



## **Track and Systems Agreement No.: HSR19-13**

### **Term Sheet**

This document provides background information and summarizes certain terms in the California High-Speed Rail Authority's Contract included in the Request for Proposals (RFP) for the Track and Systems procurement. This document is not a full restatement of the Contract requirements. There are numerous details, exceptions and qualifications associated with the provisions of the Contract that can only be ascertained by reviewing the Contract.

## 1. Contract Overview

Term	Summary	Reference
<b>Authority</b>	California High-Speed Rail Authority	GP § 1
<b>Contractor</b>	The entity identified as “Contractor” in the Signature Document and determined through the procurement	Signature Document
<b>Contract / Order of Precedence</b>	<p>The Contract will include the following documents, in the following descending order of precedence:</p> <p><u>Part A</u></p> <ol style="list-style-type: none"> <li>1. Signature Document</li> <li>2. General Provisions (without Schedules)</li> <li>3. Schedules to General Provisions</li> </ol> <p><u>Part B</u></p> <ol style="list-style-type: none"> <li>1. Functional and Technical Requirements</li> <li>2. Base Design Criteria</li> <li>3. Design Criteria Manual</li> </ol> <p><u>Part C</u></p> <ol style="list-style-type: none"> <li>1. Matrix of Contractor’s Presently-Known Environmental Obligations</li> <li>2. [RESERVED]</li> <li>3. [RESERVED]</li> <li>4. [RESERVED]</li> <li>5. [RESERVED]</li> <li>6. GIS Requirements Manual</li> <li>7. CADD Manual</li> <li>8. Plans Preparation Manual</li> <li>9. Construction Specifications Preparation Manual</li> <li>10. Water Conservation Guidance</li> <li>11. Record of Survey and Control Monument Data</li> <li>12. Railroad Agreements:               <ol style="list-style-type: none"> <li>12.1. HSR 14-63 (UPRR ECM)</li> <li>12.2. HSR 14-64 (UPRR Env)</li> <li>12.3. HSR 14-89 (SJVRR I&amp;I)</li> <li>12.4. HSR 16-67 (BNSF CP 1)</li> <li>12.5. HSR 16-68 (BNSF Joint Corridor Agreement)</li> <li>12.6. HSR 16-69 (BNSF Master Agreement)</li> <li>12.7. HSR 18-57 (BNSF CP 2-3)</li> <li>12.8. HSR 18-58 (BNSF CP 4)</li> <li>12.9. BNSF Overpass Agreements Template</li> </ol> </li> <li>13. Third Party O&amp;M Agreements</li> </ol> <p><u>Part D</u></p> <ol style="list-style-type: none"> <li>1. Proposal (provided that if Authority determines that the</li> </ol>	GP § 2.1

	Proposal contains a provision that is more restrictive or beneficial to Authority than is otherwise required, that Proposal provision will take precedence)	
<b>Federal Requirements</b>	The Contract incorporates federal requirements, including Buy America, related to the Passenger Rail Investment and Improvement Act (PRIIA).	GP § 47
<b>Small and Disadvantaged Business Enterprise Program</b>	Contractor will comply with Authority's Small and Disadvantaged Business Enterprise Program and will establish a SB Performance Plan, including a Communication Plan, to address how Contractor will meet the overall SB goal throughout the duration of the Contract.	GP §§ 31.1, 47.32
<b>Community Benefits Agreement</b>	Contractor and its Subcontractors will comply with the Community Benefits Agreement with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions. Contractor will also comply with the Overhead Electrification System Agreement with I.B.E.W. Local 47 and I.B.E.W. Local 1245.	GP § 31.2 GP Schedule 12
<b>Labor and Employment</b>	Contractor, as part of its Proposal, will be required to describe its approach to developing a skilled labor force for the Delivery and Service Periods of the Contract.	Instructions to Proposers
<b>Environmental Compliance</b>	The HSR System will comply with all state and federal environmental requirements, including noise mitigation requirements, through the Contract and/or other contracts.	GP § 44 GP Schedule 13 Part C.1

## 2. Certain Authority Obligations

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<b>Maintenance of Way Facilities Property</b>	Authority will provide Contractor with property to allow Contractor to construct the Maintenance of Way Facilities for Segment 1.	Signature Document, Attachment A § 8
<b>Operations Control Center</b>	Authority will provide Contractor with a building to use as an Operations Control Center (OCC). Contractor will be responsible for making any changes to the building and supplying all fixtures and equipment necessary to use the building as an OCC.	Signature Document, Attachment A § 8
<b>System Sites</b>	As part of being provided with Primary Access to each Section (see "Access to Civil Infrastructure Works" below), Authority will provide Contractor with access to any corresponding System Sites (traction power substation sites, paralleling station sites, switching station sites, communication tower sites, interlocking equipment sites). Authority will provide Contractor with access to electrical power (115 or 230 kV) at the traction power substation sites during each Construction Period.	Signature Document, Attachment A § 8 GP Schedule 15
<b>Governmental Approvals</b>	Authority will obtain the following Governmental Approvals: USFWS NMFS Section 7 Biological Opinion, as amended; CA SHPO Section 106 Programmatic Agreement Memorandum of Agreement and Treatment Plans; FRA Air Quality General Conformity Determination; FRA Section	Signature Document, Attachment A § 8 GP §§ 3.11, 44 GP Schedule 13

	<p>4(f)/Section 6(f) Determination; SJVAPCD Indirect Source Review; SJVAPCD Voluntary Emissions Reduction Agreement; SWRCB Section 401 – State Water Quality Certification, as amended; SWRCB Section 402 – Post Development (Operations Phase) NPDES MS4 Stormwater Discharge Permit; USACE Section 404 Clean Water Act Individual Permit, as amended, or Nationwide Permits; USACE Preliminary Section 408 Determination; CDFW Section 1602 Master Streambed Alteration Agreement, as amended; CDFW Section 2081 Incidental Take Permit, as amended.</p> <p>Contractor will obtain all other applicable Governmental Approvals.</p>	
<b>Access to Civil Infrastructure Works</b>	<p>Authority will provide Contractor with Primary Access to the Civil Infrastructure Works in defined sections (Sections) by specified deadlines according to a schedule.</p> <p>Primary Access to Sections may not be contiguous.</p> <p>Upon Contractor receiving Primary Access to a Section, the applicable Civil Infrastructure Works contractor will have Shared Access to the Section. Prior to Contractor receiving Primary Access to a Section, the applicable Civil Infrastructure Works contractor will have Primary Access and Contractor will have Shared Access to the Section.</p> <p>See Section 4, Description of Work, Primary Access/ Shared Access.</p>	<p>Signature Document, Attachment A § 8 GP Schedule 15</p>
<b>Rolling Stock</b>	<p>Authority will provide Rolling Stock (including a driver) for use by Contractor in testing the Project by a specified deadline.</p>	<p>Signature Document, Attachment A § 8</p>
<b>Radio Frequency</b>	<p>Authority will provide Contractor with specified radio frequency to use in connection with the operation of the Project.</p>	<p>Signature Document, Attachment A § 8</p>

