On-the-spot-visits) 18 (Governing Law and Resolution of Disputes), and which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this 11.5(b) of this Agreement.
- 11.6. *Partial Acceptance.* In the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any part of the Services delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Contractor of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 11.1 or Clause 11.3 of this Agreement, specifying, in reasonable detail the Services or part of the Services which the Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Services and determination of the amount of consideration payable by the Beneficiary.
- 11.7. *Beneficiary's Obligation to Pay.* In the event of termination of the Agreement due to the fault of the Principal or the Beneficiary in accordance with Clause 11.1 or 11.3.1 of the Agreement, the Beneficiary shall be obliged to compensate to the Contractor only those direct and reasonable Costs which are attributable to the Services and are incurred by the Contractor until the termination of the Agreement. The total amount of such Costs shall in any case not exceed the Initial Phase Fee if the Agreement is terminated during the Initial Phase or the actual Second Phase Fee if the Agreement is terminated during the Second Phase. The Beneficiary shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any Services (or part of any Services), if the Agreement has been terminated due to the violation of Clause 20.2 by the Contractor or due to application of international sanctions as per Clause 11.3.2 (b) or due to the fault of the Contractor, or for the Services, which are not deemed as having been accepted by the Principal in accordance with Clauses 9.2, 9.3, 9.4 and 9.5 of this Agreement.
- 11.8. *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

12. Liability

- 12.1. *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal and/or the Beneficiary arising out of or in connection with this Agreement and pay contractual penalty set forth in

accordance with Clause 12.2 of this Agreement if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Beneficiary shall be liable to pay the contractual penalty set forth in accordance with Clause 12.2 of this Agreement if a breach of payment obligations of the Beneficiary under this Agreement is established against the Beneficiary.

- 12.2. *Contractual Penalty.* In the event of failure by the Contractor to meet any Milestone and/or supply any Deliverable, the Contractor shall be liable to pay to the Beneficiary a penalty of zero point one (0.1%) of the amount of total Fee payable under this Agreement with respect to the particular Milestone and/or Deliverable for each day of delay starting from the first delayed day with meeting the respective Milestone and/or supplying of the particular Deliverable; provided, however, that the total amount of penalty payable by the Contractor under this Clause 12.2 for the relevant Services shall not exceed ten percent (10%) of the total amount of the Fee for the respective Milestone and/or Deliverable. In the event of failure by the Beneficiary to pay any amount in accordance with Section 8 Fee and Payment, the Beneficiary shall be liable to pay the Contractor a penalty of zero point one percent (0.1%) of the amount delayed for each day of delay; provided, however, that the total amount of penalty payable by the Beneficiary under this Clause 12.2 of this Agreement shall not exceed ten percent (10%) of the total delayed amount under the relevant invoice.

For the avoidance of doubt the contractual penalties shall be applied upon the sole discretion of the entitled Party under the Agreement considering the material consequences of the infringement.

- 12.3. *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 12.2 of this Agreement and subject to the provisions of Clause 12.5 of this Agreement, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 12.4. *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 12.3 of this Agreement, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 12.5. *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor, the Principal or the Beneficiary be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability for the Services carried out under this Agreement shall in no circumstances exceed twice (2) the amount of the Total Value.

13. Insurance

- 13.1. *Professional civil liability insurance.* The Contractor shall insure against public/third party liability (the "Liability Insurance") for the implementation of the Services during the term of the Agreement. In case of imperative legal requirements related to specific types of insurance for the performance of the Services (including any works forming a part of the Services), the Contractor shall also provide additional insurance for these activities.
- 13.2. *Obligation to effect insurance.* The Contractor undertakes to effect such Liability Insurance based on commercially reasonable terms (including reasonable exclusions) and which is compliant with the Agreement conditions and Applicable Law requirements. The limit of liability of the Liability Insurance shall be no less than the Total Value of the Agreement as per Clause 3.1 during the entire term of the Agreement.
- 13.3. *Submission of Insurance policy.* Within ten (10) days after request of the Principal, the Contractor shall submit the Liability Insurance policy and documents certifying payment for the particular insurance to the Principal. The Contractor shall maintain the Liability Insurance policy valid throughout the Term of Agreement and any other additional period if so required by the Applicable Law.

14. Force Majeure

- 14.1. *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 14.2 and 14.3 of this Agreement, each Party shall be relieved from liability for non-performance of its obligations under this Agreement to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.

