



CALIFORNIA

High-Speed Rail Authority

High-Speed Trainsets and Related Services Agreement No. HSR23-18

Term Sheet

This document provides background information and summarizes certain terms in the California High-Speed Rail Authority's draft Contract to be included in the Request for Proposals ("RFP") for the High-Speed Trainsets and Related Services 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		
Authority	California High-Speed Rail Authority	GP § 1
Contractor	The entity identified as “Contractor” in the Signature Document and determined through the High-Speed Trainsets and Related Services procurement.	Signature Document
Contract / Order of Precedence	<p>The Contract will include the following documents, in the following descending order of precedence:</p> <ol style="list-style-type: none"> 1. Signature Document, including Attachments A through H 2. General Provisions without Schedules 3. Performance Specification (Schedule 1 to General Provisions) 4. All other Schedules to General Provisions 5. Supplemental Contract Documents 6. Proposal, including Proposal commitments (provided that if Authority determines that the Proposal contains a provision that is more restrictive / beneficial to the Authority than is specified elsewhere in the Contract, that Proposal provision will take precedence). 	GP § 2.1
Federal Requirements	The Contract assumes applicable federal requirements, including Buy America requirements pursuant to 49 U.S.C. § 22905(a), related to the American Recovery and Reinvestment Act (ARRA), Passenger Rail Investment and Improvement Act (PRIIA), Railroad Rehabilitation & Improvement Financing (RRIF) Program and Transportation Infrastructure Finance and Innovation Act (TIFIA) and Federal-State Partnership for Intercity Rail under the Infrastructure Investment and Jobs Act (IIJA).	GP § 48
Small Business Program	<p>Contractor will comply with the Authority’s Small Business Program related to contracts funded with state and federal funds: 25% SB requirement for state-funded portion, inclusive of 3% microbusiness requirement; 10% DBE; and 3% DVBE.</p> <p>Permission to proceed with work under NTP may be withheld if Authority not satisfied with Contractor effort and progress on SB Program goals.</p> <p>Payment for preliminary submittals is dependent on Authority’s satisfaction with Contractor’s SB Program Plan submittal.</p>	GP §§ 32 and 48.27

<p>Labor and Employment</p>	<p>Contractor must comply with all applicable state and federal labor laws and regulations.</p> <p>Contractor will be required to comply with applicable provisions of the Memorandum of Understanding, dated November 16, 2023, between the Authority and Signatory Labor Organizations which addresses employees doing traditional rail work to support the Authority’s revenue operations under the Railway Labor act.</p> <p>Contractor, as part of its Proposal, will be required to describe its approach to developing a skilled labor force in the U.S. for the manufacturing and maintenance periods of the Contract. This U.S. Employment Plan will become part of the Contractor’s Project Management Plan and will have reporting requirements. The U.S. Employment Plan must include:</p> <ul style="list-style-type: none"> (i) <u>U.S. Production Sites</u> – Identify the locations in the U.S. of final assembly and manufacture of the Trainsets and Trainset components, including any evidence of Contractor’s commitment to these locations such as a letter of intent, lease, purchase agreement or existing ownership of the site, if available. Identify any other sites in the U.S. owned or controlled by Contractor where there will be a significant increase in activities and employment or jobs retention as a result of the Work under this Contract. Describe any investments and/or upgrades to existing U.S. facilities that will occur as a result of the Work under this Contract. (ii) <u>Description of Jobs Created and/or Retained</u> – Describe the number, quality, and range of employment opportunities to be created and/or retained to complete the Work under the U.S. Employment Plan during the delivery and service periods. The descriptions should include minimum requirements for each job/skill category, including the extent to which the plan is likely to produce or retain long-term employment in skilled or trade labor. Workers who also work on other projects may only be counted to the extent they perform work under this Contract. The percentage of time a worker will work under this Contract may be counted as a percentage 	<p>Instructions to Proposers, §§ 6.10.2, 9.5.3 (Table 6, no. 2); GP §§ 46.2, 22(o)(i)-(vii)</p>
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	<p>of one full-time equivalent position, or FTE.</p> <p>(iii) <u>Compensation and Benefits</u> – Regarding the jobs identified pursuant to item (ii) above, describe the compensation related to jobs created or retained and the compensation ranges for each job category and the value of benefits such as medical and dental coverage, retirement, paid sick leave and paid vacation.</p> <p>(iv) <u>Workforce Training Plans</u> – Provide Contractor’s dollar commitment to be made for workforce development, apprenticeship, and training programs for jobs in categories that will support or perform the Work under this Contract. Contractor should identify applicable, transferrable credentialing opportunities that will be offered to new hires, which may include coordinating with any publicly or privately funded workforce development, apprenticeship, and training programs.</p> <p>(v) <u>Outreach and Recruitment Plans for New Hires</u> – Describe outreach and recruitment plans for the U.S. Employment Plan, including strategies and plans for the recruitment of new hires and any special outreach for entry level positions that will include training in contemporary manufacturing skills. Describe specific outreach strategies for recruitment of disadvantaged workers. A disadvantaged worker is a worker certified under the Workforce Innovation and Opportunity Act or a worker whose permanent residence is in an economically disadvantaged zip code.</p> <p>(vi) <u>Subcontractors and Suppliers</u> – Describe approach to encourage subcontractor and supplier participation in the U.S. Employment Plan.</p> <p>(vii) <u>Plan Administrator</u> – Describe the duties assigned to an employee of the Contractor for the administration of the U.S. Employment Plan. Provide the name and contact information of the Plan Administrator no later than Authority’s issuance of NTP 1.</p> <p>The Contract will require annual reports to the Authority detailing Contractor’s adherence to the commitments made</p>	
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	<p>in its U.S. Employment Plan, which will include the elements listed above, at a minimum.</p> <p>Contractor will also be required to disclose, as part of its Proposal, whether there have been any complaints or charges filed against it within the preceding three-year period for violations of various employment and labor laws and Executive Orders.</p>	
2. Authority Obligations		
Fleet Orders	<p>Fleet 1 consists of 6 Trainsets (2 prototype Trainsets and 4 production Trainsets).</p> <p>The Authority may, as an option, order up to 15 additional Trainsets (for a maximum total order of 21 Trainsets) in one or more additional Fleets, provided that a Fleet will have a minimum of four Trainsets if Trainset production has been shut down.</p>	Signature Document General Terms § 2
Test Track	The Authority will provide Contractor with access to the Test Track no later than 48 months after Notice to Proceed for Fleet 1 or 30 days after Authority’s issuance of a Certificate of Provisional Acceptance or after Authority’s issuance of an interim Certificate of Provisional Acceptance, as applicable, for the first Prototype Trainset.	Signature Document General Terms § 9
Facilities, Track, and Systems Interfaces	The Trainset Contractor will provide design criteria to inform interfaces with the facilities, track, systems, power, and stations contracts. The Authority will require the facilities, track, systems, power, and stations contractors to provide characteristics of the facilities, and mainline track and systems by specified deadlines.	GP § 4.1
Transfer Track	The Authority will provide track and mainline signaling and communication systems for Transfer Tracks.	Signature Document General Terms § 9
Trainset Certification Facility	The Authority will provide access to an Authority-owned facility in the Central Valley segment where Trainsets can be received, made ready for commissioning and testing, stabled, and where light maintenance and cleaning may occur.	GP § 1, Signature Document General Terms § 9

