

Corrigendum - 1 for Request for Proposal
For
Selection of Digital Entertainment Service Provider (DESP) for delivering Content
on Demand (COD) services on Build Own Operate (BOO) model for Indian
Railways



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1 Corrigendum-1 for Selection of Digital Entertainment Service Provider (DESP) for delivering Content on Demand (COD) services on Build Own Operate (BOO) model for Indian Railways

In reference to the Request for Proposal for Selection of Digital Entertainment Service Provider (DESP) for delivering Content on Demand (COD) services on Build Own Operate (BOO) model for Indian Railways reference no. RailTel/Tender/OT/CO/NTP/2021-22/COD/002 dated: 30th Dec 2021, all are advised to note following changes in the RFP document:

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1	Section-II- Clause- 2.17- (Entities Eligible for Participation)	New Clause	2.17.5 In accordance with Guidelines issued by Ministry of Finance through OM no. 6/18/2019-PPD dated 23.07.2020, any bidder from country which shares a land border with India will be eligible to bid only if the bidder is registered with the Competent Authority as defined in the Guidelines. Bidders are required to submit self-undertakings as per Form no. 4.37 (for bidders) and 4.38 (for sub-contractors) certifying their eligibility. Forms are annexed as Annexure 2 of this Corrigendum-1
2	Section-II- Clause- 2.40- (Contract Agreement)	2.40 Contract Agreement 2.40.1 The agreement shall be signed immediately after fulfilling the following conditions by the selected bidder: (i) make payment of the first annual instalment of the Minimum Guarantee (ii) Submission of valid Rolling Performance Bank Guarantee and (iii) Submit a duly signed copy of the Agreement (being the Letter of Award, General Conditions of Contract and RFP and proposal response) executed on non-judicial stamp paper of adequate value.	2.40 Contract Agreement 2.40.1 The agreement shall be signed immediately after fulfilling the following conditions by the selected bidder: (i) make payment of the first quarterly instalment of the Minimum Guarantee (ii) Submission of valid Rolling Performance Bank Guarantee and (iii) Submit a duly signed copy of the Agreement (being the Letter of Award, General Conditions of Contract and RFP and proposal response) executed on non-judicial stamp paper of adequate value.

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		Format of Contract Agreement is given at Section 4- Clause 4.35	Format of Contract Agreement is given at Section 4- Clause 4.35
3	Section-III- SCHEDULE 4: MINIMUM GUARANTEE FEE, REVENUE SHARE AND THIRD PARTY SERVICE RELATED UTILITY CHARGES- Clause 3.17/ Section V- Clause 5.8- Payment Schedule Template	3.17. Minimum Guarantee and REVENUE SHARE a. Bidder shall have to pay both quoted minimum guarantee as defined in para 3.17- b & c and revenue share based on year-wise slabs as defined in para 3.18 b. The selected bidder shall have to pay in advance the Minimum Guarantee in the manner set out in the Tender document/ Contract agreement. The first annual instalment of the Minimum Guarantee shall be paid to Railtel within 60 (sixty) days of issue of LOA. c. The Bidder/ DESP shall pay each annual instalment of the Minimum Guarantee in advance within 7 (seven) days from the start of the relevant annual period, calculated from the successful award of the contract from year 2 onwards. d. The Bidder shall have to pay the revenue share on monthly basis as per the revenue share defined in the Commercial model. The revenue share has to be accrued from the third quarter after the date of issue of LoA as illustrated in the table below. The revenue share component for the first two quarters of operations (from the date of issue of LoA) is exempted. Please note, that the revenue share for any month shall be paid within 7 days of the commencement of the subsequent month.	Clause Updated. Refer to Annexure-1 of this Corrigendum-1
4	Section III- SCHEDULE 11: GOVERNING LAW AND DISPUTE RESOLUTION	SCHEDULE 11: GOVERNING LAW AND DISPUTE RESOLUTION 3.38. Governing Law and Jurisdiction The Contract Agreement shall be governed by and construed in accordance with the laws of the Republic of India. Subject to clause mentioned below, the Courts of New Delhi shall have the	SCHEDULE 11: GOVERNING LAW AND DISPUTE RESOLUTION 3.38. Governing Law and Jurisdiction The Contract Agreement shall be governed by and construed in accordance with the laws of the Republic of India. Subject to clause mentioned below, the