### 3. Payment

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<b>Contract Amount</b>	<p>The Contract Amount is based on:</p> <ol style="list-style-type: none"> <li>1. Payment Milestones during the Delivery Period of each Segment (Milestone Contract Amount); and</li> <li>2. Monthly Service Payments during each Service Period.</li> </ol>	<p>GP § 11</p>
<b>Milestone Contract Amount</b>	<p>Authority will pay the Milestone Contract Amount for each Segment through the payment of defined Payment Milestones upon completion of and Authority's issuance of a Certificate of Acceptance for each Payment Milestone.</p> <p>If revenue service is delayed by more than 365 days following Authority's issuance of a Certificate of Final Acceptance for a reason beyond Contractor's control that could not have been avoided by Contractor and not due to Contractor's act or omission, Contractor will be entitled to a</p>	<p>GP §§ 11.2, 11.4, 11.5 GP Schedule 3 GP Schedule 5 GP Schedule 9</p>

	<p>monthly payment (priced in the same manner as a Service Payment) until revenue service.</p> <p>The Milestone Contract Amount is based on the Schedule of Values bid by Contractor.</p> <p>The Milestone Contract Amounts for Segments other than Segment 1 are subject to escalation.</p>	
<b>Service Payment</b>	<p>For performance of Contractor’s obligations during the Service Period, Contractor is entitled to a monthly Service Payment. The Service Payment will be calculated in part on fixed costs and in part on usage by the Rolling Stock based on the Schedule of Values bid by Contractor and is subject to annual escalation.</p>	<p>GP §§ 11.3, 11.4, 11.5</p> <p>Signature Document, Attachment B</p>
<b>Schedule of Values</b>	<p>As part of its Proposal, Contractor will bid unit costs as follows:</p> <p><u>Delivery Period</u></p> <ol style="list-style-type: none"> <li>1. Linear elements on a per kilometer basis: at grade or on embankments; in trenches; in tunnels; on aerial structures/viaducts;</li> <li>2. Traction power facilities on a per unit basis;</li> <li>3. Right of way fencing on a per kilometer basis; access road paving on a per square meter basis; 4 quadrant gates for at grade crossing on a per unit basis;</li> <li>4. Interlockings on a per unit basis except station and refuge tracks on a per kilometer basis;</li> <li>5. Tracks for speeds less than 125 mph from Gilroy to CP Lick on a per kilometer basis except interlockings on a per unit basis;</li> <li>6. Track and systems facilities on a per unit basis.</li> </ol> <p><u>Service Period</u></p> <ol style="list-style-type: none"> <li>1. Linear elements on a per kilometer basis: at grade or on embankments; in trenches; in tunnels; on aerial structures (including right of way fencing);</li> <li>2. Traction power facilities on a per unit basis;</li> <li>3. Access roads on a square meter basis and 4 quadrant gates for at grade crossings on a per unit basis;</li> <li>4. Interlockings and track side of stations on a per unit basis except station and refuge tracks on a per kilometer basis;</li> <li>5. Tracks for speeds less than 125 mph from Gilroy to CP Lick on a per kilometer basis except interlocking on a per unit basis;</li> <li>6. Track and systems facilities on a per unit basis;</li> <li>7. Adjustment for wear items (e.g., rail, catenary contact wire) based on volume of usage.</li> </ol>	<p>GP § 11.4</p> <p>GP Schedule 9</p>
<b>Performance-Based Payment Reductions</b>	<p>Service Payments will be reduced for Contractor’s failure to meet specified Performance Standards. Contractor will be assessed reductions in Service Payments for exceeding the allowable number of Missed Stops, Late Stops and Mission</p>	<p>GP § 13</p> <p>GP Schedule 6</p>

	<p>Quality Failures over 10-day, 30-day, 90-day and 180-day concurrent measurement periods.</p> <p>A Missed Stop is a stop that, due to a failure, is not made according to the Contract.</p> <p>A Late Stop is a stop that, due to a failure, occurs at a station or specified interface point later than is allowed under the Contract (300, 150 or 120 seconds late).</p> <p>A Mission Quality Failure is where vertical or horizontal acceleration exceeds preset limits.</p> <p>If the number of Missed Stops, Late Stops and Mission Quality Failures exceed specified thresholds (Missed Stops, Late Stops and Mission Quality Failures counted separately), Authority may elect to discontinue the assessment of reductions in the Service Payment and pursue actual damages.</p> <p>Service Payment reductions will not be assessed to the extent Contractor can establish that the Missed Stops, Late Stops or Mission Quality Failures were out of Contractor's control and Contractor could not have avoided or prevented them by due diligence and use of reasonable efforts.</p> <p>Contractor may be entitled to relief from 50% of any Service Payment reduction assessed due to Missed Stops or Late Stops with respect to the 10-day measurement period upon achieving defined improvement.</p> <p>The Service Payment reduction amounts are subject to escalation on an annual basis.</p> <p>The cumulative Service Payment reductions in a month will not exceed the Service Payment amount for the month.</p>	
--	--	--

#### 4. Description of Work

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<b>Delivery Period</b>	During each Delivery Period, Contractor will design, build, test, certify and maintain all rail infrastructure, systems, sub-systems, utilities and Maintenance of Way Facilities required to enable the continuous safe operation of Rolling Stock, and will perform certain specified interface and integration duties with respect to Authority's other contractors, including the Rolling Stock contractor.	GP, Functional and Technical Requirements
<b>Primary Access/Shared Access</b>	<p>The obligations and rights associated with "Primary Access" to a Section include:</p> <ul style="list-style-type: none"> <li>(a) subject to the rights of any entity with Shared Access, control of the Section;</li> <li>(b) responsibility for safety, security, maintenance and risk of loss of the Section;</li> <li>(c) responsibility for scheduling all work on the Section and establishing access rules (e.g., locations and time periods); and</li> <li>(d) the obligation to proactively accommodate requests for</li> </ul>	Signature Document, Attachment A § 8

