



# CALIFORNIA High-Speed Rail Authority

## **Agreement No.: HSR [●]**

### **Track and Systems**

### **California High-Speed Rail Program**

### **Track and Systems Contract 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 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.

This document is subject to revision and provided as a reference document in the Early Train Operator RFP. Dates and information listed in brackets are for discussion purposes only.

<b>1. Contract Overview</b>	
<b>Authority</b>	California High-Speed Rail Authority
<b>Contractor</b>	The entity identified as “Contractor” in the Signature Document and determined through the procurement.
<b>Contract / Order of Precedence</b>	<p>The Contract will include the following documents, in the following descending order of precedence:</p> <ol style="list-style-type: none"> <li>1. Signature Document, except proposal commitments</li> <li>2. Supplemental General Provisions</li> <li>3. General Provisions without Schedules</li> <li>4. Performance Specification (Schedule 1 to General Provisions)</li> <li>5. All other Schedules to General Provisions</li> <li>6. Proposal, including proposal commitments (provided that if Authority determines that the proposal contains a provision that is more restrictive / beneficial to Authority than is specified elsewhere in the Contract, that proposal provision will take precedence).</li> </ol>
<b>Federal Requirements</b>	The Contract assumes federal requirements, including Buy America, related to the Passenger Rail Investment and Improvement Act (PRIIA), Railroad Rehabilitation & Improvement Financing (RRIF) Program and Transportation Infrastructure Finance and Innovation Act (TIFIA).
<b>Small and Disadvantaged Business Enterprise Program</b>	Contractor will comply with Authority’s Small and Disadvantaged Business Enterprise Program.
<b>Community Benefits Agreement</b>	With respect to the construction of any Maintenance Facilities on Authority-Provided Property, 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.
<b>Labor and Employment</b>	<p>Contractor, as part of its proposal, will be required to describe its approach to developing a skilled labor force for the manufacturing and maintenance periods of the Contract.</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>
<b>2. Authority Obligations</b>	
<b>Authority-Provided Property for Maintenance Facilities</b>	<p>Authority will obtain certain Governmental Approvals for certain property by specified deadlines to allow Contractor to construct the Maintenance Facilities needed to perform the required Rail Infrastructure System maintenance.</p> <p>Authority will acquire the rights and provide such property to Contractor within two years after obtaining the required Governmental Approvals.</p>
<b>Freight Rail</b>	Authority will provide Contractor by specified deadlines up to two freight rail connections built to clear the fouling point of the relevant freight rail line to assist

<b>Connection</b>	Contractor in connecting the Heavy Maintenance Facility to the freight rail line. Any additional construction necessary to connect the Heavy Maintenance Facility to the freight line will be the responsibility of Contractor.
<b>Operations Control Center</b>	Authority will provide Contractor with a location for the Operations Control Center (“OCC”) by specified deadlines. 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.
<b>Sub-Stations</b>	Authority will provide Contractor with land on which to construct the required electric sub-stations and connections to electrical power with which to power such sub-stations by specified deadlines.
<b>Governmental Approvals</b>	Authority will obtain all Governmental Approvals listed in Schedule 13 by specified deadlines.
<b>Access to Site</b>	Authority will ensure the Site is transferred from Authority’s other contractor(s) to Contractor upon the completion of specified civil works, but no later than specified deadlines. Safety and security in any particular location will be the responsibility of the contractor having priority access, as designated by the Authority.
<b>Rolling Stock</b>	Authority will provide the Contractor with Rolling Stock and driver for purposes of testing the Rail Infrastructure System by specified deadlines.
<b>Radio Frequency</b>	Authority will provide Contractor with specified radio frequency to use in connection with the operation of the Rail Infrastructure System.
<b>Utilities</b>	Authority will provide Contractor with access to electrical power and other required utilities to run the Rail Infrastructure System.
<b>3. Payment</b>	
<b>Contract Amount</b>	The Contract Amount is based on: 1. Milestone Contract Amount for [●]; and 2. Monthly Service Payment.
<b>Milestone Contract Amount</b>	Authority will pay the Milestone Contract Amount for each [●] through the use of milestone payments upon 100% completion of each defined milestone. Payment for each milestone is conditioned on completion of all prior milestones. [The Milestone Contract Amount for [●] is bid by the Contractor.] [The Milestone Contract Amounts for [●] through [●] are based on the [●] prices bid by Contractor.] [The Milestone Contract Amounts for [●] are subject to escalation, except if Authority orders [●] after [●], the Milestone Contract Amount for that [●] is subject to negotiation.]
<b>Service Payment</b>	For performance of Contractor’s obligations during the Service Period, Contractor is entitled to a monthly Service Payment. The Service Payment is subject to annual escalation. Service Payments shall be funded from revenues from the operation of the California High-Speed Rail System. Service Payments are to cover only regular and routine maintenance as well as Technology refresh. No such regular monthly payment will include payment for Non-