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		jurisdiction over any matter arising out of or in relation to the Agreement. 3.39. Dispute Resolution a. In the event of any dispute or difference between the Parties hereto as to the subject matter of the agreement , or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Authority of any certificate to which the Bidder/ DESP may claim to be entitled to, or if the Authority fails to make a decision within 60 (sixty) days, then and in any such case, the Bidder/ DESP, after 60 (sixty) days but within 120 (one hundred twenty) days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration. b. The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Authority, shall be referred to arbitration and other matters shall not be included in the reference. c. The arbitration proceedings shall be held in the following manner: i. The arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Authority. ii. The claimant shall submit his claim stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 (thirty) days from the date of appointment of the arbitral tribunal (the “Tribunal”).	Courts of New Delhi shall have the jurisdiction over any matter arising out of or in relation to the Agreement. 3.39 Settlement of Disputes/ Arbitration 1) Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 as amended and the award made in pursuance thereof shall be binding on the parties. The venue of such arbitration or proceedings thereof shall be at New Delhi. However, when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual consultation. If the parties fail to resolve the dispute within 21 (Twenty-One) days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its intention to commence arbitration 2) All arbitration proceedings shall be conducted in English. Recourse against any arbitral award so rendered maybe entered into court having jurisdiction or application may be made to such court for the order of enforcement as the case may be.

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		iii. The Authority shall submit its defence statement and counter claim(s), if any, within a period of 60 (sixty) days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by the Tribunal. iv. The place of arbitration shall be within the geographical limits of the Location where the cause of action arose or the headquarters of the Authority or any other place with the written consent of both the parties. d. No new claim shall be added during the arbitration proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it. e. If the Bidder/ DESP does/do not prefer his/their specific and final claims in writing, within a period of 90 (ninety) days of receiving the intimation from the Authority that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Authority shall be discharged and released of all liabilities under the Agreement in respect of these claims. f. Work under the Agreement shall, unless otherwise directed by the Authority continue during the arbitration proceedings, and no payment due or payable by the Bidder/ DESP or the Authority shall be withheld on account of such proceedings, provided, however, it shall be open for the Tribunal to consider and decide whether or not such work should continue during arbitration proceedings. 3.40. Appointment of Arbitrator a. In cases where the total value of all claims in question added together does not exceed Rs. 25,00,000 (Rupees twenty five lakh only), the Tribunal shall consist of a Sole Arbitrator,	

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		nominated by the Railways. The sole arbitrator shall be appointed within 60 (sixty) days from the day when a written and valid demand for arbitration is received by the Authority. b. In cases not covered by the paragraph (a) above, the Tribunal shall consist of a panel of 3 (three) arbitrators. For this purpose, the Railway will send a panel of more than 3 (three) names within 60 (sixty) days from the day when a written and valid demand for arbitration is received by the Authority. The Bidder/ DESP will be asked to suggest to the Authority at least 2 names out of the panel for appointment as Bidder/ DESP's nominee within 30 (thirty) days from the date of dispatch of the request by the Authority. The Authority shall appoint at least one out of them as the Bidder/ DESP's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 (three) arbitrators so appointed. The Authority shall complete this exercise of appointing the Tribunal within 30 (thirty) days from the receipt of the names of the Bidder/ DESP's nominees. c. If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the Authority fails to act without undue delay, the Authority shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s). d. The Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Tribunal to make the award without any delay. The Tribunal	

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		should record day to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements. e. While appointing arbitrator(s) as mentioned above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the Contract Agreement relates or who in the course of his/their duties as Indian Railways' employee expressed views on all or any of the matters under dispute or differences. The proceedings of the Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the Contract Agreement relates or who in the course of his/their duties expressed views on all or any of the matters under dispute. f. The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom. g. A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 (sixty) days of receipt of the award. h. A party may apply to Tribunal within 60 (sixty) days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award. i. In case of the Tribunal, comprising of 3 (three) members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the presiding arbitrator shall prevail. j. Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.	