<p>Heavy Maintenance Facility</p>	<p>The Authority will provide access to an Authority-owned facility for Trainset stabling, inspection, testing, preventative maintenance, corrective maintenance, running repairs, and overhaul. The Heavy Maintenance Facility (HMF) will be located between Merced and Bakersfield.</p> <p>The Heavy Maintenance Facility (HMF) will initially support the required inspection, maintenance, testing, and storage for the Trainset. The future buildout of the HMF will include the expansion to support the Mid-Life Overhaul. The Authority will not issue NTP 5 (to commence the Mid-Life Overhaul) before the HMF can support the Mid-Life Overhaul.</p>	<p>GP § 1, Signature Document Attachment General Terms § 9</p>
<p>3. Payment</p>		
<p>Contract Amount</p>	<p>The Contract Amount is based on:</p> <ol style="list-style-type: none"> 1. Manufacturing Amount for each Fleet; 2. Amount for spare parts and special tools; 3. Driving Simulator Amount; 4. Service Payment; and 5. Trainset Mid-Life Overhaul (MLO) Amount for each Fleet. 	<p>GP § 11</p>
<p>Milestone Contract Amount</p>	<p>The Authority will pay the Milestone Contract Amount for each Fleet it orders through the use of milestone payments upon 100% completion of each defined milestone.</p> <p>The Milestone Contract Amount for Fleet 1 is bid by Contractor.</p> <p>The Milestone Contract Amount for any subsequent Fleet is based on the Trainset unit prices bid by Contractor for these Fleets multiplied by the number of Trainsets in the Fleet, subject to escalation.</p> <p>The Milestone Contract Amount for each Fleet ordered after 36 months from NTP of Fleet 1 is subject to negotiation.</p>	<p>GP §§ 11.2, 11.4 GP Schedule 3</p>
<p>Driving Simulator Amount</p>	<p>The Authority will pay the Driving Simulator Amount through the use of milestone payments upon 100% completion of each defined milestone. The Driving Simulator Amount is bid by Contractor.</p>	<p>GP § 11.2; GP Schedule 3-B</p>
<p>Service Payment</p>	<p>For performance of Contractor’s obligations during the Trainset Service Period, Contractor is entitled to a monthly Service Payment. As part of its Proposal, Contractor will bid unit prices for various mileage bands. For each Trainset, the Service Payment is calculated by multiplying the unit price for the applicable mileage band (based on the average mileage per Trainset).</p>	<p>GP §§ 11.3.2, 11.4; 13; 15.1; Signature Document, Attachment B</p>

	<p>The Service Payment is subject to annual escalation. The Service Payment is subject to performance-based reductions as provided below.</p>	
<p>Trainset Mid-Life Overhaul (MLO) Amount</p>	<p>A separate MLO payment will be made by Authority at or around year 14 of each Fleet after relevant work has been performed on a per Trainset basis (Trainset MLO Amount). Contractor will bid an aggregate Trainset MLO Amount for Fleet 1.</p> <p>The Trainset MLO Amount for any subsequent Fleet is based on the Trainset MLO Amount unit prices bid by Contractor multiplied by the number of Trainsets in the Fleet, subject to escalation. If necessary additional scope for the MLO beyond that included in unit price is negotiated later.</p> <p>The Trainset MLO Amount for each Fleet ordered after 36 months from NTPs of Fleet 1 is subject to negotiation.</p>	<p>GP §§ 11.3.2, 15.1(b); GP Schedules 3-D and 9</p>
<p>Performance-Based Payment Reductions – Performance Standards</p>	<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 Quality Failures over 10-day, 30-day, 90-day and 180-day measurement periods.</p> <p><u>Missed Stops:</u> A Missed Stop is deemed to have occurred when passengers have been unable to board and/or exit from the train at a Stop shown in the Revenue Service Timetable, due to a Trainset failure. A single Trip may have multiple Missed Stops. If a service does not start its Trip at the origin station shown in the Revenue Service Timetable this will be counted as a Missed Stop.</p> <p>The payment reduction (p_m) for each Missed Stop shall be calculated as:</p> $p_m = 0.08S / (10r_m \times 180)$ <p>where</p> <p>S = Contractor’s monthly service payment (\$)</p> <p>$x_{180}$ = number of scheduled stops in 180 days</p>	<p>GP §13 GP Schedule 6</p>

The PBPR for Missed Stops shall be calculated as:

$$PBPR = (y_m - z_m)p_m$$

where

y_m = number of Missed Stops in applicable payment period

z_m = allowable number of Missed Stops

Note that if $y_m < z_m$ then PBPR=0.

Late Stops:

A Late Stop shall be deemed to have occurred whenever any train arrives more than 300 seconds after its scheduled arrival for a Stop according to the Revenue Service Timetable, due to a Trainset failure. A single Trip may have multiple Late Stops.