	Technology Component MLO.																				
<b>Payment for Non-Technology Component Mid-Life Overhaul (MLO)</b>	<p>Non-Technology Components are to include: a) Ballasts/PADS b) Track and OCS c) Civils structures.</p> <p>Separate Non-Technology Component MLO payment(s) will be made by Authority (and not Operator) at or around year [25-30] from an Escrow Account – only after relevant work has been performed and on a component by component basis (Non-Technology Component MLO Amount). Bidders will bid an aggregate MLO amount including allowance for each Non-Technology Component (in aggregate the “Aggregate Non-Technology Component MLO Bid”) and subject to defined indexation.</p>																				
<b>Add/Deduct Costs</b>	<p>The Contract will include unit costs to add or deduct lineage of various Rail Infrastructure System Assets.</p>																				
<b>Service Payment Reductions – Performance Standards</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 Trips, Late Trips and Mission Quality Failures over [10]-day, [30]-day, [90]-day and [180]-day measurement periods.</p> <table border="1" data-bbox="454 898 1445 1285"> <thead> <tr> <th>Reduction per occurrence (in excess of allowable number)</th> <th>Missed Trips</th> <th>Late Trips</th> <th>Mission Quality Failures</th> </tr> </thead> <tbody> <tr> <td>10-day</td> <td>\$24,500</td> <td>\$615</td> <td>N/A</td> </tr> <tr> <td>30-day</td> <td>\$29,000</td> <td>\$615</td> <td>N/A</td> </tr> <tr> <td>90-day</td> <td>\$38,000</td> <td>\$615</td> <td>\$12,200</td> </tr> <tr> <td>180-day</td> <td>\$48,000</td> <td>\$615</td> <td>[To be provided by Authority]</td> </tr> </tbody> </table> <p>A Missed Trip is a trip that, due to a failure, either (i) does not start or (ii) if it does start, is not completed by a Trainset under its own power.</p> <p>A Late Trip is a trip that, due to a failure, arrives at a station or specified interface point later than is allowed under the Contract (either 300, 150 or 120 seconds late).</p> <p>A list of failures to be used to measure Mission Quality will be developed by Contractor for Authority’s approval. The list will include, but not be limited to: [●].</p> <p>If the number of Missed Trips, Late Trips and Mission Quality Failures exceed specified thresholds below (Missed Trips, Late Trips and Mission Quality Failures counted separately), Authority may elect to discontinue the assessment of reductions in the Service Payment and pursue actual damages.</p> <ul style="list-style-type: none"> <li>(i) 10-Day Measurement Period – 36 instances (Late Trips and Missed Trips counted separately);</li> <li>(ii) 30-Day Measurement Period – 12 instances (Late Trips and Missed</li> </ul>	Reduction per occurrence (in excess of allowable number)	Missed Trips	Late Trips	Mission Quality Failures	10-day	\$24,500	\$615	N/A	30-day	\$29,000	\$615	N/A	90-day	\$38,000	\$615	\$12,200	180-day	\$48,000	\$615	[To be provided by Authority]
Reduction per occurrence (in excess of allowable number)	Missed Trips	Late Trips	Mission Quality Failures																		
10-day	\$24,500	\$615	N/A																		
30-day	\$29,000	\$615	N/A																		
90-day	\$38,000	\$615	\$12,200																		
180-day	\$48,000	\$615	[To be provided by Authority]																		