	<p>Shared Access to the Section.</p> <p>The obligations and rights associated with “Shared Access” to a Section include:</p> <ul style="list-style-type: none"> <li>(a) subject to the rights of the entity with Primary Access, shared use of the Section;</li> <li>(b) responsibility to proactively request Shared Access to the Section from the entity having Primary Access;</li> <li>(c) the obligation to follow the schedule and access rules set by the entity having Primary Access to the Section; and</li> <li>(d) the obligation to not unreasonably interfere with the entity having Primary Access.</li> </ul>	
<b>Maintenance of Way Facilities</b>	<p>Contractor is required to construct and/or contract for sufficient Maintenance of Way Facilities to perform its maintenance obligations. Contractor’s Proposal, Maintenance Plan and Baseline Program will identify all such facilities and/or contracts, including the timing for constructing each facility.</p> <p>The Maintenance of Way Facilities will be located on the Maintenance of Way Facilities property provided by Authority.</p> <p>Any maintenance contracts will be assignable to Authority.</p>	Signature Document, Attachment A § 8 GP Schedule 11
<b>Design Responsibility and Liability</b>	<p>Contractor will be solely responsible for designing the Project, and for performing all design activities related to the Work and for ensuring that the design of the Project is fully integrated with the work of all Interfacing Parties, as set forth in more detail below. Contractor will be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by Contractor.</p> <p>Contractor will not be relieved of its obligation to design and perform the Work by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, statements of no objection, statements of objection, approvals, or by any failure of any person or entity to take such action.</p>	GP §§ 3.1, 3.14, 3.17, 4
<b>Testing and Commissioning</b>	<p>All testing and commissioning of the Work will be the responsibility of Contractor and will be performed pursuant to a Testing and Commissioning Program, which Contractor will develop and implement in accordance with the Contract.</p>	GP § 22 GP Schedule 2
<b>Service Period</b>	<p>The Service Period commences upon achieving revenue service of a Segment and ends 30 years after commencing Revenue Service of the Segment; provided, however, that if Authority issues two or more NTPs for Segments within a five-year period, the Service Period for each such Segment ends 30 years after achieving revenue service for the last such Segment.</p>	GP § 15 GP Schedule 6

	<p>During the Service Period, Contractor's obligations include:</p> <ol style="list-style-type: none"> <li>1. Manage and maintain the Rail Infrastructure System so that it is fit for safe and efficient operation in regular service and otherwise meets the Contract requirements;</li> <li>2. Manage and maintain the Maintenance of Way Facilities, as necessary to meet the Contract requirements;</li> <li>3. Investigate all failures / incidents relating to the Rail Infrastructure System, assess what occurred, describe any recommended repair or replacement work necessary, and plan an optimal manner to accomplish such work and report its findings to Authority;</li> <li>4. Meet the minimum standards of performance for Contractor set forth in the Contract; and</li> <li>5. Commence any emergency corrective work immediately and commence any non-emergency corrective work within 24 hours after becoming aware of the need for the corrective work, and complete the corrective work in accordance with the timeframe and other requirements set forth in the Maintenance Plan.</li> </ol>	
<b>Project Management Plan</b>	<p>Contractor will establish and implement a comprehensive Project Management Plan in accordance with Federal Transit Administration guidelines and in accordance with the quality management system requirements of ISO 9001.</p> <p>Contractor will review, update or correct the Project Management Plan, and all programs, plans, manuals and training materials developed pursuant to the Project Management Plan at any tier, on a quarterly basis, or more often if updates are required as a result of an audit or if otherwise required by Authority.</p>	GP § 22 GP Schedule 3
<b>Applicable Laws</b>	Contractor will comply with all applicable laws that bear on the performance of the Work.	GP § 3.4
<b>Applicable Standards</b>	<p>Applicable standards will apply as follows:</p> <p>During the Delivery Period of Segment 1, the versions in place on the Proposal due date.</p> <p>During the Delivery Period of each subsequent Segment, the versions in place on the NTP date for the Segment.</p> <p>During each Service Period, the current versions.</p>	GP § 3.6
<b>Warranty</b>	Contractor will provide a five-year warranty for each Segment commencing on achieving revenue service for the Segment covering all Work, including defects, but excluding any latent construction defects in the Civil Infrastructure Works caused by a Civil Infrastructure Works contractor.	GP § 14
<b>Handback</b>	At the conclusion of the last Service Period or termination of the Contract, Contractor will turn over the applicable Segment or Segments to Authority, in a state of good repair and with all non-technology assets having at least 10 years	Functional and Technical Requirements, § 18



	of useful life without any overhauls or renewals.	
--	---	--

**5. Integration and Interface**

Term	Summary	Reference
<b>General Interface Requirements</b>	Contractor will have lead responsibility for coordinating all technical and programming obligations among the Interfacing Parties (including all contractors that could affect Contractor).	GP § 4.7 GP Schedule 14
<b>Interface Management System</b>	Contractor will (1) establish an Interface Management System, including development of a Coordinated Interface Report and Coordinated Interface Program, and (2) modify the design process to accommodate the timing of information available from the Interfacing Parties in order to achieve a coordinated design.	GP Schedule 14 § 2

**6. Commencement of Work; Completion Deadlines**

Term	Summary	Reference
<b>Notices to Proceed / Preliminary Notice</b>	<p><u>Notices to Proceed (NTP)</u></p> <ol style="list-style-type: none"> <li>1. Authority intends to issue NTP 1 to authorize Work on Segment 1 (Madera to Poplar Avenue).</li> <li>2. Authority may issue NTP 2 to authorize Work on Segment 2 (extension to Bakersfield).</li> <li>3. Authority may issue NTP 3 to authorize Work on Segment 3 (extension to Merced).</li> <li>4. Authority may issue additional NTPs to authorize Work on additional Segments defined by Authority.</li> </ol> <p>Contractor will not proceed with any Work with respect to a Segment prior to the issuance of an NTP for the Segment.</p> <p><u>Preliminary Notice</u></p> <p>Before Authority issues an NTP other than NTP 1, it will issue to Contractor a preliminary notice indicating its intent to issue the NTP. Upon receipt of the preliminary notice, Contractor will submit for Authority’s approval Contractor’s determination of the applicable escalated payment amounts.</p>	GP § 5
<b>Prerequisites for Commencement of Work under the Notice to Proceed</b>	<p>Contractor may not commence any Work under an NTP with respect to a Segment until the following conditions are satisfied with respect to the Segment and Contractor has provided notice to Authority that the conditions are satisfied:</p> <ol style="list-style-type: none"> <li>1. All Governmental Approvals necessary for the Work have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of the Work have been performed;</li> <li>2. All insurance policies and other related documents required to be delivered to Authority under the Contract have been submitted to Authority and remain in full force and effect;</li> </ol>	GP §§ 5.7, 5.9