The payment reduction (p_l) for each Late Stop shall be calculated as:

$$p_l = 0.08S/(r \times 180)$$

where

S = Contractor's monthly service payment (\$)

x_{180} = number of scheduled stops in 180 days

The PBPR for Late Stops shall be calculated as:

$$PBPR = (y_l - z_l)p_l$$

where

y_l = number of Late Stops in applicable payment period

z_l = allowable number of Late Stops

Note that if $y_l < z_l$ then PBPR=0.

Mission Quality Failures:

A list of failures to be used to measure Mission Quality will be developed by Contractor for the Authority's approval. The list will include, but not be limited to: (a) failure of the HVAC system in any Vehicle, inclusive of the Trainset cab; (b) failure of the lighting within a Vehicle; (c) failure of more than one toilet in the Trainset, resulting in its being locked out-of-

	<p>service; (d) failure of the pressure sealing in any Vehicle; (e) failure of the interior and/or exterior door systems resulting in two or more doors being locked out-of-office; (f) failure of one or more gap filler devices; (g) lack of cleanliness impacting a passenger from utilizing a space (e.g., seat on the Trainset); (h) failure of food service equipment; (i) failure of seat functions (adjustable back rests, energy supply, folding tables, etc.); (j) failure of the passenger information system; and (k) failure of the onboard wi-fi system.</p> <p>The list above will become part of the quality checklist at hand-over before Revenue Service, and at hand-back after Revenue Service of each Trainset and will be subject to coordination and finalization between the Authority, Contractor, and future Operator.</p> <p>For each Mission Quality Failure in excess of the allowable number of Mission Quality Failures over a 90-day measurement period, the sum of \$12,200 shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Mission Quality Failures.</p> <p><u>PBPR Limitation:</u> The cumulative PBPR amount for Missed Stops, Late Stops, and Mission Quality Failures for any month shall not exceed 50% of the Service Payment amount for the month.</p> <p><u>Excused Late Stops, Missed Stops, and Mission Quality Failures</u> Service Payment reductions will not be assessed to the extent Contractor can establish that the Authority, Interfacing Contractor, a third party or a Force Majeure Event is wholly responsible for the Late Stop, Missed Stop or Mission Quality Failure, and the excused Late Stop, Missed Stop, or Mission Quality Failure was beyond the control of, and could not have been avoided or prevented by due diligence or use of reasonable efforts by the Contractor.</p> <p><u>PBPR Relief:</u> Contractor shall be entitled to relief from 50% of any Service Payment reduction assessed due to Missed Stops or Late</p>	
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	<p>Stops with respect to the 10-day measurement period upon achieving specified improvement.</p> <p><u>Escalation:</u> The Service Payment reduction amounts are subject to escalation on an annual basis.</p>	
4. Description of Work		
General Description of Work	<p>Contractor will design, manufacture, deliver, test, support certification, and commission 6 Trainsets (2 prototypes and 4 production trainsets) ordered by the Authority, maintain those Trainsets for 30 years; design, manufacture, install, test, commission, maintain, and update the driving simulator; provide design criteria to inform interfaces with the facilities, track, systems and stations contracts; participate in the testing and commissioning of the driving simulator, facilities, track, and systems; operate and maintain the Maintenance Facilities; and provide all Spares for such Trainsets; complete Mid-Life Overhauls for each Trainset; all in accordance with the Performance Specification, the Baseline Program, the Quality Plan, the Safety Plan, the Testing and Commissioning Program, all applicable laws, and all other Contract requirements.</p>	<p>GP §§ 3.2, 4, 10, 11, 22; Schedule 3 to the GPs (Milestones); Articles 2, 3, and 7 of the General Terms to the Signature Document</p>
Driving Simulator	<p>Contractor will design, manufacture, deliver, install, test, commission, update, and maintain one driving simulator at the OCC. The comprehensive set of training scenarios for the simulator will be proposed by Contractor, subject to a statement of no objection.</p>	<p>GP §§ 8.5, 15.1</p>
Authority-Owned Spares and Special Tools	<p>Authority-Owned Spares are Spares that are identified by the Authority as Authority-Owned Spares and made available by Contractor for use by the Authority. Contractor is required to store Authority-Owned Spares separately from other Spares in Contractor’s inventory. Payment for the initial quantity of Authority-Owned Spares is covered by a separate milestone payment for Fleet 1. The Authority may purchase additional Authority-Owned Spares at unit prices provided in Contractor’s Proposal (subject to audit by the Authority).</p> <p>The Maintenance Plan must include a system by which, when Spares are needed, Contractor uses and subsequently replaces Spares from the inventory of Authority-Owned Spares with enough frequency to ensure</p>	<p>GP §§ 3.2, 15.1, 15.2 Attachment B to Signature Document</p>

	<p>that Authority-Owned Spares are kept up to date and in serviceable condition. Each time Contractor uses an Authority-Owned Spare pursuant to this system, Contractor will immediately replace the Authority-Owned Spare with a Spare from its own inventory of Spares, at no additional cost to the Authority.</p> <p>Contractor will produce required Special Tools at no additional charge with Fleet 1. The Authority may purchase additional Special Tools at unit prices provided in Contractor's Proposal (subject to audit by the Authority). If there is a design change in the Trainsets, Contractor will deliver any additional Special Tools to accommodate the design change at no additional charge and update the list of Spares and Special Tools and associated unit prices.</p> <p>Contractor will store and manage the Authority-Owned Spares until such time as they are used.</p>	
<p>Design Responsibility and Liability</p>	<p>Contractor will be solely responsible for designing the Trainsets, and for performing all other design activities related to the Work. 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 individual or entity to take such action.</p>	<p>GP §§ 3.1, 3.14, 3.17, 4</p>
<p>Testing and Commissioning</p>	<p>Contractor is required to develop the Simulation, Testing and Commissioning Program in accordance with the Contract.</p> <p>The principal purpose of the implementation of the Simulation, Testing and Commissioning Program is to demonstrate to Authority that the contract requirements, including performance, function, quality, and safety, have been met or exceeded and that execution is in accordance with design requirements and is fit for purpose. This includes all requirements for interfaces with the Driving Simulator, facilities, track, and systems as well to the operator and passengers. A key requirement is to prove that all parts of the trainset as a system function correctly together and that the trainset functions correctly as part of the CHSR-system</p>	<p>GP § 22 GP Schedule 2</p>

