

	<p>model, industrial design, mask work, trade secret or other proprietary right of a third party;</p> <ol style="list-style-type: none"> 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; 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; 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 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. 	
<p>Insurance</p>	<p><i>[Under development.]</i></p> <p>Contractor is required to provide the following insurance during the Construction Periods of the Contract:</p> <ol style="list-style-type: none"> 1. Automobile Liability Insurance. The minimum combined single limit for primary coverage is [\$1,000,000] per occurrence. 2. Workers' Compensation and Employer's Liability Insurance at statutory limits, including not less than [\$1,000,000] for each accident. 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. 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. 5. Professional Liability Insurance with limits of not less than [\$50,000,000] per claim and in the aggregate. 6. Railroad protective liability coverage, with a limit of not less than [\$25,000,000] per occurrence and 	<p>GP § 37</p>

	<p>[\$25,000,000] in the aggregate. Contractor is required to provide the following insurance during the Service Period of the Contract: <i>[Under development]</i></p>	
Risk of Loss	<p>Contractor is responsible for risk of loss for all Deliverables until delivery to and acceptance by Authority. Contractor is responsible for the risk of loss of each Segment at all times.</p>	GP § 43.1
Breaches and Cure Periods	<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 a Segment 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 Authority. 6. Contractor fails to make any payments due to Authority under the Contract. 7. Contractor fails to provide and maintain the payment bond as required under the Contract. 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. 9. Contractor fails to submit and maintain the insurance required under the Contract. 10. Contractor transfers any interest in the Contract without the approval of Authority. 11. Contractor fails to comply with the terms of a directive letter. 12. Contractor fails to comply with a suspension of work notice by Authority. 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. 	GP § 17

	<ol style="list-style-type: none"> 14. Contractor or any Guarantor dissolves or liquidates. 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. 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. 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. 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. 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. 20. Failure to commence emergency corrective work immediately and non-emergency corrective work within 24 hours after becoming aware of the need for the corrective work, and to complete the corrective work in accordance with the Maintenance Plan. 21. Contractor fails to comply with any other provision of the Contract. <p>Authority will provide Contractor 30-day written notice and opportunity to cure breaches (1) through (10) and (21) above related to Construction Period work 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</p>	
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	Service Period work.	
Authority Remedies	<p>Authority's remedies include, but are not limited to:</p> <ol style="list-style-type: none"> 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. 2. Authority may remedy any default and charge the cost to Contractor. 3. If Authority determines that any Project 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 Project Asset), and implement that plan at no additional cost to Authority. 4. If, over 30 consecutive days or 100 cumulative days of operations, a particular Project Asset does not meet the Contractor's RAMS Commitment in its proposal, Authority reserves the right to require Contractor to provide a new Project Asset to replace the element that could not meet the RAMS Commitment, at no additional cost to Authority. 5. If cumulative defects or failures of any kind in substantially identical components or systems within the Project 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 Project Assets, all at no additional cost to Authority. 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. 7. If there is a material default, Authority may terminate the Contract in whole or in part. <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>	GP §§ 9.7, 18, 37.2.10
Termination for Convenience	<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</p>	GP § 19