	<p>3. Contractor has provided to Authority an irrevocable letter of credit and/or performance bond, as applicable, to secure Contractor's obligations under the Contract (see Section 8 below); and</p> <p>4. Contractor has provided to Authority an executed Guaranty, if required (see Section 8 below).</p> <p>Contractor will not commence construction of any portion of the Project unless:</p> <ol style="list-style-type: none"> <li>1. All necessary rights of access to such portion have been obtained;</li> <li>2. Authority has approved the design furnished by Contractor that describes such portion in sufficient detail to proceed with construction; and</li> <li>3. Contractor has submitted a draft Environmental Compliance Plan to Authority and Authority provided a statement of no objection.</li> </ol>	
<p><b>Milestone Acceptance Deadlines</b></p>	<p>Contractor is required to obtain a Certificate of Acceptance by the following Milestone Acceptance Deadlines:</p> <ol style="list-style-type: none"> <li>1. Certificate of Provisional Acceptance for Plain Line (Segment 1) (including plain line track work, relevant positive train control requirements, FRA compliant broken rail detection system and adequate wayside communications system) by July 31, 2022;</li> <li>2. Certificate of Provisional Acceptance for Integrated Static Tests of Segment 1 (ready for Rolling Stock testing) by December 31, 2025;</li> <li>3. Certificate of Final Acceptance of Segment 1 by December 31, 2028;</li> <li>4. Certificate of Final Acceptance of Segment 2 within 36 months after NTP 2 for Segment 2;</li> <li>5. Certificate of Final Acceptance of Segment 3 within 36 months after NTP 3 for Segment 3; and</li> <li>6. Certificate of Final Acceptance of any additional Segment by the deadline agreed to by the parties.</li> </ol>	<p>GP § 10 Signature Document, Attachment A § 3 Functional and Technical Requirements § 2.1.1</p>

**7. Change Orders**

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<p><b>Change Orders</b></p>	<p>An Authority-signed Change Order or Directive Letter designated to direct changes in the Work is required for any time extension or price increase. Authority may at any time issue a unilateral Directive Letter to direct changes in the Work or to direct work within the original scope of the Work. Contractor will proceed immediately with the work as directed in the Directive Letter. If the Directive Letter states that it is directing changes in the Work, Contractor will have the right to request that Authority issue a Change Order with respect to the Directive Letter. If the directed work</p>	<p>GP § 16</p>

	<p>involves \$50,000 or more in Contractor direct costs and the Directive Letter states that the work is within the Work, Contractor will have the right to dispute whether the directed work is within the Work and request that Authority issue a Change Order. If the directed work involves less than \$50,000 in Contractor direct costs and the Directive Letter states that the work is within the Work, Contractor will not be entitled to a Change Order.</p> <p>Contractor may request a Change Order for a time extension or price increase only “but for” those circumstances that the Contract expressly contemplates that a Change Order is permitted. Contractor is not entitled to request a Change Order for a circumstance for additional costs totaling less than \$25,000. Individual circumstances cannot be aggregated in order to meet the \$25,000 threshold.</p> <p>Except as provided below, Change Orders are limited to the following circumstances (and no others):</p> <ol style="list-style-type: none"> <li>1. Authority-Directed Changes;</li> <li>2. Authority Delays (unavoidable delays arising from Authority’s failure to comply with certain obligations);</li> <li>3. Certain changes in applicable laws (see “Relief for Changes in Applicable Laws” below);</li> <li>4. Force Majeure Events, which are limited to the following, provided the event is out of Contractor’s control and is wholly responsible for Contractor’s failure to perform: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Work; (b) embargoes instituted by a governmental entity; (c) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the Work; (d) nuclear explosion, radioactive or chemical contamination of the site, unless the source of the explosion, contamination, radiation or contaminated material is brought to or near the site by Contractor; (e) fire, explosion, earthquakes, or floods and landslides caused by natural events; (f) terrorism; or (g) any governor-declared emergency within the limits of the site;</li> <li>5. Hazardous Materials, not including investigations or characterizations of hazardous materials or preparation of remediation plans, hazardous material brought onto the site by any Contractor-Related Entity (Contractor, entities forming Contractor (e.g., joint venture members), subcontractors, their employees, agents and officers and all other entities for whom Contractor may be legally or contractually responsible) or</li> </ol>	
--	---	--

	<p>hazardous material where the removal or handling involved negligence, willful misconduct, or breach of contract by any Contractor-Related Entity, hazardous material that could be reasonably anticipated based on any information provided with the Contract, or hazardous material that could have been avoided by reasonable design modifications or construction techniques;</p> <ol style="list-style-type: none"> <li>6. Suspensions for convenience by Authority;</li> <li>7. Differing site conditions on the Maintenance of Way Facilities property or System Sites;</li> <li>8. Contractor’s provision of maintenance that is needed to fulfill the Contract requirements, to the extent Contractor can establish that Authority or a third party is wholly responsible for such damage and such damage occurred on property not controlled by Contractor;</li> <li>9. Issuance of a temporary restraining order or other form of injunction that prohibits prosecution of a material portion of the Work, subject to certain exceptions;</li> <li>10. Relocation of underground main or trunkline utilities on the Maintenance of Way Facilities property or System Sites;</li> <li>11. Authority issues an NTP other than NTP 1 and there is no Segment in the Delivery Period prior to Final Acceptance (see “Construction Mobilization” below).</li> <li>12. Certain additional costs and/or delays related to a change in the Civil Infrastructure Works’ design that Authority has provided to Contractor;</li> <li>13. A failure by any Authority contractor to meet certain dates, periods or standards concerning interface requirements;</li> <li>14. Earthquakes in excess of a magnitude of 3.5 on the Richter scale as measured by USGS or tidal waves that impact any site in a manner causing interruption of Work;</li> <li>15. An unreasonable delay by FRA in connection with Contractor’s obligation to prepare the Rule of Particular Applicability; and</li> <li>16. Any latent construction defect in the Civil Infrastructure Works caused by a Civil Infrastructure Works contractor.</li> </ol> <p>Change Orders that extend the deadline for obtaining a Certificate of Provisional Acceptance for Plain Line (Segment 1) are limited to Authority-Directed Changes, Authority Delays, Force Majeure Events and suspensions for convenience by Authority (and no other events).</p>	
--	--	--