	<p>in a properly integrated manner with no adverse effects to or from others.</p>	
<p>Trainset Service Period</p>	<p>For a 30-year period for each Trainset ordered by the Authority, Contractor is required to:</p> <ol style="list-style-type: none"> 1. Maintain the Trainset so that it is fit for safe and efficient operation in regular service and otherwise; 2. Upon issuance of applicable NTP perform a Mid-Life Overhaul of each Trainset; 3. Operate and maintain the equipment needed to inspect and maintain Trainsets within the Maintenance Facilities, as necessary; 4. Provide all Spares and Special Tools, as necessary, and maintain an accurate inventory of such; 5. Provide training to the Operator’s training staff, set parameters for competency testing, and provide technical support to the Trainset operator; 6. Update and maintain the Driving Simulator; 7. Interface with and obtain direction from the Operator regarding Trainset operations and maintenance; 8. Investigate all failures / incidents relating to the operation of the Trainsets in regular service assess what occurred, describe any recommended repair or replacement Work necessary, including the provision of Spares, plan an optimal manner to accomplish such Work and report its findings to the Authority; 9. Meet the minimum Mean Time between Service Interruptions (MTBSI) requirements for each Trainset and each Fleet; 10. Upon Train Engineer’s request, provide Train Engineer technical support related to the Trainsets and any Spares; 11. Meet the minimum standards of performance for Contractor set forth in the Performance Standards; and 12. Commence any corrective Work, including any required replacement of Spares, 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. <p>The 30-year Service Period applicable to each Trainset commences upon the Authority’s issuance of a Certificate of Final Acceptance for the Trainset and NTP 4, provided that in no event will the Service Period for a Trainset in Fleet 1 commence prior to the earlier of (a) the Authority’s issuance of a Certificate of Final Acceptance for four Trainsets or (b) the commencement of timetabled (revenue) service.</p>	<p>GP § 15 GP Schedules 6 and 9</p>

<p>Project Management Plan</p>	<p>Contractor will establish and implement a comprehensive Project Management Plan. The Project Management Plan is required to be developed consistent 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 the Authority.</p>	<p>GP § 22</p>
<p>Applicable Laws and Draft Tier III Rule</p>	<p>Contractor will comply with all Applicable Laws that bear on the performance of the Work, provided that Contractor will be entitled to relief as described in Section 6 below.</p> <p>With respect to the draft Tier III Rule (NPRM2) published by the FRA, the following will apply:</p> <ol style="list-style-type: none"> 1. If the subject matter of the draft Tier III Rule is not addressed by applicable law, including by a final Tier III Rule or a Rule of Particular Applicability, Contractor will comply with the draft Tier III Rule; 2. If the subject matter of the draft Tier III Rule is addressed in whole by applicable law, including by a final Tier III Rule or a Rule of Particular Applicability, Contractor will comply with such applicable law; 3. If the subject matter of the draft Tier III Rule is addressed in part by applicable law, including by a final Tier III Rule or a Rule of Particular Applicability, for those elements of the draft Tier III Rule that are addressed by applicable law, Contractor will comply with such applicable law, and for those elements of the draft Tier III Rule that are not addressed by applicable law, Contractor will comply with the draft Tier III Rule; and 4. The draft Tier III Rule will supersede Tier I and Tier II Rules that address the same subject matter. 	<p>GP §§ 3.4, 3.5 GP Schedule 12</p>
<p>Applicable Standards</p>	<p>Contractor will comply with the current version of all standards referenced in the Contract, provided that (a) with respect to the manufacturing of Fleet 1, the version of such standards in place 30 days prior to the Proposal due date (or submission of a revised Proposal or best and final offer, if later) will apply, and (b) if the Contract references a specific version or date for a standard, that version will apply.</p>	<p>GP § 3.6</p>
<p>5. Commencement of Work; Completion Deadlines</p>		
<p>Notice to Proceed /</p>	<p>Preliminary Notices</p>	<p>GP § 5</p>

<p>Preliminary Notices</p>	<p>Before the Authority issues a Notice to Proceed , it will issue to Contractor a Preliminary Notice indicating its intent to issue a Notice to Proceed for that Fleet. Upon receipt of the Preliminary Notice, Contractor will submit for the Authority’s approval Contractor’s determination of the applicable escalated payment amounts.</p> <p>The Authority may, in its sole discretion, issue a Preliminary Notice for subsequent Fleets any time after Notice to Proceed for Fleet 1; if a Preliminary Notice for a subsequent Fleet is later than 36 months after NTP for Fleet 1, then such Fleet price is subject to negotiation.</p> <p>Notice to Proceed</p> <p>The Authority will issue a Notice to Proceed for a Fleet within 180 days after the Authority issues a preliminary notice for the Fleet. Contractor will not proceed with any Work under the Contract without a written Notice to Proceed for such Work.</p>	<p>Signature Document General Terms § 2</p>
<p>Prerequisites for Commencement of Work under a Notice to Proceed</p>	<p>Contractor may not commence any Work under a Notice to Proceed until the following conditions are satisfied and Contractor has provided notice to the Authority that the conditions are satisfied:</p> <ol style="list-style-type: none"> 1. All governmental approvals necessary for the Work covered by the Notice to Proceed have been obtained and all conditions of such governmental approvals that are a prerequisite to commencement of the Work covered by the Notice to Proceed have been performed; 2. All insurance policies required to be delivered to the Authority under the Contract for the Fleet at issue have been submitted to the Authority and remain in full force and effect; 3. Contractor has provided to the Authority a manufacturing security, maintenance security, and performance bond per Contract requirements (see Section 7 below); and 4. Contractor has provided to the Authority an executed Guaranty (see Section 7 below). 5. Contractor is progressing on and making a good faith effort toward its Small Business Program obligations in the Contract. 	<p>GP § 5.7</p>
<p>Trainset Acceptances</p>	<p>Trainset Acceptance includes Provisional Acceptance, Conditional Acceptance, and Final Acceptance. Contractor is required to obtain a Certificate of Provisional Acceptance, a Certificate of Conditional Acceptance, and a</p>	<p>GP § 10 Signature Document</p>