- 14.2. *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 14.2(a) of this Agreement.
- 14.3. *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Business Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 14.2(a) of this Agreement and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 14.4. *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 14.5. *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 14.3 of this Agreement, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

15. Confidentiality

- 15.1. *Confidential Information.* Confidential Information means all information of a confidential nature relating to the Principal, the Beneficiary and their affiliates which is supplied by the Principal or the Beneficiary (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all analyses, compilations, deeds, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or
 - (c) was developed by or for the Contractor at any time independently of this Agreement.
- 15.2. *Undertakings with Respect to Confidential Information.* Subject to Clauses 15.1 and 15.3, the Contractor shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - (b) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 15.3. *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 15.1 and 15.2 of this Agreement, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
 - (b) to enable a determination to be made pursuant to *On-the-spot-visits*;

- (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
 - (e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 15.4. *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 15.3(a) or (c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 15.5. *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:
- (a) return to the Beneficiary and the Principal all of the Confidential Information then within the possession or control of the Contractor; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 15.6. *No Press Release by Contractor.* Save as required by Applicable Law, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal and Beneficiary (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 15.7. *Right to Publish.* For the avoidance of any doubt, the Principal and Beneficiary shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Services.
- 15.8. *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section 15 *Confidentiality* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 15.2, 15.4 or 15.6 may be entitled to other remedies, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

16. Right to Audit

- 16.1. *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal or the Beneficiary itself, a reputable outside independent body or expert engaged and authorised by the Principal or the Beneficiary shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the Services; and/or
 - (b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Services.
- 16.2. *Obligation to Assist.* The Contractor shall provide all reasonable assistance to the Principal, the Beneficiary or the independent body authorised by the Principal or the Beneficiary, as the case may be, in carrying out any inspection or audit pursuant to this Right to Audit. The Principal and the Beneficiary shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal or the Beneficiary, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Principal or the Beneficiary for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 16.3. *Survival of Termination.* The rights and obligations set forth in accordance with this *Right to Audit* shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

17. On-the-spot-visits

- 17.1. *Right to perform on-the-spot visits.* By submitting a written notice five (5) Business Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal

and/or the Beneficiary may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.

- 17.2. *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal, the Beneficiary or by any other outside body or third party authorised to do so on behalf of the Principal or the Beneficiary. Information provided and collected in the framework of on-the-spot visits shall be treated as confidential. The Principal and the Beneficiary shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 17.3. *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit the copying of the information and documents, with due respect to the confidentiality obligation.
- 17.4. *Checks and Inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and other legislation and documentation relating to European Union grant awarding and subsequent monitoring processes, the European Commission; the European Anti-Fraud Office; the European Climate, Infrastructure and Environment Executive Agency; the European Court of Auditors and other European Union institutions and bodies may perform checks, reviews, audits and investigations towards Contractor in case such activities are related to the use of grants awarded.

18. Governing Law and Resolution of Disputes

- 18.1. *Governing Law.* This Agreement shall be governed by and construed in accordance with laws of the Republic of Latvia.
- 18.2. *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 18.3. *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for all Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

19. Responsibilities of the Beneficiary

- 19.1. *Review of Documentation.* The Beneficiary shall examine the Documentation as may be submitted by the Principal for review to the Beneficiary and upon the Principals request shall render opinions pertaining thereto.
- 19.2. *Decisions.* On all matters properly referred to it in writing by the Principal the Beneficiary shall within a reasonable time give its decision in writing so as not to delay the provision of the Services.
- 19.3. *Action Upon Becoming Aware of Defects.* In the event the Beneficiary observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services, the Beneficiary shall give prompt notice thereof to the Principal.

20. Miscellaneous Provisions

- 20.1. *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorised and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 20.2. *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a *breach* under this Agreement and the Principal shall be entitled to terminate this Agreement

immediately and without any regard to the provisions of Clause 11.2 of this Agreement, if it is shown that the Contractor is guilty of:

- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
- (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.