	<p>Authority is entitled to a Change Order for Force Majeure Events pursuant to the same conditions applicable to Contractor above, upon written notice to Contractor.</p>	
<p><b>Relief for Changes in Applicable Laws</b></p>	<p>Contractor will be entitled to a time extension and price increase or Authority will be entitled to a time decrease or price decrease, as applicable, based on: A change to applicable laws after the date that is 30 days prior to the Proposal due date, provided one of the following conditions is met:</p> <ul style="list-style-type: none"> <li>(a) the change requires physical rework to a Segment that has already received a Certificate of Final Acceptance; or</li> <li>(b) the change is both (i) a Discriminatory Change (a change that is principally directed at and the effect of which is principally borne by Contractor or operators of high-speed rail in California, except where the change (x) is in response to any failure to perform or culpable act / omission of Contractor, (y) is a directive by the U.S. Department of Homeland Security or comparable state agency, unless it is directed solely at or solely affects the Work and requires specific changes to the design or manufacturing procedures in order to comply or (z) is expressly contemplated under the Contract) and (ii) affects the physical Work.</li> </ul>	<p>GP § 16.17</p>
<p><b>Limitation on Contract Amount Increases</b></p>	<p>Any increase in the Contract Amount will exclude:</p> <ol style="list-style-type: none"> <li>1. Costs caused by breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.</li> <li>2. Costs that could reasonably have been avoided by Contractor, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).</li> <li>3. Costs for (i) any rejected Work that failed to meet the requirements of the Contract and (ii) any necessary remedial work.</li> <li>4. Costs caused, in whole or in part, by any concurrent event(s) for which Contractor is not entitled to an increase in the Contract Amount.</li> <li>5. Costs resulting from Contractor's failure to meet its interface obligations.</li> </ol>	<p>GP § 16.6.2</p>
<p><b>Limitation on Time Extensions</b></p>	<p>Any extension of a completion deadline will exclude any delay to the extent that it:</p> <ol style="list-style-type: none"> <li>1. Did not impact the critical path affecting the Milestone Acceptance deadline.</li> </ol>	<p>GP § 16.6.3</p>

	<ol style="list-style-type: none"> <li>2. Was due to the breach of contract, fault or negligence, or act or failure to act of any Contractor-Related Entity.</li> <li>3. Could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves an Authority Delay, Authority shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces).</li> <li>4. Was concurrent with any other delay for which Contractor is not entitled to a time extension.</li> <li>5. Resulted from Contractor's failure to meet its interface obligations.</li> </ol> <p>Contractor will be required to demonstrate to Authority's satisfaction that the change in the Work or other event or situation which is the subject of a Change Order seeking a time extension has caused or will result in an identifiable and measurable delay of the Work which has impacted the critical path.</p>	
<p><b>Delay Damages and Disruption Damages</b></p>	<p>Contractor is entitled to reimbursement of delay damages only to the extent any of the following events entitle Contractor to a time extension: (a) a written order from Authority designated to be a Directive Letter to direct changes in the Work; (b) Authority's suspension of the Work for convenience; or (c) Authority delay.</p> <p>Delay damages are limited to additional field office and jobsite overhead costs, including onsite storage costs, incurred by Contractor directly attributable to the delay resulting in a time extension. Home office overhead is excluded from delay damages and not compensable under the Contract. Before Contractor may obtain any price increase to compensate for any delay damages, Contractor must demonstrate to Authority's satisfaction that:</p> <ol style="list-style-type: none"> <li>1. The Baseline Program (project schedule) in fact sets forth a reasonable method for completion of the Work.</li> <li>2. The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the Work and impact the critical path.</li> <li>3. The delay damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).</li> </ol>	<p>GP § 16.6.4</p>

	<p>4. The delay for which compensation is sought is not concurrent with any other delay for which Contractor is not entitled to delay damages.</p> <p>5. Contractor has suffered or will suffer actual costs due to such delay, each of which costs must be documented in a manner satisfactory to Authority.</p> <p>Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Contract. Disruption damages include costs of (i) rearranging Contractor's work plan not associated with a time extension and (ii) loss of efficiency, momentum or productivity.</p>	
<b>Delivery Mobilization</b>	If Authority issues an NTP other than NTP 1 and there is no other Segment in the Delivery Period for which Authority has issued a Certificate of Final Acceptance, Contractor will be entitled to an additional mobilization payment.	GP § 16.24

**8. Security, Indemnities, Insurance, Risk of Loss**

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<b>Performance Security</b>	<p><u>Delivery Period Security</u></p> <p>Contractor will provide and maintain until five years after revenue service of each Segment, an irrevocable letter of credit or a performance bond, provided that a minimum portion of the security must be provided with a letter of credit. The required security amount will vary from 20% to 50% of the Milestone Contract Amount for the Segment.</p> <p><u>Service Period Security</u></p> <p>During the Service Period, Contractor will provide and maintain a performance bond or irrevocable letter of credit. The required amount of the performance bond or letter of credit will vary during the Service Period based on the anticipated maintenance activities.</p>	GP § 7 Signature Document, Attachments E, F, H, I
<b>Payment Bond</b>	A Payment Bond will be required in the amount of 100% of the Milestone Contract Amount for each Segment.	GP § 7.3 Signature Document, Attachment G
<b>Guaranty</b>	<p>The ultimate parent company of Contractor (or if Contractor consists of a consortium, partnership or joint venture, the ultimate parent company of each member, partner or joint venturer) may be required to provide a guaranty for the Project. The guaranty will assure performance of all obligations of Contractor under the Contract. Guarantor must agree to be sued in California.</p> <p>Any guaranties must be maintained in full force and effect from NTP 1 to five years after revenue service of the last Segment.</p>	GP § 7.7 Signature Document, Attachment J
<b>Indemnities</b>	Contractor will defend, indemnify and hold harmless the	GP § 29