	Certificate of Final Acceptance for each Trainset within Fleet 1 as detailed in the table below. For any additional Fleet(s), the Trainset Acceptance Deadlines will be negotiated.			General Terms § 4	
	Months from issuance of NTP 1 (Fleet 1)				
	Trainset #	Certificate of Provisional Acceptance	Certificate of Conditional Acceptance		Certificate of Final Acceptance
	1-2	48	60		72
	3-6	60	66	78	

6. Change Orders

Change Orders	<p>An Authority signed Change Order is required for any time extension or price increase. The Authority may at any time issue a unilateral Directive Letter and Contractor will proceed immediately with the Work as directed, pending the execution of a formal Change Order (or, if the Directive Letter states that the Work is within the original scope of the work, Contractor will proceed with the Work as directed but will have the right to request that the Authority issue a Change Order with respect to the Directive Letter).</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. Time extensions will only be available with respect to a particular Fleet up until the point of the Authority’s issuance of a Certificate of Fleet Acceptance.</p> <p>Change Orders are limited to the following circumstances (and no others):</p> <ol style="list-style-type: none"> 1. Authority-Directed Changes, including any Authority order of additional Authority-Owned Spares and Special Tools (above the baseline amount) and use of Contractor’s wreck and rescue crews; 2. Authority Delay; 3. Certain changes in applicable laws (described under a separate entry below); 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 Work site, unless the source of the explosion, 	GP § 16
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	<p>contamination, radiation or contaminated material is brought to or near the site by Contractor; (e) fire (excluding wildfire), explosion, earthquake, floods and landslides caused by natural events; (f) terrorism; (g) any government-declared emergency within the limits of the site; (h) strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Contractor-Related Entity; or (i) hurricane or tornado that impact any Site in a manner causing interruption of Work;</p> <ol style="list-style-type: none"> 5. Suspensions of Work for convenience; 6. Differing Site Conditions shown to be primary cause of the need for a time extension. 7. Issuance of a temporary restraining order or other form of injunction that prohibits prosecution of a material portion of the Work; 8. Contractor’s provision of maintenance or Spare(s) that are needed to fulfill the Contract requirements, to the extent Contractor can establish that the Authority, Trainset operator or a third party is wholly responsible for such damage (e.g., damage caused because Trainset operator did not properly follow Contractor’s operation manual); and 9. Contractor shuts down the Trainset production line in between Fleet orders for more than 180 days after providing 30 days written notice to the Authority. <p>The 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>Relief for Changes in Applicable Laws</p>	<p>Contractor will be entitled to a time extension and price increase or the Authority will be entitled to a time decrease and price decrease, as applicable, based on:</p> <ol style="list-style-type: none"> 1. A change to applicable laws, except for changes addressed under clause 2 below, after the Milestone Design Freeze, provided one of the following conditions is met: <ol style="list-style-type: none"> (a) the change requires physical rework to Trainsets that have already achieved Final Acceptance; or (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 is in response to any failure to perform or 	<p>GP § 16.13</p>

	<p>culpable act / omission of Contractor, 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; or</p> <p>2. To the extent the cost of, and/or the time required for, performance of the Work materially increases or decreases because of differences between (i) applicable laws, including requirements in a final Tier III Rule or a Rule of Particular Applicability and (ii) the draft Tier III Rule (except increases required as a result of Contractor-initiated changes to the Project) provided such differences affect the physical Work.</p>	
<p>Limitation on Contract Amount Increases</p>	<p>Any increase in the Contract Amount will exclude:</p> <ol style="list-style-type: none"> 1. Costs caused by breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity. 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). 3. Costs for (i) any rejected Work that failed to meet the requirements of the Contract and (ii) any necessary remedial Work. 4. Costs resulting from Contractor's failure to perform its obligations to interface with an Interfacing Contractor. 	<p>GP § 16.6.2</p>
<p>Limitation on Time Extensions</p>	<p>Any extension of a completion deadline will exclude any delay to the extent that it:</p> <ol style="list-style-type: none"> 1. Did not impact the Critical Path affecting a Trainset Acceptance Deadline. 2. Was due to the breach of contract, fault or negligence, or act or failure to act of any Contractor-Related Entity. 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, the 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). 4. Was concurrent with any other delay for which Contractor is not entitled to a time extension. 	<p>GP § 16.6.3</p>

	<p>Contractor will be required to demonstrate to the 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>Delay Damages and Disruption Damages</p>	<p>Contractor is entitled to reimbursement of delay damages only for the following: (a) a written order from the Authority designated to be a directive letter; (b) the Authority's suspension of the Work for convenience; or (c) the 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. Before Contractor may obtain any price increase to compensate for any delay damages, Contractor must demonstrate to the Authority's satisfaction that:</p> <ol style="list-style-type: none"> 1. The Baseline Program (project schedule) in fact sets forth a reasonable method for completion of the Work. 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. 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). 4. The delay for which compensation is sought is not concurrent with any other delay for which Contractor is not entitled to delay damages. 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 the Authority. <p>Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable. 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>	<p>GP § 16.6.4</p>