- 20.3. *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed. Delivery can be made by hand, by post, or by e-mail.
- 20.4. *Relationship of the Parties.* The relationship between the Contractor and the Principal and the Beneficiary under this Agreement is that of independent contractors. The Contractor (and the Contractor's sub-contractors) is not an employee of the Principal or the Beneficiary, is not carrying out the regular business of the Principal or the Beneficiary and is not subject to the same employment regulations as are applicable to employees of the Principal or the Beneficiary. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal or the Beneficiary to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.
- 20.5. *Severability.* If any provision of this Agreement shall become illegal, invalid, void or unenforceable under the Applicable *Laws*, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 20.6. *Successors and Assigns.* The Principal, the Beneficiary and the Contractor each bind themselves, their successors, *legal* representatives, and assigns to the other Parties to this Agreement and to the partners, successors, *legal* representatives and assigns of such other Parties in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Parties.
- 20.7. *Amendments and Variations.* No amendment or variation of this Agreement shall be effective unless made in writing and signed by duly authorised representatives of all Parties, if not provided otherwise herein. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.
- 20.8. *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 20.9. *Execution.* This *Agreement* is prepared and is executed as an electronic document.

Signed by:

For and on behalf of the Principal and the
Beneficiary:

Chairperson of the Management Board:
Marko Kivila
RB Rail AS

For and on behalf of the Contractor:

Management Board Member:
Uldis Kalējs
SIA "ARCHEO arheologi"

THIS AGREEMENT IS SIGNED WITH SECURE ELECTRONIC SIGNATURES AND CONTAINS A TIMESTAMP

Annex A: Definitions and common terms

The following capitalised terms shall be ascribed the following meaning for the purposes of the Agreement:

1. "Agreement", this Agreement, together with all Annexes thereto.
2. "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include, but not be limited to, any legislative act or directive relevant to public procurement and provision of the Services.
3. "Approved Staff", any person listed pursuant to *Annex F: List of approved Sub-Contractors and Staff*, which is in a contractual relationship with the Contractor to provide a part of the Services.
4. "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex F: List of approved Sub-Contractors and Staff*, which is in a contractual relationship with the Contractor to provide a part of the Services.
5. "Beneficiary", the Ministry of Transport of the Republic of Latvia, as further specified in the Preamble of this Agreement.
6. "Business Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
7. "Commencement Order for the Second Phase Services", as mentioned under Clause 3.4 of the Agreement and substantially in the form of *Annex E: Commencement Order for the Second Phase Services*.
8. "Completion Date", as defined in accordance with Clause 9.3 and 9.4 of this Agreement, as appropriate.
9. "Confidential Information", as defined in accordance with Clause 15.1 of this Agreement.
10. "Contractor", the company SIA "ARCHEO arheologi" as further specified in the Preamble of this Agreement, which is engaged by the Principal and the Beneficiary as an independent professional contractor to perform the Services.
11. "Costs", direct costs reasonably incurred in relation to the Services. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Services, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Contractor in the performance of the Services or relating to the Services;
 - (iii) salaries of the Contractor's employees for the time that they spend in connection with the Services;
 - (iv) payments to sub-contractors relating to the Services;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Services;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Services, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Services;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Contractor;
 - (x) sales, use, gross receipts or other taxes or state fees related to the Services, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Services; and

- (xii) costs of any data processing services used in connection with the performance of the Work required under this Agreement.
12. "Corrective Period", as defined in accordance with Clause 11.2 of this Agreement.
 13. "Cure Period", as defined in accordance with Clause 9.1 of this Agreement.
 14. "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
 15. "Deed of Acceptance", as defined under Clause 9.2 of the Agreement and substantially in the form of *Annex G: Deed of Acceptance*.
 16. "Defect", is a part of the Services which is not in accordance with the *Annex B: Technical Specification* and/or the *Annex H: Contractor's Proposal*, and/or the Applicable Law and/or Good Industry Practice.
 17. "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, reports, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Services, as further specified pursuant to Annex C: Schedule of Services.
 18. "Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
 19. "Effective Date", the date when the Agreement is signed by the Principal, the Beneficiary and the Contractor as indicated in the Preamble to this Agreement.
 20. "EUR", and "*euro*", the official currency of the eurozone, officially known as the euro area.
 21. "Fee", as specified in accordance with Clause 8.1.
 22. "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination, pandemic, quarantine;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils or antiquities of significant historical importance; and/or
 - (vii) strike, lockout or other industrial action other than involving the Contractor, the Principal or the Beneficiary.
 23. "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying the Services, including any works that are part of the Services, of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
 24. "Initial Phase Fee", part of the Fee payable for the Initial Phase Services as described in Clause 8.1(a).
 25. "Initial Phase Services", as defined in accordance with Clause 2.1.1 of this Agreement.
 26. "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor to the Beneficiary, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
 27. "Intellectual Property of the Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license. "Milestone", the date for completion of the respective part of the Services and delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Services*.