	<p>State, Authority, Federal Railroad Administration, and their respective officers, directors, employees, agents, servants, representatives, consultants, successors, assigns and subsidiaries (Indemnified Parties) from and against any third party claims, losses, liabilities (including environmental liabilities), penalties, fines, demands, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs and expenses incidental thereto (including costs of defense and attorney's fees) (Costs) arising out of, relating to or resulting from:</p> <ol style="list-style-type: none"> <li>1. Any errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the design documents furnished by Contractor, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects were also included in documents provided by Authority, if any;</li> <li>2. The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by any Contractor-Related Entity;</li> <li>3. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable law;</li> <li>4. The breach or alleged breach of any Contractor-Related Entity of intellectual property non-infringement representation and warranties;</li> <li>5. The breach or alleged breach of any Contractor-Related Entity of any confidentiality or data security obligations;</li> <li>6. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault, of any Contractor-Related Entity;</li> <li>7. The (a) injury, or death of any person, including any of Contractor's employees, agents or subcontractors, or (b) damage to or loss (including loss of use) of any private party, including property of the Parties, arising out of or in any degree directly or indirectly caused by or resulting from the Work;</li> <li>8. Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret or other proprietary right of a third party;</li> <li>9. Any and all claims by any governmental entity claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Contractor-Related Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract;</li> <li>10. Any and all stop notices and/or liens filed in connection</li> </ol>	
--	---	--



	<p>with the Work, including all expenses and attorney's fees incurred in discharging any stop notice or lien, provided that Authority is not in default in payment owing to Contractor with respect to such Work;</p> <p>11. Any release or threatened release of hazardous materials brought onto the site by any Contractor-Related Entity or where the removal or handling of hazardous materials involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity; or</p> <p>12. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by any Contractor-Related Entity interfering with or hindering the progress or completion of work being performed by other contractors or failure of any Contractor-Related Entity to cooperate reasonably with other Contractors.</p> <p>Contractor will defend, indemnify, and hold harmless the Indemnified Parties from any and all Costs arising out of or related to errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects in the design documents furnished by Contractor, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects were also included in the Conceptual Track-Side Station Design or Reference Materials. Contractor agrees that, because the Conceptual Track-Side Station Design and Reference Materials are preliminary and conceptual in nature and are subject to review and modification by Contractor, such documents are not deemed "design furnished" by Authority or any of the other Indemnified Parties, as the term "design furnished" is used in Civil Code Section 2782. Contractor waives the benefit (if any) of Civil Code Section 2782 and agrees that this clause constitutes an agreement governed by Civil Code Section 2782.5.</p> <p>Contractor will defend, indemnify and hold harmless the Indemnified Parties from and against all Costs incurred by Authority to any railroad pursuant to the indemnification provisions of the following agreements, to the extent arising from any act or omission of Contractor: the agreements between Authority and BNSF Railway Company; the agreement between Authority and Union Pacific Railroad Company; and the agreement between Authority and San Joaquin Valley Railroad.</p>	
<p><b>Insurance</b></p>	<p>Contractor is required to provide the following insurance during each Delivery Period:</p> <p>1. Automobile Liability Insurance. The minimum combined single limit for primary coverage is \$25,000,000 per occurrence.</p>	<p>GP § 37 Part C.12</p>

	<ol style="list-style-type: none"> <li>2. Workers' Compensation at statutory limits and Employer's Liability Insurance with limits of liability of not less than \$1,000,000 for each accident.</li> <li>3. Commercial General Liability Insurance. Annual limit of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate and \$4,000,000 products and completed operations aggregate.</li> <li>4. Excess/Umbrella Liability Insurance of not less than \$300,000,000 per occurrence and in the aggregate in excess of the above underlying coverages.</li> <li>5. Professional Liability Insurance with limits of not less than \$50,000,000 per claim and in the aggregate.</li> <li>6. Railroad protective liability coverage, with a limit of not less than \$25,000,000 per occurrence and \$25,000,000 in the aggregate.</li> <li>7. Pollution Liability Insurance with a limit of not less than \$5,000,000 per loss and \$5,000,000 in the aggregate.</li> </ol> <p>Contractor is also required to procure and maintain, at its own cost and expense, the applicable insurance required under the contracts between the Authority and the relevant freight railroads.</p> <p>Contractor is anticipated to be required to provide insurance during each Service Period, with amounts and types of coverage to be established by the Authority.</p>	
<b>Risk of Loss</b>	<p>Contractor is responsible for risk of loss as follows:</p> <ol style="list-style-type: none"> <li>1. For Civil Infrastructure Works associated with a Section, upon obtaining Primary Access to the Section; and</li> <li>2. For all other portions of the Project, at all times.</li> </ol>	GP § 43.1

**9. Defaults, Remedies, Suspensions, Terminations**

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<b>Breaches and Cure Periods</b>	<p>Contractor will be in breach under the Contract upon occurrence of any one or more of the following:</p> <ol style="list-style-type: none"> <li>1. Contractor fails to deliver a Segment within the time specified in the Contract.</li> <li>2. Contractor fails to make progress, so as to endanger timely performance under the Contract.</li> <li>3. Contractor fails or refuses to complete the Work within the time specified in the Contract.</li> <li>4. Contractor fails, without cause, to make prompt payments to subcontractors or to make prompt payment for equipment, materials, and/or labor.</li> <li>5. Contractor noncompliance with applicable laws or the proper instruction of Authority.</li> <li>6. Contractor fails to make any payments due to Authority under the Contract.</li> </ol>	GP § 17