	<p>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"> ○ For any Segment for which Authority has issued an NTP but Contractor has not achieved 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 milestone payments for that Work; ○ 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 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 Authority may have against any Contractor-Related Entity in connection with the Contract; less 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 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 Authority, including any liquidated damages; less 11. Any costs saved by Contractor as a result of the 	
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	<p>termination.</p> <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 any NTP without incurring any cost or liability to Contractor, including termination expenses.</p>	
<p>Liquidated Damages – Delay in Acceptances</p>	<p>Liquidated damages will be assessed for failure to achieve Provisional Acceptance of Plain Line of Segment 1 by the applicable deadline, in the amount of:</p> <ol style="list-style-type: none"> 1. \$[●]/day, for up to [90] days of delay; 2. \$[●]/day, for between [91] and [180] days of delay; and 3. \$[●]/day, for beyond [180] days of delay. <p>Liquidated damages will be assessed for failure to achieve Provisional Acceptance of Segment Integrated Static Tests of Segment 1 by the applicable deadline, in the amount of:</p> <ol style="list-style-type: none"> 1. \$[●]/day, for up to [90] days of delay; 2. \$[●]/day, for between [91] and [180] days of delay; and 3. \$[●]/day, for beyond [180] days of delay. <p>Liquidated damages will be assessed for failure to achieve Final Acceptance of any Segment by the applicable deadline in the amount of:</p> <ol style="list-style-type: none"> 1. \$[●]/day, for up to [90] days of delay; 2. \$[●]/day, for between [91] and [180] days of delay; and 3. \$[●]/day, for beyond [180] days of delay. <p>Aggregate liquidated damages for failure to achieve Segment Acceptance are capped at 10% of the escalated Milestone Contract Amount for the Segment. The liquidated damages are not exclusive, except that Authority will not have the right to recover any damages it incurs due to Contractor’s delay that are in excess of the amount of the liquidated damages.</p> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p>	<p>GP § 12.1</p>
<p>Incentives</p>	<p>Contractor will be entitled to an incentive payment in the amount of \$[●] if Contractor achieves Provisional Acceptance of Plain Line of Segment 1 by June 30, 2022. The incentive deadline is not subject to extension for any reason whatsoever.</p>	
<p>Liquidated Damages – Replacement of</p>	<p>Liquidated damages will be assessed for Contractor’s removal of the [project manager, the lead design engineer</p>	<p>GP §§ 12.2, 21</p>

<p>Key Personnel</p>	<p>or the testing and commissioning engineer] without Authority's approval of the replacement, in the following amount: <i>[Under development]</i> The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p>	
<p>Suspension</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"> 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 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 Authority. 	<p>GP § 25</p>
<p>Settlement of Disputes</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 arisen between the Authority and another Authority contractor, the Authority may consolidate pending arbitrations or join other such contractors in an arbitration with Contractor under certain circumstances.</p>	<p>GP § 32</p>

<p>Intellectual Property Rights Granted to Authority</p>	<p>Intellectual Property Definitions</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>Authority Rights to use IP</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 and Third Party IP solely in connection with the "Allowable Uses," which are limited to:</p> <ul style="list-style-type: none"> (a) the use, maintenance or repair of each Segment that has reached Final Acceptance, including the Maintenance of Way Facilities; (b) the use, maintenance, repair, construction or manufacture of any Segment in the Construction Period, including Maintenance of Way Facilities; and (c) equipment acquisitions by Authority related to clauses (a) and (b) above. <p>Delivery of IP into Escrow</p> <p>Contractor will identify all Background Inventions, Subject Inventions and Third Party IP in connection with the Allowable Uses and deliver the same into escrow, under an</p>	<p>GP §§ 1, 28</p>
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	<p>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>Subcontractor IP Obligations</p> <p>Contractor will cause all subcontractors to:</p> <ol style="list-style-type: none"> 1. Identify and disclose Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses; 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 3. Submit and deliver the escrow materials. <p>Release of IP from Escrow</p> <p>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>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 Authority. Authority will not unreasonably prohibit Contractor from assigning its right to payment, provided that Contractor remains responsible for all its obligations hereunder.</p> <p>Authority may assign with prior notice to Contractor, but without the need for Contractor’s consent, all or any portion of the Contract (including Authority’s rights under required insurance policies, letter(s) of credit, guaranties and Change Orders) to any entity, including (i) any entity that is or will be the Trainset operator and its successors and assigns or (ii) any entity succeeding to all or substantially all of Authority’s powers and authority of Authority respecting the high-speed rail system or its operations.</p>	<p>GP § 33</p>
<p>Consequential Damages</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"> • Losses (including defense costs) arising out of the 	<p>GP § 43.3</p>

	<p>work and covered by the proceeds of insurance carried by or insuring Contractor;</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; • Losses (including defense costs) arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence; • Contractor or Authority's indemnities under the Contract; • Performance-Based Payment Reductions assessed by 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 Authority. 	
<p>Limitation of Contractor's Liability</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"> • 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) covered by Contractor's indemnification obligations to the Authority; • Performance-Based Payment Reductions assessed by Authority; • Any liquidated damages; • Any type of cost arising from fraud, gross negligence, intentional misconduct or criminal acts of any Contractor-Related Entity; • 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 • All costs reasonably incurred by Authority or any party acting on Authority's behalf in correcting the 	<p>GP § 43.4</p>

	<p>work or having the work corrected by another Person. The limitation of Contractor's liability above will not affect Contractor's obligation to provide insurance.</p>	
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