	<p>Trips counted separately);</p> <p>(iii) 90-Day Measurement Period – 4 instances (Late Trips, Missed Trips and Mission Quality Failures counted separately); or</p> <p>(iv) 180-Day Measurement Period – 1 instance (Late Trip, Missed Trip or Mission Quality Failure).</p> <p>Service Payment reductions will not be assessed to the extent Contractor can establish that Authority, [the Trainset operator], a third party or a Force Majeure Event is wholly responsible for the Late Trip, Missed Trip or Mission Quality Failure.</p> <p>Contractor may be entitled to relief from [50]% of any Service Payment reduction assessed due to Missed Trips or Late Trips with respect to the [10]-day measurement period upon achieving sufficient improvement.</p> <p>The Service Payment reduction amounts are subject to escalation on an annual basis.</p> <p>There will be a cap on the amount of Service Payment reductions equal to: \$[●].</p>
<p><b>Appropriation Requirement</b></p>	<p>Payments during the construction period are subject to appropriation. Authority is not required to make any payment for Work performed in a fiscal year for which funds have not been appropriated for the Contract. Contractor is not obligated to perform the Work, and correspondingly, Contractor is not entitled to any compensation for Work performed, during such a year.</p> <p>Contractor shall have the right to stop Work if Authority fails to make an undisputed payment due within 15 business days after Authority’s receipt of written notice of nonpayment from Contractor. Authority’s nonpayment shall not permit Contractor to terminate the Contract.</p>
<p><b>4. Description of Work</b></p>	
<p><b>General Description of Work</b></p>	<p>Contractor will design, build, test and certify, procure, provide and operate and maintain all infrastructure, systems, sub-systems, services, and utilities required to enable the continuous safe operation of Trainsets (the “Rail Infrastructure System”), build necessary Maintenance Facilities for such Rail Infrastructure System, and perform certain specified interface and integration duties with respect to the Authority’s other contractors, 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><b>Maintenance Facilities</b></p>	<p>Contractor is required to own and/or contract for sufficient Maintenance 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 Facilities will be located on Authority-Provided Property. If Contractor’s proposal specifies the need for additional property beyond the specified Authority-Provided Property that the Authority will acquire for the Maintenance Facilities, Contractor is required to obtain all necessary Governmental Approvals in order to acquire such property, and Authority will acquire the rights and provide such property to Contractor within two years after Contractor obtains the required Governmental Approvals.</p> <p>Any maintenance contracts will be assignable to Authority.</p>
<p><b>Handback Condition</b></p>	<p>At the conclusion of the Service Period or termination of the Contract, Contractor will turn over the Rail Infrastructure System and the Maintenance Facilities, including fixed equipment but excluding hand tools and portable equipment, constructed on Authority-Provided Property, to Authority. The Rail Infrastructure System and all Maintenance Facilities and equipment must be turned over to Authority in a state of good repair and consistent with the termination procedures set forth in Section 20 of the General Provisions.</p>
<p><b>Design Responsibility and Liability</b></p>	<p>Contractor will be solely responsible for designing the Rail Infrastructure System, and for performing all design activities related to the work and for ensuring that the design of the Rail Infrastructure System 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 (any individual or entity) to take such action.</p>
<p><b>Testing and Commissioning</b></p>	<p>All testing and commissioning of the Work will be the responsibility of the Contractor and will be performed pursuant to a Testing and Commissioning Program, which the Contractor will develop and implement in accordance with the Contract.</p>
<p><b>Service Period</b></p>	<p>For a [30]-year period, Contractor is required to:</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 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 Performance Standards; and</li> <li>5. Commence any emergency repairs or corrective work immediately, and commence any non-emergency corrective work within 24 hours after becoming aware of the need for the corrective work; complete all corrective</li> </ol>