7. Security, Indemnities, Insurance, Risk of Loss		
Performance Security	<p>Manufacturing Security - From the issuance of NTP 1 until NTP 2 is issued, the amount of the letter of credit or performance bond shall be 35% of the NTP 1 Contract Amount. From issuance of NTP 2 until the Provisional Acceptance of the first Trainset, the amount shall be 35% of the sum of NTP 1 Contract Amount and NTP 2 Contract Amount. From the date of Provisional Acceptance of the first Trainset until Final Acceptance of the first Trainset, the amount shall be 90% of the sum of NTP 1 Contract Amount and NTP 2 Contract amount. From the date of Final Acceptance of the first Trainset until 5 years after Fleet Acceptance, the amount shall be 20% of the sum of NTP 1 Contract Amount and NTP 2 Contract amount.</p> <p>If Authority issues NTP 3, Contractor shall increase the amount by 35% of the NTP 3 Contract Amount until date of Provisional Acceptance of the first Trainset in NTP 3. From Provisional Acceptance of the first Trainset to Final Acceptance of the first Trainset, Contractor shall increase the amount by 50% of the NTP 3 Contract Price. From the date of Final Acceptance of the first Trainset until 5 years after Fleet Acceptance, Contractor shall increase the amount by 20% of the sum of NTP 3 Contract Amount.</p> <p>Maintenance Security - The Contractor shall provide to Authority at the date of Overall Trainset Service Period and maintain at all times thereafter until 30 years after Fleet Acceptance, a properly executed performance bond or letter of credit in the form included as Attachment E to the Signature Document or Attachment F to the Signature Document, as applicable. Contractor may, subject to Authority's approval, modify the form as needed to accommodate the varying amounts and associated time periods set forth in this Article.</p> <p>The performance bond or letter of credit shall be equal to the annual Service Payment for that year based on the Timetabled trip miles provided by Authority.</p> <p>Contractor may provide multiple letters of credit or bonds to satisfy its obligations under this Article (e.g., to provide separate letters of credit or bonds for the different required amounts), on condition of Contractor providing the required amount of security during the specified time periods in this</p>	<p>GP § 7 Signature Document General Terms § 11</p>

	Article and on condition of providing any replacement bonds prior to the expiration of the existing letter of credit or bond.	
Guaranty	<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 venture) will be required to provide a guaranty for each Fleet ordered by the Authority. The guaranty will assure performance of all obligations of Contractor under the Contract with respect to that Fleet. The guarantor must agree to be sued in California.</p> <p>The guaranties must be maintained in full force and effect from Notice to Proceed to five years after Fleet Acceptance.</p>	GP § 7.6; Article 11 of Signature Document General Terms
Indemnities	<p>Contractor will defend, indemnify and hold harmless the Authority and its respective officers, directors, employees, agents, servants, representatives, consultants, successors, assigns and subsidiaries from and against any third party claims, losses, liabilities (including without limitation 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) arising out of or relating to or resulting from:</p> <ol style="list-style-type: none"> 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 the Authority, if any; 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; 3. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable law; 4. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault, of any Contractor-Related Entity; 5. 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; 6. 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 	GP § 30

	<p>Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract;</p> <p>7. Any and all stop notices and/or liens filed in connection 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; or</p> <p>8. 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.</p>	
<p>Insurance</p>	<p>Without limiting Contractor’s indemnification requirements under the contract, Contractor is required to provide the following insurance:</p> <ol style="list-style-type: none"> 1. Workers’ Compensation and Employer’s Liability Insurance at statutory limits, including not less than \$1,000,000 for each accident. 2. 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. 3. Automobile Liability Insurance. The minimum combined single limit for primary coverage is \$1,000,000 per occurrence. 4. Railroad protective liability coverage, with coverage forms and policy limits as required by the railroad for entry onto railroad property. 5. Professional Liability Insurance with limits of not less than \$25,000,000 per claim and in the aggregate. 6. Excess/Umbrella Liability Insurance of not less than \$200,000,000 per occurrence and in the aggregate in excess of the above underlying coverages. 	<p>GP § 38</p>

<p>Risk of Loss</p>	<p>Contractor is responsible for risk of loss of mock-ups, aesthetic design concepts and interior layout concepts for the Trainsets until delivery to and acceptance by the Authority.</p> <p>Contractor is responsible for the risk of loss of a Trainset at all times except for the periods after Final Acceptance or periods where Contractor has handed custody and control of the Trainset to the Trainset operator.</p> <p>Contractor is responsible for risk of loss of the driving simulator, Authority-Owned Spares, other Spares, Special Tools and the Maintenance Facilities at all times.</p> <p>Contractor is responsible for risk of loss of all other deliverables upon delivery to and acceptance by the Authority.</p>	<p>GP § 45</p>
<p>8. Defaults, Remedies, Suspensions, Terminations</p>		
<p>Breaches and Cure Periods</p>	<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"> 1. Contractor fails to deliver Trainsets within the time specified in the Contract. 2. Contractor fails to make progress, so as to endanger timely performance under the Contract. 3. Contractor fails or refuses to complete the Work within the time specified in the Contract. 4. Contractor fails, without cause, to make prompt payments to Subcontractors or to make prompt payment for equipment, materials, and/or labor. 5. Contractor noncompliance with applicable laws or the proper instruction of the Authority. 6. Contractor fails to make any payments due to the Authority under the Contract. 7. 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. 8. Contractor fails to submit and maintain the insurance required under the Contract. 9. Contractor transfers any interest in the Contract without the approval of the Authority. 10. Contractor fails to comply with the terms of a Directive Letter. 	<p>GP § 17</p>