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		k. The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Authority or by the court of law unless specifically directed by Hon'ble court otherwise on the matter. l. Subject to the provisions of the aforesaid Arbitration and Conciliation Act, 1996 and the rules thereunder and any statutory modifications thereof shall apply to the arbitration proceedings under this Section 11.	
5	Section IV- Clause 4.33- Financial Bid Format	<u>Note:</u> 1. The Bidder is expected to quote above the Minimum Guarantee value of Rs 63 Cr. The quote is to be in Rs. Cr. without decimal places as part of the commercial bid exclusive of applicable taxes.	<u>All the Bidders who have uploaded the financial bid in the RailTel's E-Nivida portal as on date of issue of Corrigendum-1 are advised to re-download the new financial bid format and again upload their financial bid in the portal.</u> <u>Note:</u> 1. The Bidder is expected to quote equal to & above the Minimum Guarantee value of Rs 63 Cr. The quote is to be in Rs. Cr. without decimal places as part of the commercial bid exclusive of applicable taxes.
6	Section V- 5.6 Timelines and Project Deliverables	5.6 Timelines and Project Deliverables The Bidder is expected to follow the deliverable schedule as mentioned below. Each of the deliverables should be accompanied with a status update on the task by the bidder to Railways with a detailed and exhaustive list of challenges. The completion schedule will be carefully monitored in line with the Service Level agreements and implementation schedule as mentioned in the contract. The below implementation schedule	5.6 Timelines and Project Deliverables The Bidder is expected to follow the deliverable schedule as mentioned below. The implementation schedule of 2 years is the maximum period given to the bidder to implement the project. The bidder is free to complete the implementation work before the maximum timelines given. Each of the deliverables should be accompanied with a status update on the task by the bidder to RailTel/ Railways.

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		captures the timelines, with the underlined table detailing out the timeline blocks. All the schedules of implementation and installation as defined below would start from the date of Issue of LoA. Please refer to the schedule mentioned below for the phases of implementation.	The completion schedule will be carefully monitored in line with the Service Level agreements and implementation schedule as mentioned in the contract. The below implementation schedule captures the timelines, with the underlined table detailing out the timeline blocks. All the schedules of implementation and installation as defined below would start from the date of Issue of LoA. Please refer to the schedule mentioned below for the phases of implementation.
7	Tender Notice/Entire Tender Document	Due Date and time of Submission of bids (online submission) - 03.02.2022 till 1500 hrs Date and time of Opening of Technical bids- 03.02.2022 at 1530 hrs	Due Date and time of Submission of bids (online submission) - 17.02.2022 till 1500 hrs Date and time of Opening of Technical bids- 17.02.2022 at 1530 hrs
8	Section III-Clause 3.19- Verification of Revenue and escrow account creation	b) The authority may, in order to satisfy itself that the bidder is reporting its revenue share honestly and faithfully, depute any third party auditor to conduct Content, IT and financial audit of bidder to ascertain the actual fee revenues	b) The authority may, in order to satisfy itself that the bidder is reporting its revenue share honestly and faithfully, depute any third party auditor to conduct Content, IT and financial audit of bidder to ascertain the actual fee revenues. The same shall be verified with reference to clause no. 3.22 and 3.23 of Section III-GCC of the RFP.
9	Section III-SCHEDULE 5-CONTENT AND ADVERTISEMENTS ADHERENCE Clause 3.22-CONTENT	d. The DESP has to share content audit reports to railways on quarterly basis to ascertain that the content library has 50% fresh content. e. The DESP has to share certified reports to show that the content has been refreshed as per the SLA defined below. The	d. The DESP has to share content audit reports to RailTel on quarterly basis to ascertain that the content library has 50% fresh content. e. The DESP has to share certified reports to show that the content has been refreshed as per the SLA