	<p>work in accordance with the timeframe and other requirements set forth in the Maintenance Plan.</p> <p>The [30]-year Service Period commences upon Authority's issuance of a Certificate of [Final Acceptance] for the Rail Infrastructure System [, provided that in no event will the Service Period commence prior to the commencement of timetabled (revenue) service].</p>
<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>
<b>Applicable Laws</b>	<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>
<b>Applicable Standards</b>	<p>Contractor will comply with the current version of all standards referenced in the Contract.</p>
<b>5. Integration and Interface</b>	
<b>General Interface Requirements</b>	<p>Contractor will have lead responsibility for coordinating all technical and programming matters between the Interfacing Parties (which term will include all contractors that could affect the Contractor).</p>
<b>Delays Caused by Interfacing Parties</b>	<p>Contractor will be entitled to claim an increase in the Contract Amount or an extension of time if Contractor incurs additional costs or is delayed in its performance of the Work as a result of any omission or act of an Interfacing Party.</p>
<b>Interface Management System</b>	<p>Contractor must (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.</p>
<b>6. Commencement of Work; Completion Deadlines</b>	
<b>Notice to Proceed / Preliminary Notice</b>	<p><b>Notice to Proceed</b></p> <p>[Authority will issue the Notice to Proceed within [180] days after the Effective Date.] Contractor will not proceed with any work under the Contract prior to the issuance of the Notice to Proceed.</p> <p><b>Preliminary Notice</b></p> <p>Before Authority issues the Notice to Proceed, it will issue to Contractor a preliminary notice indicating its intent to issue the Notice to Proceed. Upon receipt of the preliminary notice, Contractor will submit for Authority's approval Contractor's determination of the applicable escalated payment amounts.</p>

	<p>Authority will issue the Preliminary Notice no later than [90 days] after the Effective Date.</p>
<p><b>Prerequisites for Commencement of Work under the Notice to Proceed</b></p>	<p>Contractor may not commence any work under the Notice to Proceed until the Contractor has satisfied the following conditions and provided notice to Authority to such effect:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2. All insurance policies required to be delivered to Authority under the Contract have been submitted to Authority and remain in full force and effect;</li> <li>3. Contractor has provided to Authority an irrevocable letter of credit to secure Contractor's obligations under the Contract (see Section 7 below); and</li> <li>4. Contractor has provided to Authority an executed Guaranty (see Section 7 below).</li> </ol>
<p><b>Rail Infrastructure System Acceptances</b></p>	<p>Rail Infrastructure System Acceptance includes Test Track Acceptance, Provisional Acceptance, Conditional Acceptance and Final Acceptance. Contractor is required to obtain (1) a Certificate of Test Track Acceptance by the Test Track Acceptance Deadline ([●] months after the Notice to Proceed), and (2) a Certificate of Final Acceptance by the Final Acceptance deadline ([●] months] after the Notice to Proceed).</p>
<p><b>7. Change Orders</b></p>	
<p><b>Change Orders</b></p>	<p>An Authority-signed Change Order or directive letter is required for any time extension or price increase. Authority may at any time issue a unilateral directive letter and Contractor will proceed immediately with the work as directed in the directive letter, 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 pursuant to the disputes provision to request that 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.</p> <p>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 Delay (unavoidable delays arising from Authority's failure to comply with certain obligations);</li> <li>3. Certain changes in applicable laws (described under a separate entry 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,</li> </ol>



	<p>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 Person; (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, earthquake, floods and landslides caused by natural events, or tidal wave; (f) terrorism; or (g) any governor-declared emergency within the limits of the site;</p> <ol style="list-style-type: none"> <li>5. Railroad operations that were not reasonably foreseeable or of which Contractor did not know or have reason to know as of the date of the Contract;</li> <li>6. Suspensions of work for convenience;</li> <li>7. Issuance of a temporary restraining order or other form of injunction that prohibits prosecution of a material portion of the work; and</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.</li> </ol> <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:</p> <ol style="list-style-type: none"> <li>1. A change to applicable laws, except for changes addressed under clause 2 below, after the date that is 30 days prior to the final proposal due date or, if later, the date that is 30 days prior to submission of a revised proposal or best and final offer, if any, provided one of the following conditions is met: <ol style="list-style-type: none"> <li>(a) the change requires physical rework to Rail Infrastructure System that has already achieved 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; or</li> </ol> </li> <li>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 (except increases required as a result of Contractor-initiated changes to the Project), provided such differences affect the physical work.</li> </ol>
<p><b>Limitation on Contract Amount</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</li> </ol>