	<ol style="list-style-type: none"> <li>7. Contractor fails to provide and maintain the payment bond as required under the Contract.</li> <li>8. Contractor fails to submit the required performance bond, irrevocable letter(s) of credit and guaranties required under the Contract and keep such performance bond, letter(s) of credit and guaranties in full force and effect as required under the Contract.</li> <li>9. Contractor fails to submit and maintain the insurance required under the Contract.</li> <li>10. Contractor transfers any interest in the Contract without the approval of Authority.</li> <li>11. Contractor fails to comply with the terms of a Directive Letter.</li> <li>12. Contractor fails to comply with a suspension of Work notice by Authority.</li> <li>13. Contractor or any Guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debt, or makes an assignment for the benefit of creditors.</li> <li>14. Contractor or any Guarantor dissolves or liquidates.</li> <li>15. Contractor or any Guarantor commences a voluntary case seeking liquidation, reorganization or other relief related to Contractor or Guarantor or their debts under any U.S. or foreign bankruptcy, insolvency or other similar law.</li> <li>16. An involuntary case is commenced against Contractor or Guarantor seeking liquidation, reorganization, dissolution, winding up or other relief related to Contractor or Guarantor or their debts under any U.S. or foreign bankruptcy, insolvency or other similar law and have not been dismissed or stayed within 60 days.</li> <li>17. Contractor or Guarantor seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets.</li> <li>18. Any material representation or warranty made by Contractor or any Guarantor in the Contract or in any certificate, schedule, instrument or other document delivered pursuant to the Contract is false or materially misleading when made.</li> <li>19. Any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect.</li> <li>20. Failure to commence emergency corrective work immediately and non-emergency corrective work within 24 hours after becoming aware of the need for the corrective work, and to complete the corrective work in</li> </ol>	
--	---	--

	<p>accordance with the Maintenance Plan.</p> <p>21. Contractor fails to comply with any other provision of the Contract.</p> <p>Authority will provide Contractor 30-day written notice and opportunity to cure breaches (1) through (10) and (21) above before declaring an event of default. If a breach is curable, but by its nature cannot be cured within the 30-day period, as determined by Authority, Authority will not declare an event of default provided that Contractor commences cure within such 30-day period and thereafter diligently prosecutes such cure to completion. Unless approved in writing by Authority in its sole discretion, in no event will such cure period exceed 180 days in total. Authority will provide Contractor five-day written notice and opportunity to cure the breach listed in (11) above before declaring an event of default. There will be no cure period with respect to breaches (12) through (20) above. In addition, notwithstanding the above, there will be no cure period to the extent the breach relates to any Performance-Based Payment Reduction.</p>	
<p><b>Authority Remedies</b></p>	<p>Authority's remedies include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Authority may reject any non-conforming work or require Contractor to remedy non-conforming work at Contractor's cost and without a time extension.</li> <li>2. Authority may remedy any default and charge the cost to Contractor.</li> <li>3. If Authority determines that any Rail Infrastructure System Asset is unfit for safe and efficient operation, Authority can require Contractor to propose a plan, subject to Authority's approval, to remedy the problem (e.g., through reconstruction, replacement of systems or provision of a new Project Asset), and implement that plan at no additional cost to Authority.</li> <li>4. If, over 30 consecutive days or 100 cumulative days of operations, a particular Rail Infrastructure System Asset does not meet Contractor's RAMS Commitment in its Proposal, Authority reserves the right to require Contractor to provide a new Rail Infrastructure System Asset to replace the element that could not meet the RAMS Commitment, at no additional cost to Authority.</li> <li>5. If cumulative defects or failures of any kind in substantially identical components, subsystems or systems within the Rail Infrastructure System serving substantially similar functions exceed 10% of the total of such components, subsystems or systems, Contractor will develop and implement a Modification Program, subject to Authority's approval, that addresses the issue in all affected components,</li> </ol>	<p>GP §§ 9.8, 18</p>

	<p>subsystems or systems in all Rail Infrastructure System Assets, all at no additional cost to Authority.</p> <p>6. If Contractor fails to maintain the required insurance, Authority may procure or renew such insurance and pay any and all premiums in connection therewith, with Contractor being responsible to pay Authority for such expenses or Authority offsetting those expenses from funds otherwise due Contractor.</p> <p>7. If there is a material default, Authority may terminate the Contract in whole or in part.</p> <p>The rights and remedies of Authority provided for under the Contract are in addition to any other rights and remedies provided by law.</p>	
<p><b>Termination for Convenience</b></p>	<p>Authority may, in its sole discretion and upon 15 days written notice to Contractor, terminate the Contract, in whole or in part, for the convenience of Authority.</p> <p>Upon Contractor's compliance with applicable requirements, Authority will pay Contractor for work performed and termination expenses in the event of a termination for convenience, which amount will include certain fixed markups for overhead and profit. Contractor is not entitled to profit on future terminated Work.</p> <p>Authority may terminate the Contract prior to issuance of any NTP without incurring any cost or liability to Contractor, including termination expenses.</p>	<p>GP § 19</p>
<p><b>Liquidated Damages – Delay in Acceptances</b></p>	<p>Liquidated damages may be assessed for failure to obtain a Certificate of Provisional Acceptance for Plain Line (Segment 1) by the applicable deadline, which damages are expected to increase as the delay increases.</p> <p>Liquidated damages will be assessed for failure to obtain a Certificate of Provisional Acceptance for Segment Integrated Static Tests of Segment 1 by the applicable deadline, which damages are expected to increase as the delay increases.</p> <p>Liquidated damages will be assessed for failure to obtain Certificate of Final Acceptance for any Segment by the applicable deadline, which damages are expected to increase as the delay increases.</p> <p>Aggregate liquidated damages for failure to timely obtain any such Certificate of Acceptance are capped at 10% of the escalated Milestone Contract Amount for the Segment. The liquidated damages are not exclusive, except that Authority will not have the right to recover any monetary damages it incurs due to Contractor's delay that are in excess of the amount of the liquidated damages.</p> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p>	<p>GP § 12.1</p>

<b>Liquidated Damages – Replacement of Key Personnel</b>	Liquidated damages will be assessed for Contractor's removal of specified key personnel without Authority's approval of the replacement.	GP §§ 12.2, 21
<b>Suspension</b>	<p>Authority may order Contractor to suspend all or any part of the Work for the period of time that Authority deems appropriate.</p> <ol style="list-style-type: none"> <li>1. Suspension for cause. No price/time adjustment will be made for suspensions: <ul style="list-style-type: none"> <li>- required to correct conditions unsafe for Project personnel or the general public;</li> <li>- required to comply with any Governmental Approval or applicable law;</li> <li>- required to carry out an order of Authority duly given; or</li> <li>- required to comply in all respects with the Contract.</li> </ul> </li> <li>2. Suspension for convenience. Contractor will be entitled to a price/time adjustment for suspensions for convenience. In the event of a suspension for convenience for more than 180 consecutive days, Contractor will have the right to consider the Contract to have been terminated for convenience by Authority.</li> </ol>	GP § 25