28. "Milestone", the date for completion of the respective part of the Services and delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Services*.
29. "NHB", National Heritage Board of Latvia.
30. "Objection Notice", as defined in accordance with Clause 9.3 of this Agreement.
31. "Party" and "Parties", the Principal, the Beneficiary and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
32. "Person", shall include any natural person, company, corporate body, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
33. "Programme", survey programme to be developed in accordance with the Agreement, including *Annex B: Technical Specification* and requirements of NHB, including the requirements of the Technical Conditions;
34. "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
35. "Principal", RB Rail AS as specified in the Preamble of this Agreement.
36. "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
37. "Representative", an officer, employee or individual appointed by the Contractor and/or the Principal to serve as its authorised representative toward the supply or receipt of the Service and indicated under *Annex I: Representatives*.
38. "Right of Partial Acceptance", as defined in accordance with Clause 11.6 of this Agreement.
39. "Second Phase Fee", part of the Fee payable for the Second Phase Services as described in Clause 8.1(b).
40. "Second Phase Services", as defined in accordance with Clause 2.1.2 of this Agreement.
41. "Services", archeological surveying services and works as provided under this Agreement and further described under *Annex B: Technical Specification*.
42. "Technical Conditions", technical conditions issued by the NHB and enclosed in *Annex D: Technical Conditions issued by the National Heritage Board of Latvia*.
43. "VAT", value added tax.
44. "Variations", a variation to the Agreement or any part thereof mentioned in Clause 4.1.

Annex B: Technical Specification

*Annex No 2 to open competition
"Archeological survey in the protection
zone of Daugmale hillfort" regulation,
ID No RBR 2023/4*

ANNEX NO 2: TECHNICAL SPECIFICATION (*DATE OF PREPARATION: 8 MARCH 2023*)

FOR OPEN COMPETITION

"Archeological survey in the protection zone of Daugmale hillfort"



**Co-funded by
the European Union**

Riga, 2023

1. General information and Scope of services

The Contracting authority RB Rail AS (RBR or the Principal) was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and Construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic states with Poland and the rest of the EU.

During the Value engineering stage of the design of Rail Baltica railway line, Ministry of Transport decided to implement the combined rail-road bridge over the Daugava near Salaspils. Chosen Rail Baltica and highway A4 (A4 autoceļš Rīgas apvedceļš (Baltezers—Saulkalne)) alignment is located at distance less than 500 m and is inside the protection zone of Daugmale hillfort with an ancient town and an ancient burial field (Daugmales pilskalns ar senpilsētu un senkapi).

The planned section of the railway line "Rail Baltica" from the combined rail-road bridge over the Daugava to the regional road P85 (P85 autoceļš Rīgas HES—Jaunjelgava) and the road junction between the main national highway A4 (A4 autoceļš Rīgas apvedceļš (Baltezers—Saulkalne)) and the national regional highway P85 (P85 autoceļš Rīgas HES—Jaunjelgava) and related infrastructure facilities are planned to be built in the protection zone of Daugmale hillfort, an archaeological monument of national importance, with an ancient city and an ancient burial field (state protection No. 2090). The protected values of the Daugmale hillfort with the ancient town and ancient burial field are: their external appearance in the landscape, archaeological context, intangible evidence, fortification (defense) system, relief, cultural layer, burial structure, inventory and archaeological antiquities.

Daugmale hillfort with an ancient town and an ancient burial field are located in Ķekavas district, Daugmales parish near Tīči and Pukstiņi on the left bank of the Daugava. Hillfort is included in the composition of Cadaster numbers: 80560010075, 80560010196, 80560010225, 80560010255, 8056001056 (see also in Image 1).