	<ol style="list-style-type: none"> 11. Contractor fails to comply with a suspension of Work notice by the Authority. 12. 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. 13. Contractor or any Guarantor dissolves or liquidates. 14. 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. 15. 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. 16. 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. 17. 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. 18. 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. 19. Failure to commence corrective Work, including any required replacement of Spares, within 24 hours after becoming aware of the need for the corrective Work, and to complete the corrective Work in accordance with the Maintenance Plan. 20. Contractor fails to comply with any other provision of the Contract. <p>The Authority will provide Contractor 30 days' written notice and opportunity to cure breaches (1) through (10) and (20) 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 the Authority, the Authority will not declare an event of default provided that Contractor commences cure within such 30-day period and thereafter</p>	
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	<p>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. The Authority will provide Contractor five days written notice and opportunity to cure the breach listed in (10) above before declaring an event of default. There will be no cure period with respect to breaches (11) through (19) above. In addition, notwithstanding the above, there will be no cure period to the extent the breach relates to Work during the Service Period.</p>	
<p>Authority Remedies</p>	<p>The Authority’s remedies include, but are not limited to:</p> <ol style="list-style-type: none"> 1. The Authority may reject any non-conforming Work or require Contractor to remedy non-conforming Work at Contractor’s cost and without a time extension. 2. The Authority may terminate the Contract in whole or in part for Contractor’s breach of a material requirement 3. The Authority may remedy any default and charge the cost to Contractor. 4. If the Authority determines that a Trainset is unfit for safe and efficient operation, the Authority can require Contractor to propose a plan, subject to the Authority’s approval, to remedy the problem (e.g., through remanufacturing, replacement of systems or provision of a new Trainset), and implement that plan at no additional cost to the Authority. 5. If the Authority determines that three or more Trainsets in a Fleet are unfit for safe and efficient operation in regular service, the Authority can require Contractor to propose and implement a plan, subject to the Authority’s approval, to remedy the problem in the entire Fleet (e.g., through remanufacturing, replacement of systems or provision of new Trainsets) at no additional cost to the Authority. 6. If, over 30 consecutive days or 100 cumulative days of operations, a particular Trainset does not meet the Contractor’s RAM Commitment, the Authority reserves the right to require Contractor to provide a new Trainset to replace the Trainset that could not meet the RAM Commitment, at no additional cost to the Authority. 7. If, over 30 consecutive days or 100 cumulative days of operations, a Trainset fails to meet the minimum mean time between service failures (MTBSF) of 2,397 hours (or higher if proposed by Contractor in its Proposal), the Authority may require Contractor to re-manufacture the Trainset. 	<p>GP §§ 9.7, 18</p>

	<p>8. If cumulative defects or failures of any kind in substantially identical components or systems within the Trainsets serving substantially similar functions exceed 10%, Contractor will develop and implement a Modification Program, subject to the Authority's approval, that addresses the issue in all affected components or systems in all Trainsets within the Fleet, all at no additional cost to the Authority.</p> <p>9. If Contractor fails to maintain the required insurance, the Authority may procure or renew such insurance and pay any and all premiums in connection therewith, with Contractor being responsible to pay the Authority for such expenses or the Authority offsetting those expenses from funds otherwise due Contractor.</p> <p>10. If there is a material default, the Authority may terminate the Contract in whole or in part, and, if the Authority issued less than four Certificates of Final Acceptance for Trainsets, Contractor will be liable for repayment to the Authority of any payments made by the Authority.</p> <p>The rights and remedies of the Authority provided for under the Contract are in addition to any other rights and remedies provided by law.</p>	
<p>Termination for Convenience</p>	<p>The 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 the Authority. Upon Contractor's compliance with certain requirements, the Authority will pay Contractor termination expenses in the event of a termination for convenience, which will be, if appropriate and reasonable, an amount equal to the total of (without duplication):</p> <ol style="list-style-type: none"> 1. All amounts due, and not previously paid to Contractor, for Work authorized and completed in accordance with the Contract prior to the date of termination, provided that: <ul style="list-style-type: none"> o For any Fleet for which the Authority has issued a Notice to Proceed but has not reached Fleet Acceptance, Contractor will be entitled to Contractor's actual costs incurred towards reaching the Milestones for that Fleet, plus a 15% markup, minus any milestone payments previously paid for that Fleet, provided that such amount must not exceed the sum of all milestone payments for that Fleet; 	<p>GP § 19</p>

	<ul style="list-style-type: none"> ○ For any Service Payment due for the month of termination, the Authority will pay for the month at issue reduced pro rata to reflect the portion of the month terminated; plus 2. Contractor’s cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract (settlement costs include accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data); plus 3. Contractor’s expenses incurred for demobilization; plus 4. 10% of item 2 and item 3 for overhead and profit; plus 5. Contractor’s reasonable expenses incurred in fulfilling its obligations under the Contract in respect of termination; less 6. The amount of any claim which the Authority may have against any Contractor-Related Entity in connection with the Contract; less 7. Amounts that the Authority reasonably deems advisable to retain to cover any existing or threatened claims, liens and stop notices relating to the Project, including claims by third parties, less 8. The costs of repairing any non-conforming Work; less 9. Any Performance-Based Payment Reductions assessed by Authority but not yet deducted from a payment to Contractor; less 10. Any amounts due or payable by Contractor to the Authority, including any liquidated damages; less 11. Any costs saved by Contractor as a result of the termination. <p>The termination expenses must not exceed the total Contract Amount for all Fleets ordered by the Authority as reduced by (i) the amount of payments otherwise made by the Authority to Contractor prior to the date of termination and (ii) in the case of a partial termination, the portion of the Contract Amount attributable to the Work not terminated. The Authority may terminate the Contract prior to issuance of Notice to Proceed without incurring any cost or liability to Contractor, including termination expenses.</p>	
<p>Liquidated Damages – Delay in</p>	<p>Contractor will be assessed liquidated damages for failure to obtain a Certificate of Provisional Acceptance for the first two Trainsets, in the amount of:</p>	<p>GP §12.1; GP Schedule 4</p>

<p>Trainset Final Acceptance</p>	<ol style="list-style-type: none"> 1. \$24,000 per day, per Trainset, for up to 90 days of delay; 2. \$30,000 per day, per Trainset, for between 91 and 180 days of delay; and 3. \$45,000 per day, per Trainset, for beyond 180 days of delay. <p>Contractor will be assessed liquidated damages for failure to obtain a Certificate of Final Acceptance for any Trainset within a Fleet by the Trainset acceptance deadline for that Fleet, in the amount of:</p> <ol style="list-style-type: none"> 1. \$12,000/day, per Trainset, for up to 90 days of delay; 2. \$20,000/day, per Trainset, for between 91 and 180 days of delay; and 3. \$38,000/day, per Trainset, for beyond 180 days of delay. <p>Liquidated damages for failure to obtain a Certificate of Provisional Acceptance, as referenced above, are capped at 5% of the escalated Milestone Contract Amount of the Fleet. Liquidated damages for failure to obtain a Certificate of Final Acceptance, as referenced above, are capped at 10% of the escalated Milestone Contract Amount for the Fleet. The liquidated damages are not exclusive, except that the Authority will not have the right to recover any 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>Liquidated Damages – Weight Commitments</p>	<p>Each Trainset that receives a Certificate of Conditional Acceptance will be weighed and liquidated damages will be assessed on a one-time basis if one or both of the final certified axle load and final certified unsprung axle load weights for the Trainset exceeds the corresponding weight commitments provided by Contractor in its Proposal. Weighing is a condition to Final Acceptance. The amount of the liquidated damages is:</p> <ol style="list-style-type: none"> 1. \$650,000 per tonne, or part thereof on a pro rata basis, for the amount the final certified axle load weight exceeds the weight commitment; and 2. \$6,500,000 per tonne, or part thereof on a pro rata basis, for the amount the final certified unsprung axle load weight exceeds the weight commitment. <p>Authority may elect to re-weigh a Trainset for purposes of determining liquidated damages after any remedy requiring</p>	<p>GP §§ 12.2.1 and 12.2.2</p>