**10. Other Contract Provisions**

<b>Term</b>	<b>Summary</b>	<b>Reference</b>
<b>Settlement of Disputes</b>	<p>The parties will use informal dispute resolution procedures, including partnering, to attempt to resolve disputes without resorting to formal legal processes.</p> <p>Either party may refer the dispute to binding arbitration if the dispute is not resolved through the informal dispute resolution procedure.</p> <p>For a dispute that is appealed to binding arbitration, the parties will seek to appoint a panel of three arbitrators. If the parties cannot agree on a panel, then each party will appoint one arbitrator, and the two selected will then select a third arbitrator who will serve as the chairperson of the arbitral tribunal. The decision of the arbitrators will be binding on the parties and any judgment on the award may be entered in the Superior Court for Sacramento County.</p> <p>In the event that substantially similar disputes have risen between the Authority and another Authority contractor, the Authority may consolidate pending arbitrations or join other such contractors in an arbitration with Contractor under certain circumstances.</p>	GP § 32
<b>Escrowed Proposal Documents</b>	Contractor will be required to deliver to Authority all documentary information used in preparation of the Contract Amount (EPDs). The EPDs will be held in a cabinet supplied by Contractor with the key held only by	GP § 27

	<p>Contractor. Concurrently with approval of each Change Order, one copy of all documentary information used in preparation of the Change Order will be added to the cabinet to be held with the other EPDs. Contractor will require each Subcontractor whose subcontract price equals or exceeds \$5,000,000 to submit a copy of all documentary information used in determining its subcontract price, to be held in the same manner as the EPDs. The EPDs will remain the property of Contractor, and will be considered to be in Contractor's possession, subject to Authority's right to review.</p> <p>The EPDs will be available for joint review by Contractor, Authority and dispute resolves in connection with approval of schedules, negotiation of Change Orders and the resolution of disputes.</p>	
<p><b>Intellectual Property Rights Granted to Authority</b></p>	<p><u>Authority Right to use Intellectual Property</u></p> <p>Contractor assigns to Authority all rights, title and interest to the intellectual property created for the Project (Project IP). Authority grants to Contractor a limited, non-exclusive license to use the Project IP.</p> <p>Contractor grants to Authority an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license to use the Intellectual Property owned by Contractor-Related Entities (Contractor IP) in connection with the Project, including integration with portions adjacent to the Project. The grant is with respect to the Project, including integration with portions adjacent to the Project, except in a termination for convenience the grant will be limited to completing partially completed Segments and placing into service completed Segments.</p> <p>Contractor will secure licenses in the name of Authority to use intellectual property owned by third parties (Third Party IP) in connection with the Project, including integration with portions adjacent to the Project, subject to Authority's prior written approval.</p> <p><u>Delivery of Intellectual Property</u></p> <p>Contractor will deliver all intellectual property to Authority or deposit such intellectual property into escrow.</p> <p>Escrowed Contractor IP will be released and delivered to Authority upon expiration or termination of the Contract. Escrowed Third Party IP will be released and delivered to Authority upon any of (i) the owner of the Third Party IP is in material breach of any agreement with Authority, (ii) an application is filed in any jurisdiction for the liquidation, restructuring or relief of debts of such owner or (iii) such third party otherwise ceases to engage in the ordinary course of business for a period of 30 consecutive days.</p>	<p>GP §§ 1, 28</p>
<p><b>Assignment and</b></p>	<p>Contractor must not delegate its responsibility under the</p>	<p>GP § 33</p>

<p><b>Delegation</b></p>	<p>Contract and must not assign the Contract, any part of the Contract or any monies due or to become due under the Contract without the prior written consent of Authority. Authority will not unreasonably prohibit Contractor from assigning its right to payment, provided that Contractor remains responsible for all its obligations hereunder.</p> <p>Authority may assign with prior notice to Contractor, but without the need for Contractor's consent, all or any portion of the Contract (including Authority's rights under required insurance policies, letter(s) of credit, guaranties and Change Orders) to any entity, including (i) any entity that is or will be the Trainset operator and its successors and assigns or (ii) any entity succeeding to all or substantially all of Authority's powers and authority of Authority respecting the high-speed rail system or its operations.</p>	
<p><b>Consequential Damages</b></p>	<p>Contractor and Authority will not be liable for punitive damages or special, indirect (e.g., loss of profit or loss of revenues), incidental or consequential damages arising out of contract, tort (including negligence) or any other theory of liability. However, this limitation on liability will not apply to the following:</p> <ul style="list-style-type: none"> <li>• Losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor;</li> <li>• Losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required under the Contract;</li> <li>• Losses (including defense costs) arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence;</li> <li>• Contractor or Authority's indemnities under the Contract;</li> <li>• Performance-Based Payment Reductions assessed by Authority;</li> <li>• Contractor obligations to pay liquidated damages in accordance with the Contract;</li> <li>• Amounts owing under express provisions of the Contract; and</li> </ul> <p>Losses arising out of releases of hazardous materials by Contractor or Authority.</p>	<p>GP § 43.3</p>
<p><b>Limitation of Contractor's Liability</b></p>	<p>Contractor's liability to Authority will be limited to an amount equal to 100% of the Contract Amount. However, excluded from this cap will be:</p> <ul style="list-style-type: none"> <li>• Losses (including defense costs) arising out of the Work and covered by the proceeds of insurance</li> </ul>	<p>GP § 43.4</p>



	<p>carried by or insuring Contractor;</p> <ul style="list-style-type: none"><li>• Losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required under the Contract;</li><li>• Losses (including defense costs) covered by Contractor's indemnification obligations to the Authority;</li><li>• Performance-Based Payment Reductions assessed by Authority;</li><li>• Any liquidated damages;</li><li>• Any type of cost arising from fraud, gross negligence, intentional misconduct or criminal acts of any Contractor-Related Entity;</li><li>• All costs reasonably incurred by Authority (minus the unpaid portion of the Contract Amount) in completing the Work or having the Work completed by another Person; and</li></ul> <p>All costs reasonably incurred by Authority or any party acting on Authority's behalf in correcting the Work or having the Work corrected by another Person.</p>	
--	--	--