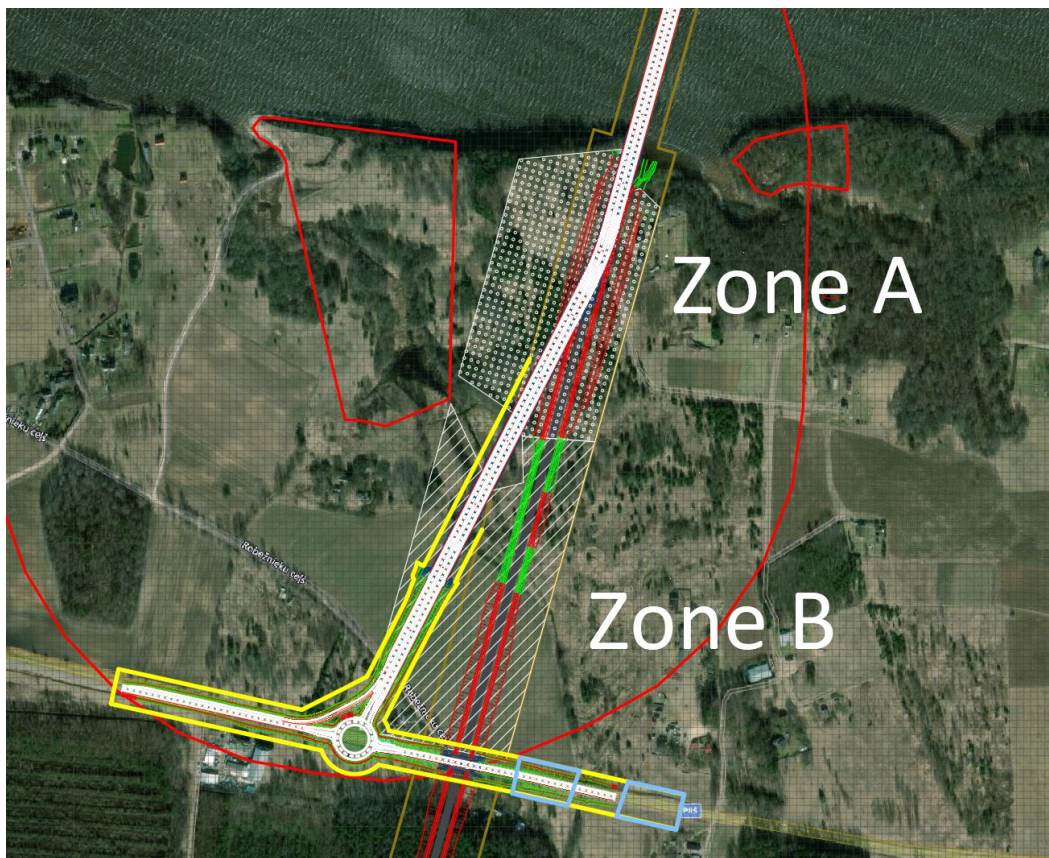


Image No.1. "Location of Daugmale hillfort with an ancient town and an ancient burial field, state protection No. 2090"

Considering that Daugmale hillfort is one of the most important hillforts in Latvia (it played an outstanding role both in the prehistory of Latvia as an important trade center on the Daugava waterway and in the 20th century as a site of archaeological research expeditions, separate archaeological survey needs to be carried out according to Technical Conditions from the National Heritage Board of Latvia (NHB of Latvia; Nacionālā kultūras mantojuma pārvalde), included as Annex D of Contract. The indicative area of planned archeological survey is indicated in green dashed pattern (see in Image No 1), **approximate area 16.83 ha (168333 m²)**. Impacted landplots - 80560010211, 80560010084, 80560010319, 80560010224, 80560010255, 80560010078, 80560010196, 80560010301, 80560010106, 80560010304 (contacts to be provided by the Principal after the Contractor's request).

2. General task and description

2.1. General tasks of the Contractor:

- 2.1.1. The Contractor needs to carry out archaeological survey in the protection zone of Daugmale hillfort with an ancient town and an ancient burial field, state protection No. 2090" (Image No.1).
- 2.1.2. Coordinate archaeological survey with the NHB of Latvia and obtain all permits for conducting these works. In order to obtain the identification permit, a detailed survey plan (description, cartographical material etc.) has to be submitted to the NHB of Latvia. Survey program shall be inline with the Technical Conditions to the NHB of Latvia. Before commencement of any field works the Contractor shall get approval from landowners impacted my planned archaeological identification works.
- 2.1.3. Archaeological survey is planned in the area indicated in the Image No.1. The main aim of the survey work is to clarify if there is a presence of archaeological remains in the zone affected by the planned construction works. According to the Technical Conditions from the NHB of Latvia, all the aforementioned area has to be investigated, but due to different archaeological potential, two survey zones have been distinguished:
 - Zone A, located closer to the hillfort and Daugava river, is to be intensely surveyed by field-walking, metal detector survey, probing with hand-operated geological probe in a grid of 10x10 m and excavating trial trenches (size 1x2 m; 1-3 trenches, but not more than 4 for potentially archeologically significant points) if probing and field walking would point to possible archaeological sites and/or objects. The aim of excavating trial trenches is to establish the extent of the possible archaeological site and acquire information that can be used for planning excavations in a later stage of the project development.
 - Zone B, located further away from the hillfort, is to be surveyed by fieldwalking and metal detector survey, but probing with hand-operated geological probe and/or excavating trial trenches should only be carried out if deemed necessary by the archaeologist from visually inspecting the specific place of interest. No more than 10 geological probes should be done in a place of interest and/or no more than 1-3 trial trenches (size 1x2 m). Before commencement of investigations the amount shall be agreed with Principal. Planned amount of investigations works:

Type of investigation	Planned amount
Probing point	800
Trial trenches	20

- 2.1.4. Archaeological investigations shall be done in two phases from contract perspective:
 - 2.1.4.1. Initial Phase Services. The phase includes - archaeological survey, including - desk study, obtain of all permits for conducting archaeological survey works, program development (methodology and in line with the Technical Conditions to the NHB of Latvia), program coordination with Principal, program coordination and approval by

- NCHB, fieldwalking, metal detector survey of zone A and B, Inception Report and other needed actions for successful completion if identification studies);
- 2.1.4.2. Second Phase Services. The phase includes investigations to be performed in zone A and zone B (to be agreed with Principal during Initial Phase Services).
- 2.1.5. Entry and parking in the territory of the archaeological monument must be coordinated by the Contractor with the Principal and owners of the respective properties. During the performance of the service, the bearing capacity of the access roads and the territory must be observed and maintained in original condition.
- 2.1.6. Archaeological survey works should be planned according to season/ weather conditions.
- 2.1.7. Make all necessary recordings in the excavation and probing areas - description and photo recording of ongoing works and discoveries; layer and profile fixation - description, drawing and photo fixation, incl. fixation of exposed objects and structures; fixation of findings (antiques, etc.);
- 2.1.8. During archaeological survey, to record all discoveries and finds, as well as topographical surveying of excavation areas within the LKS-92 coordinate system, and report that in the Final deliverable No. 3.
- 2.1.9. The Contractor must obtain permissions from the owners of the properties and clean the areas from trees and bushes, if necessary, in order to carry out the necessary work.
- 2.1.10. The Contractor must use such methods and tools that provide full archaeological surveying of the territory specified in the Agreement and recognition of archaeological remains from all ages and types of sites.

2.2. The services and works shall be carried out according to:

- 2.2.1. Ministru kabineta 2021.gada 26.oktobra noteikumi Nr. 720 "Kultūras pieminekļu uzskaites, aizsardzības, izmantošanas un restaurācijas noteikumi. Available here: <https://likumi.lv/ta/id/327240-kulturas-piemineklu-uzskaites-aizsardzibas-izmantosanas-un-restauracijas-noteikumi>;
- 2.2.2. Latvijas Republikas 1992.gada 12.februāra likums "Par kultūras pieminekļu aizsardzību". Available here: <https://likumi.lv/ta/id/72551-par-kulturas-piemineklu-aizsardzibu> ;
- 2.2.3. Eiropas Padomes 1992.gada 16.janvāra līgums "Eiropas Konvencija arheoloģiskā mantojuma aizsardzībai". Available here: <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1305>;
- 2.2.4. Technical Conditions from the National Heritage Board of Latvia - before commencement of archaeological identification, a identification Programme must be submitted to and approved by the Heritage Board.

3. Language

All deliverables and related documentation (work program, reports, presentations, etc.) under the agreement must be created in Latvian. Approved versions of Final Report shall be translated to English.

4. Deliverables and milestones

4.1. Deliverables

The Contractor shall prepare Reports in written and submit to the Principal files in .doc, .pdf and .shp formats (other if needed). The Services shall result in the provision **of the following deliverables:**

4.1.1. Inception report (to be provided in the Initial Phase Services)

Contains: time schedule of the planned works for surveying of archaeological values within planned area (refer to Image No 1), list with certified experts according to Country legislation, references to laws and regulations that will be followed during the identification etc. Survey programme must be approved by the NHB of Latvia and submitted to RBR together with Inception Report deliverable. When coordinating the Survey programme with the NHB of Latvia, the archaeologist must also provide information on landowner's agreement to commence

archeological survey works (Please see cadastral numbers in Section No.1 of this Technical specification).

4.1.2. Interim report on Progress (to be provided in the Second Phase Services)

Contains: time schedule of the executed and planned works, description of performed investigations, main findings etc.