<p><b>Increases</b></p>	<p>to act of any Contractor-Related Entity (Contractor, entities forming Contractor (e.g., joint venture members), subcontractors, their employees, agents and officers and all other Persons for whom Contractor may be legally or contractually responsible).</p> <ol style="list-style-type: none"> <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> </ol>
<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 Acceptance deadline.</li> <li>2. Was due to the 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> </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 for those events and situations that the Contract expressly contemplates that delay damages are permitted: (a) a written order from Authority designated to be a directive letter; (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> </ol>

	<p>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).</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>8. Security, Indemnities, Insurance, Risk of Loss</b>	
<b>Performance Security</b>	<p>Construction Security - Contractor will provide and maintain until five years after Final Acceptance, an irrevocable letter of credit. From the date the letter of credit is issued until Provisional Acceptance, the amount of the letter of credit will be [25]% of the Milestone Contract Amount. From the date of Provisional Acceptance until Final Acceptance, the amount of the letter of credit will be [50]% of the Milestone Contract Amount. From the date of Final Acceptance until 5 years after Final Acceptance, the amount of the letter of credit will be [20]% of the Milestone Contract Amount.</p> <p>Maintenance Security - From the date of Final Acceptance until 30 years after Rail Infrastructure System Acceptance, Contractor will provide and maintain a bond or irrevocable letter of credit. The amount of the bond or letter of credit will be calculated according to a formula that increases or decreases the bond or letter of credit amount to reflect the anticipated maintenance activities.</p> <p>Contractor may provide multiple letter(s) of credit for shorter durations on condition of providing the required amounts of security during the specified time periods and providing replacement letter(s) of credit prior to expiration.</p>
<b>[Payment Bond]</b>	[A Payment Bond will be required in the amount of 100% of the cost of the Work.]
<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) will be required to provide a guaranty for the Rail Infrastructure System. The guaranty will assure performance of all obligations of Contractor under the Contract. 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 Final Acceptance.</p>
<b>Indemnities</b>	Contractor will defend, indemnify and hold harmless the State, the Authority, the Federal Railroad Administration, and their respective officers, directors, employees, agents, servants, representatives, consultants, successors, assigns

	<p>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"> <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 negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault, of any Contractor-Related Entity;</li> <li>5. 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 hereto, arising out of or in any degree directly or indirectly caused by or resulting from supplies, material, Deliverables, products or equipment supplied by, or from activities of, or work performed by any Contractor-Related Entity;</li> <li>6. 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>7. Any and all claims by any governmental Person 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>8. 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;</li> <li>9. 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</li> <li>10. 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.</li> </ol>
<b>Insurance</b>	Contractor is required to provide the following insurance:

	<ol style="list-style-type: none"> <li>1. Automobile Liability Insurance. The minimum combined single limit for primary coverage is \$1,000,000 per occurrence.</li> <li>2. Workers' Compensation and Employer's Liability Insurance at statutory limits, including 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 \$200,000,000 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> </ol>
<p><b>Risk of Loss</b></p>	<p>Contractor is responsible for risk of loss for all Deliverables until delivery to and acceptance by Authority.</p> <p>Contractor is responsible for the risk of loss of the Rail Infrastructure System at all times except for the periods after Final Acceptance where Contractor has handed custody and control of the Rail Infrastructure System to the Trainset operator.</p> <p>Contractor is responsible for risk of loss of the Maintenance Facilities at all times.</p>
<p><b>9. Defaults, Remedies, Suspensions, Terminations</b></p>	
<p><b>Breaches and Cure Periods</b></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"> <li>1. Contractor fails to deliver the Rail Infrastructure System 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> <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</li> </ol>