	<p>repair or remanufacturing of the Trainset, and the amount of liquidated damages owing, if any, will be adjusted accordingly.</p> <p>The liquidated damage amounts are subject to escalation on an annual basis.</p>	
Suspension	<p>The Authority may order Contractor to suspend all or any part of the Work for the period of time that the Authority deems appropriate.</p> <ol style="list-style-type: none"> 1. Suspension for cause. No price/time adjustment will be made for suspensions: <ul style="list-style-type: none"> - required to correct conditions unsafe for Project personnel or the general public; - required to comply with any governmental approval or applicable law; - required to carry out an order of the Authority duly given; or - required to comply in all respects with the Contract. 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 the Authority. 	GP § 26
Trainset Retirement	<p>The Authority may, in its sole discretion, retire any Trainset in the Service Period by issuing an Authority-Directed Change to Contractor directing the retirement of the Trainset. The Change Order will address retirement requirements, including continuing obligations during retirement, re-commissioning requirements and payment. Any Trainset retired by the Authority will remain in retirement until and unless the Authority directs Contractor to re-commission the Trainset.</p>	GP § 15.8
9. Other Contract Provisions		
Settlement of Disputes	<p>The parties will use informal dispute resolution procedures, including partnering, to attempt to resolve disputes without resorting to formal legal processes.</p> <p>If the dispute is not resolved through the informal dispute resolution procedure, the Authority’s Chief Operating Officer will consider any evidence submitted by the parties and issue the final, binding decision.</p> <p>The Contractor may commence action in court within 90 days following the date of the final decision or 1 year</p>	GP § 33

	<p>following the accrual of the cause of action whichever is later.</p>	
<p>Intellectual Property Rights Granted to Authority</p>	<p>Authority Rights to use Intellectual Property Contractor grants, pays for and delivers to the Authority an irrevocable, perpetual, fully paid-up right and license to the applicable intellectual property for:</p> <ul style="list-style-type: none"> (a) the use, maintenance or repair (including wreck repairs) including related equipment acquisitions of any Trainsets that have reached Final Acceptance; and (b) the use, maintenance, repair or manufacture of any deliverables under the Contract, including Spares, Special Tools, the driving simulator, Maintenance Facilities and any related equipment acquisitions, but excluding Trainsets. <p>Delivery of Intellectual Property into Escrow Contractor will deliver all applicable intellectual property into escrow, under an Escrow Agreement. Contractor is responsible to pay for and maintain the escrow for the duration of the Contract. Execution of the Escrow Agreement and delivery of the applicable intellectual property into escrow is a condition to Final Acceptance for the first Trainset.</p> <p>Subcontractor Intellectual Property Obligations Contractor will cause all Subcontractors to:</p> <ul style="list-style-type: none"> 1. Secure and deliver written licenses to grant an irrevocable perpetual, fully paid-up right and license to the applicable intellectual property owned by the Subcontractor; and 2. Submit and deliver all applicable intellectual property into escrow. <p>Release of Intellectual Property from Escrow The applicable intellectual property (including escrowed intellectual property from Subcontractors) is subject to release from escrow due to Contractor’s material default of the Contract.</p>	<p>GP §§ 1, 29</p>
<p>Assignment and Delegation</p>	<p>Contractor must not delegate its responsibility under the 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 the Authority. The Authority will not unreasonably prohibit Contractor from assigning its right to payment, provided that Contractor remains responsible for all its obligations hereunder.</p>	<p>GP § 34</p>

	<p>The Authority may assign without Contractor’s consent all or any portion of the Contract (including the 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 the Authority respecting the high-speed rail system or its operations.</p>	
<p>Consequential Damages</p>	<p>Contractor and the Authority will not be liable for punitive damages or special, indirect (e.g., loss of profit or loss of revenues) or incidental 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"> • Losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor; • Losses (including defense costs) of amounts which would have been reimbursed but for Contractor’s failure to carry insurance required under the Contract; • Losses (including defense costs) arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence; • Contractor or the Authority’s indemnities under the Contract; • Performance-Based Payment Reductions assessed by the Authority; • Contractor obligations to pay liquidated damages in accordance with the Contract; • Amounts owing under express provisions of the Contract; and • Losses arising out of releases of Hazardous Materials by Contractor or the Authority. 	<p>GP § 45.3</p>
<p>Limitation of Contractor’s Liability</p>	<p>Contractor’s liability to the 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"> • Losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor; 	<p>GP § 45.4</p>

	<ul style="list-style-type: none"> • Losses (including defense costs) of amounts which would have been reimbursed but for Contractor’s failure to carry insurance required under the Contract; • Performance-Based Payment Reductions assessed by Authority; • Any liquidated damages under the Contract; • Any type of cost arising from fraud, gross negligence, intentional misconduct or criminal acts of any Contractor-Related Entity; • All costs reasonably incurred by the Authority (minus the unpaid portion of the Contract Amount) in completing the Work or having the Work completed by others; and • All costs reasonably incurred by the Authority or any party acting on the Authority’s behalf in correcting the Work or having the Work corrected by others. <p>The limitation of Contractor’s liability above will not affect Contractor’s obligation to provide insurance.</p>	
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