4.1.3. Final report on the survey results and suggestions for further research and construction works (to be provided in the Second Phase Services)

Contains: approval from National Heritage Board of Latvia, description of performed investigations, main findings, works recordings, photos of excavations, cartographical materials (maps, plans, drawings), suggestions for Construction stage, etc.

4.2. Milestones

4.2.1. **Inception report** – 8 weeks after signing of Agreement (Commencement date);

4.2.2. **Interim report on Progress** – 8 weeks after Commencement Order for the Second Phase Services;

4.2.3. **Final report on the survey results and suggestions** – 20 weeks after Commencement Order for the Second Phase Services

Deliverables/Report	No. Of hard copies	Submission schedule	Approval by the Principal
Inception report	1 hard copy	Commencement date + 8 weeks	4 weeks after reception of deliverables
Interim report on Progress	1 hard copy	8 weeks after Commencement Order for the Second Phase Services	4 weeks after reception of deliverables
Final report on the survey results and suggestions	1 hard copy	20 weeks after Commencement Order for the Second Phase Services	6 weeks after reception of deliverables

4.3. Meetings

Title	Responsible party organising the meeting	Timeline
Inception meeting	Principal	8 weeks after Commencement date
Progress meetings	Contractor	If necessary or requested by the Principal
Final meeting	Contractor	After submission of Final Report

5. HEALTH AND SAFETY

- 5.1. The Contractor shall comply with applicable regulations and directives in respect of health and safety, and those obligations specified in the Agreement.
- 5.2. The Supplier shall take care of the health and safety of all persons entitled to be on the site and other places (if any) where the Services are performed and keep the site where Services (including any works) are performed in a proper manner to avoid danger to all persons entitled to be on site.
- 5.3. The Contractor will provide written and signed Acknowledgement (in Latvian and English) in accordance with provided sample:
Health and Safety system compliance minimum requirements

Acknowledgement

Hereby "name of legal entity" acknowledges that before field works are commenced and all through the operations of field works, management of health and safety (H&S), fire safety and electric safety are established and implemented in full compliance with local legislation and complies with following:

- 1) Will maintain consistent H&S level at all working sites to avoid injuries or/and fatalities of all people involved in the project.
- 2) Types of work to be performed in accordance to this agreement are listed;
- 3) Risk assessment for listed types of work is carried out and recorded ;
- 4) Risk control action plan is designed and signed by the most senior manager in the company. All risk controls have owners and they are aware of their responsibilities. Risk control action plan progress is being reviewed on regular basis.
- 5) All "name of legal entity" employees involved in delivery of this contract are trained in risk recognition and risk management of work performed and their knowledge is tested and records available;
- 6) Safe work performance, fire safety and electrical safety instructions are designed, signed off by most senior manager of the company and all employees involved in delivery of this contract are trained accordingly at sufficient level and knowledge is tested. Evidences for competency evaluation are available instantly shall Principal request them;
- 7) All employees involved in delivery of this contract have undergone mandatory health surveillance.

For the work site safety:

- 8) In case of accident, incident or high potential near miss on the work site "name of legal entity" will inform Principal's contact person or H&S manager over the phone or e-mail immediately however in 4 hours latest;
- 9) "name of legal entity" site manager or project manager will be present at work site at all times as work is in process;
- 10) All "name of legal entity" employees will be equipped with necessary personal protective equipment (PPE) at all times with no exceptions being on the work site. Minimum PPE requirements on the work site: a) Hi-Viz vest or jacket (EN 471); 2) safety boots (S1P or S3 or S5). In addition to minimum stated PPE list employees must be equipped with PPEs according to risk assessment and risk control requirements stated by employer;
- 11) Work site is properly barricaded and safety/warning signs are displayed in order to: a) prevent unauthorized persons to enter worksite; b) enclose dangerous work area where risks to general public may be exposed;
- 12) Site manager or project manager will be responsible to remove all dangerous structures and ensure the site is protected when the site is not occupied. This should include appropriate barriers or covers;
- 13) "name of legal entity" H&S representative runs safety walk and records results at least by-weekly;
- 14) Principal's representatives (H&S manager, project team members etc) will have access to the site without previous warning at all times to run safety walks.

Principal has all rights to request and receive evidences to prove all above stated with notice of 1 working day.