	<p>Contract.</p> <ol style="list-style-type: none"> <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 corrective work 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.</li> <li>21. Contractor fails to comply with any other provision of the Contract.</li> </ol> <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 90 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 work during the Service Period.</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 remanufacturing, replacement of systems or provision of a new Rail Infrastructure System 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 the 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 or systems within the Rail Infrastructure System serving substantially similar functions exceed 10%, Contractor will develop and implement a Modification Program, subject to Authority’s approval, that addresses the issue in all affected components or systems in all Rail Infrastructure System Assets, all at no additional cost to Authority.</li> <li>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.</li> <li>7. If there is a material default, Authority may terminate the Contract in whole or in part.</li> </ol> <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-day written notice to Contractor, terminate the Contract, in whole or in part, for the convenience of Authority.</p> <p>Upon Contractor’s compliance with certain requirements, 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"> <li>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"> <li>○ [If Authority has issued the Notice to Proceed but the Contractor has not reached Final Acceptance, Contractor will be entitled to Contractor’s actual costs incurred towards reaching the Milestones for that Work, plus a [15]% markup, minus any milestone payments previously paid for that Work, provided that such amount must not exceed the sum of all</li> </ul> </li> </ol>

	<p>milestone payments for that Work;]</p> <ul style="list-style-type: none"> <li>○ For any Service Payment due for the month of termination, Authority will pay for the month at issue reduced pro rata to reflect the portion of the month terminated; plus</li> </ul> <ol style="list-style-type: none"> <li>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</li> <li>3. Contractor’s expenses incurred for demobilization; plus</li> <li>4. 10% of item 2 and item 3 for overhead and profit; plus</li> <li>5. Contractor’s reasonable expenses incurred in fulfilling its obligations under the Contract in respect of termination; less</li> <li>6. The amount of any claim which Authority may have against any Contractor-Related Entity in connection with the Contract; less</li> <li>7. Amounts that 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</li> <li>8. The costs of repairing any non-conforming work; less</li> <li>9. Any Performance-Based Payment Reductions assessed by Authority but not yet deducted from a payment to Contractor; less</li> <li>10. Any amounts due or payable by Contractor to Authority, including any liquidated damages; less</li> <li>11. Any costs saved by Contractor as a result of the termination.</li> </ol> <p>The termination expenses must not exceed the total Contract Amount as reduced by (i) the amount of payments otherwise made by 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.</p> <p>Authority may terminate the Contract prior to issuance of the Notice to Proceed without incurring any cost or liability to Contractor, including termination expenses.</p>
<p><b>Termination Payment</b></p>	<p>In the event of termination for default or termination for convenience, compensation may be owing to or from Contractor to account for any underpayment or overpayment that resulted from the termination occurring prior to full payment to Contractor for Deliverables based on audited costs (e.g., [Maintenance Facilities built on Authority-Provided Property that are not fully paid for upon termination]).</p>
<p><b>Liquidated Damages – Delay in Acceptances</b></p>	<p>Liquidated damages will be assessed for failure to obtain Certificate of Test Track Acceptance by the Test Track Acceptance Deadline, in the amount of:</p> <ol style="list-style-type: none"> <li>1. \$[●]/day, for up to [90] days of delay;</li> <li>2. \$[●]/day, for between [91] and [180] days of delay; and</li> <li>3. \$[●]/day, for beyond [180] days of delay.</li> </ol> <p>Liquidated damages will be assessed for failure to obtain Certificate of Final</p>