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		railways holds the discretion to audit the same and may ask for additional details to prove the refresh SLA.	defined below. RailTel holds the discretion to audit the same and may ask for additional details to prove the refresh SLA.
10	Section III- SCHEDULE 5- CONTENT AND ADVERTISEMEN T ADHERENCE Clause 3.23- ADVERTISEMEN T	New Clause	b- vi. Copies of all Agreements/ Purchase Order/ LOA/Rate contracts etc (monthly reporting)
11	Section III- SCHEDULE 12- TAX AND INSURANCE Clause 3.41- Tax	The successful bidder and all personnel employed by him shall pay such taxes like GST, Income Tax or any other applicable taxes as are payable under statutory laws of India and RailTel will not accept any liability for the same. The Bidder shall be liable to pay any other similar tax, if payable, in respect of the Minimum Guarantee or the revenue share. If there is any reduction or increase in taxes / duties due to any reason whatsoever, the same shall be passed on to the bidder. Any foreign entity participating in the bid would be liable to comply with the applicable laws under taxation, with RailTel not being liable on any claims within or outside India.	The successful bidder and all personnel employed by him shall pay such taxes like GST, Income Tax or any other applicable taxes as are payable under statutory laws of India and RailTel will not accept any liability for the same. The Bidder shall be liable to pay any other similar tax, if payable, in respect of the Minimum Guarantee and the revenue share. If there is any reduction or increase in taxes / duties due to any reason whatsoever, the same shall be passed on to the bidder. RailTel will raise all invoices from Delhi state. However if bidder requires state-wise billing then, bidder will provide state-wise data upto 5th of next month for the amount collected in escrow account. If data is not provided by 5th of next month then invoice will be generated from Delhi state. Any foreign entity participating in the bid would be liable to comply with the applicable laws under taxation, with RailTel not being liable on any claims within or outside India.

1.1 Annexure 1 – Updated Section III- SCHEDULE 4: Minimum Guarantee Fee, Revenue Share and Third Party Service related Utility Charges

3.17. Minimum Guarantee and REVENUE SHARE

- a. Bidder shall have to pay both quoted minimum guarantee as defined in para 3.17- b, c & d and revenue share based on year-wise slabs as defined in para 3.18
- b. **Q1 of Year 1:** The selected bidder shall have to pay the Minimum Guarantee in the manner set out in the Tender document/ Contract agreement. The first **quarterly** instalment of the Minimum Guarantee shall be paid to Railtel within 60 (sixty) days of issue of LOA.
- c. **Q2 of first year till Q4 of Year 2: The Bidder shall pay each quarterly instalment of the Minimum Guarantee within 7 (seven) days from the start of the relevant quarterly period, calculated from the successful award of the contract.**
- d. **Year 3 onwards:** The Bidder shall pay each annual instalment of the Minimum Guarantee within 7 (seven) days from the start of the relevant annual period, calculated from the successful award of the contract.
- e. The Bidder shall have to pay the revenue share on monthly basis as per the revenue share defined in the Commercial model. The revenue share has to be accrued from the third quarter after the date of issue of LoA as illustrated in the table below. The revenue share component for the first two quarters of operations (from the date of issue of LoA) is exempted. **The bidder will also have option to settle revenue share on daily basis (bank working day) subject to threshold limit of minimum Rs 25 lakhs, subject to maximum one settlement per day. In case the minimum threshold of Rs 25 lakhs is not reached on any working day, the amount would be settled on the next working day on which the minimum threshold limit reaches. However, in any case, the billing, reconciliation, audit & SLA will follow be as per the extant terms of RFP.**

Time Period (from date of issue of LOA)	Minimum Guarantee	Revenue Share (monthly payout) (through escrow account)
Year 1 (Quarter 1)	25% of Quoted Annual Minimum Guarantee (Within 60 (sixty) days of issue of LOA)	Exempted for Q1
Year 1 (Quarter 2)	25% of Quoted Annual Minimum Guarantee (Within 7 (seven) days from the start of the relevant quarterly period)	Exempted for Q2
Year 1 (Quarter 3 and Quarter 4)		Payable for Q3* & Q4*
Year 2	25% of Quoted Annual Minimum Guarantee (Within 7 (seven) days from the start of the relevant quarterly period)	Payable monthly*.
Year 3-10	100% of Quoted Annual Minimum Guarantee (Within 7 (seven) days from the start of the relevant annual period)	Payable monthly*.

* Revenue share in month (for applicable year) = Total Revenue as computed according to the revenue slabs upto the month LESS total revenue paid in previous months (for the corresponding year) .

1.2 Annexure 2 – Form 4.37 and 4.38

i) **4.37- Certificate to be provided by Tenderer on their letter heads:**

“I have read the clause regarding restrictions on bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority, I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]”

ii) **4.38- Certificate for Tenderer for Works involving possibility of sub-contracting**

“I have read the clause regarding restrictions on bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]”.