Annex C: Schedule of Services

1. Services and Deliverables:

Services and Deliverable	Services Milestone
Initial Phase Services – with all the Deliverables as per the Agreement, including Annex B: Technical Specification	Eight (8) weeks after the Effective Date
Second Phase Services – with all the Deliverables as per the Agreement, including Annex B: Technical Specification	Twenty (20) weeks after the Principal has sent the Commencement Order for the Second Phase Services

2. The Principal shall accept the Services and the Deliverables in accordance with the Clauses 9.3 and 9.4 of the Agreement only if they conform with the quality and other requirements defined under the Agreement (including Annex B: Technical Specification).

3. The Principal may provide comments or remarks to Deliverables after signing of the Deed of Acceptance. In such situations the Contractor shall timely implement and/or reply to these comments and remarks.

Annex D: Technical Conditions issued by the National Heritage Board of Latvia (*added as a separate document*)

Annex E: Commencement Order for the Second Phase Services

No [INSERT NUMBER]

Date: [INSERT DATE]

Location: [INSERT LOCATION]

This commencement Order for the Second Phase Services (the "Commencement Order for the Second Phase Services") has been submitted pursuant to the Agreement for archeological survey in the protection zone of Daugmale hillfort No [●] (the "Agreement") by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register under registration No 40103845025,

Ministry of Transport of the Republic of Latvia, registration No 90000088687, registered address at Gogoļa iela 3, Rīga, LV-1050, Latvia (the "Beneficiary"), represented by the Principal, on the one side,

and

[●], a limited liability company registered in the [●] Commercial Register under registration number [●], having its registered address at [●] (the "Contractor"),

Whereas:

- (A) pursuant to the Agreement the Second Phase Services shall be performed and commenced upon the discretion of the Principal;
- (B) as stipulated by Clause 3.4 of the Agreement, the Principal hereby notifies the Contractor on commencement on the Second Phase Services.

The following terms (in addition to the Agreement) are applicable to the Second Phase Services:

1. Second Phase Fee:

Services / Deliverable	Type of investigation	Price for 1 investigation unit (EUR without VAT)	Number of investigations	Total Value for each Type of investigation (EUR without VAT)	Actual Second Phase Services Fee (EUR without VAT)
Second Phase Services	Probing	[●]	[●]	[●]	[to be calculated as sum of total value of both types of investigations, and this fee includes all Deliverables and Services within the Second Phase Services]
	Trial Trenches	[●]	[●]	[●]	

2. Second Phase Services Milestone: [●];
3. Payment: The payment shall be made as a single payment after completion of the Second Phase Services (including acceptance of the Deliverables) according to the Agreement.
4. Governance: This document forms part of and is subject to the Agreement.
5. Other terms [●].

On behalf of the Principal:

On behalf of the Contractor:

[●]

[●]

Annex F: List of approved Sub-Contractors and Staff

Annex G: Deed of Acceptance

No [INSERT NUMBER]

Date: [INSERT DATE]

Location: [INSERT LOCATION]

For: [INSERT PRINCIPAL], registration number [●], legal address: [●] (the "Principal")

This Acceptance Deed is issued to the Principal by [●] [INSERT NAME, REGISTRATION NUMBER, LEGAL ADDRESS] (the "Contractor"), represented by [INSERT NAME OF REPRESENTATIVE AND THE BASIS OF REPRESENTATION].

Whereas:

- (A) the Principal, the Beneficiary and the Contractor have entered into the agreement [●] (the "Agreement");
- (B) one or more Milestones have been met and/or Deliverables of the Services have been completed or the Services have been fully completed by the Contractor;
- (C) as stipulated by Clause 9.2 of the Agreement, completion of a Milestone shall be evidenced by means of the Contractor issuing a signed Deed of Acceptance;
- (D) as per Clause 9.2 of the Agreement the Principal following the reception of a signed Deed of Acceptance shall review the submitted Deed of Acceptance and either sign the Deed of Acceptance conforming the compliance of the Services rendered or raise objections by issuing an Objection Notice.

The Contractor hereby confirms that following Milestone has/have been supplied on [INSERT DATE], as specified in accordance with the Agreement, or the Services have been completed in full: [DESCRIBE IN REASONABLE DETAIL THE DELIVERABLE SUPPLIED AND ATTACH THE RESPECTIVE SUPPORTING DOCUMENTATION]

By signing this Deed of Acceptance the Principal confirms in accordance with the Agreement its satisfaction with the result of the Deliverable submitted and the Milestone completed, and the Principal accepts the respective Deliverable.

Signatures:

For and on behalf of the Principal:

[●]

For and on behalf of the Contractor:

[●]

Annex H: Contractor's Proposal

Annex I: Representatives