	<p>Acceptance by the Final Acceptance Deadline, in the amount of:</p> <ol style="list-style-type: none"> <li>1. \$[●]/day, for up to [90] days of delay;</li> <li>2. \$[●]/day, for between [91] and [180] days of delay; and</li> <li>3. \$[●]/day, for beyond [180] days of delay.</li> </ol> <p>Aggregate liquidated damages for failure to obtain a Certificate of Test Track Acceptance and Certificate of Final Acceptance are capped at 10% of the escalated Milestone Contract Amount. The liquidated damages are not exclusive, except that 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><b>Liquidated Damages – Replacement of Key Personnel</b></p>	<p>Liquidated damages will be assessed for Contractor replacement of the [project manager, the lead design engineer or the testing and commissioning engineer] without Authority's approval of the replacement, in the following amount:</p> <ol style="list-style-type: none"> <li>1. \$[1,000,000] for each individual removed during the first year after Notice to Proceed;</li> <li>2. \$[500,000] for each individual removed during the second year after Notice to Proceed;</li> <li>3. \$[100,000] for each individual removed during the third year after Notice to Proceed; and</li> <li>4. \$[50,000] for each individual removed during the remaining period of the Contract.</li> </ol> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p>
<p><b>Suspension</b></p>	<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>
<p><b>10. Other Contract Provisions</b></p>	
<p><b>Settlement of Disputes</b></p>	<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, who 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 arbitration with Contractor under certain circumstances.</p>
<p><b>Intellectual Property Rights Granted to Authority</b></p>	<p><b>Intellectual Property Definitions</b></p> <p>Intellectual Property means all rights, title and interest in (i) patents, (ii) inventions (whether patentable or not); (iii) trademarks, service marks trade names, trade dress, logos and fictitious business names; (iv) design rights; (v) utility models; (vi) copyright (including software); (vii) database rights; (viii) know-how (including trade secrets and confidential business information which is contained on any media); and in each case for such rights, whether registered or unregistered, and including (A) any pending applications or rights to apply for registrations of any of these rights, and (B) any similar or analogous rights to any of these rights, whether arising or granted under the laws of the United States of America or of any other country, territory or jurisdiction.</p> <p>Background Inventions means all Intellectual Property owned by any Contractor-Related Entity (i) prior to Authority’s issuance of the RFP and (ii) after issuance of the RFP and not for the purposes of the Contract or Project.</p> <p>Third Party IP means all Intellectual Property owned by any Person other than a Contractor-Related Entity or Authority.</p> <p>Subject Inventions means all Intellectual Property and/or work created, authored and/or invented by any Contractor-Related Entity following Authority’s issuance of the RFP and for the purposes of the Contract or the Project.</p> <p><b>Authority Rights to use IP</b></p> <p>At no additional cost to Authority, Contractor grants, pays for and delivers to Authority an irrevocable, perpetual, fully paid-up right and non-exclusive license to use, exploit, manufacture, have manufactured, distribute, import, reproduce, perform, prepare derivative works, adapt and display the Background Inventions, Subject Inventions or Third Party IP solely in connection with the “Allowable Uses,” which are limited to:</p> <ul style="list-style-type: none"> <li>(a) the use, maintenance or repair of Rail Infrastructure System that has reached Final Acceptance;</li> <li>(b) the use, maintenance, repair or manufacture of any deliverables under the Contract, including Maintenance Facilities, but excluding [ ]; and</li> <li>(c) equipment acquisitions by Authority related to clauses (a) and (b) above.</li> </ul> <p><b>Delivery of IP into Escrow</b></p> <p>Contractor will identify all Background Inventions, Subject Inventions and Third</p>

	<p>Party IP in connection with the Allowable Uses and deliver the same 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 Background Inventions, Subject Inventions and Third Party IP into escrow is a condition to Final Acceptance.</p> <p><b>Subcontractor IP Obligations</b> Contractor will cause all subcontractors to:</p> <ol style="list-style-type: none"> <li>1. Identify and disclose Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses;</li> <li>2. Secure and deliver written licenses to grant an irrevocable perpetual, fully paid-up right and all license to use, exploit, manufacture, distribute, copy, adapt and display the Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses; and</li> <li>3. Submit and deliver the escrow materials.</li> </ol> <p><b>Release of IP from Escrow</b> The Background Inventions, Subject Inventions and Third Party IP (including escrowed IP from subcontractors) are subject to release from escrow due to Contractor’s material default of the Contract.</p>
<p><b>Assignment and Delegation</b></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 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 the Contractor, but without 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. For the avoidance of doubt, Authority may, at its option, assign only the management or administration of the Contract to any such entity.</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) or incidental 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> </ul>



	<ul style="list-style-type: none"> <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> <li>• Losses arising out of releases of hazardous materials by Contractor or Authority.</li> </ul>
<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 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) 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> <li>• 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.</li> </ul> <p>The limitation of Contractor’s liability above will not affect Contractor’s obligation to provide insurance.</p>