

Pre Bid Clarifications dt. 05.09.2019

EOI No. RailTel/EOI/MKTG/2019-20/DSP/493 dt. 29th July 2019

Date of Pre Bid Meeting: 14.08.2019

Venue: RailTel Corporate Office , Gurgaon

S. No.	Clause No.	Page No.	Clause Description	Query	RailTel's Remarks/ Clarifications
A	Queries by M/s Makeip				
A1	Clause 2 of Annexure A	30	Consortium: Consortium is allowed in Open Category only. A consortium may comprise of any of the entity mentioned above and there can be a maximum of 2 members in a consortium. Only one offer shall be accepted from one organization. A consortium agreement and undertaking has to be attached with the EOI documents (ANNEXURE-E). The consortium members can form a JV or a new business entity to implement the service in the post EOI stage but before execution of agreement with RailTel. However, if any member of the Consortium quits the consortium during the service implementation phase, the Lead bidder shall be responsible to continue the service for the duration of the agreement with the Competent Authority (RailTel). The remaining member may be allowed to induct a new member under intimation to the Competent Authority (RailTel) for the duration of the service. However, at all times, the consortium should meet the eligibility criteria laid in this EoI. No consortium is allowed in 'Start Up / Incubate Category'.	<p>We request the amendment to the line ' Only one offer shall be accepted from one organization'. Request your consideration for changing this line to 'only one offer shall be accepted from the lead bidder' in order to achieve the below objective</p> <p>As scenario of bidding may be such that lead bidder will be one. But second member may be common with multiple OEMs expertise go to market expertise to build the business. This will help multiple OEMs to use the market expertise of one company who will be acting as second member in multiple consortium.</p>	A suitable modification has been done in the EoI clause. May kindly refer Corrigendum III
A2	New Clause Request			Request you to consider a system where a mature and proven product can be given a preference and accordingly given price preference for short listing.	Evaluation process is already defined. Kindly refer Annexure- B of EoI.
A2.1	New Clause Request			a. You may device a point system by including some of the below points and more, i. Stable product with more features and shown working in the POC at Railtel. ii. Proven product with existing installed base. iii. Product giving flexibility to Railtel to OEM its product under Railtel brand name.	Evaluation process is already defined. Kindly refer Annexure- B of EoI.
A2.2	New Clause Request			b. Product with more points can be given price benefit under a defined formulae as prescribed by Railtel.	Evaluation process is already defined. Kindly refer Annexure- B of EoI.
A2.3	New Clause Request			In case of DSP getting business to Railtel, we request you to give the exclusivity or clear preference to DSP for giving back to back business.. This is required, as lot of investment will go into getting the business.	Kindly refer Clause 3.1.1 of Annexure- C which gives "first right of refusal".
B	Queries by M/s STARMASS				
B1				Request for allowing foreign companies to participate in EoI	
C	Queries by NxtGen Datacenter & Cloud Technologies Pvt. Ltd				
C1	S.No. 3 of Table under para 3c of Annexure-A	31	<p>Pre-Qualification Criteria: The DSP should have Cumulative turnover of at least INR 5 Crores in last 3 years in India as per the standalone financial statements.</p> <p>Documentary Evidence Required in Open Category: Copy of audited relevant financial statements for the entity or its global entity for the last 3 years.</p> <p>Documentary Evidence Required in Start Up / Incubate Category:</p>	We can provide a certificate signed by a signatory authority. Please confirm.	EOI clause is clear and may be complied.

			No Turnover Requirement. However, registration certificate as per DIPP notification / issued by DST-IC is to be enclosed		
C2	S.No. 4 of Table under para 3c of Annexure-A	32	<p>Pre-Qualification Criteria: The DSP must have profitable operations in India for at least 2 of the last 3 years preceding the date of submission of EoI.</p> <p>Documentary Evidence Required in Open Category: Copy of audited profit and loss statement for the entity or its global entity for last 3 years.</p> <p>Documentary Evidence Required in Start Up / Incubate Category: Not Applicable</p>	We can provide a certificate signed by a signatory authority. Please confirm.	EoI clause is clear and may be complied.
C3	Clause 2 of Annexure A	30	Consortium: Consortium is allowed in Open Category only. A consortium may comprise of any of the entity mentioned above and there can be a maximum of 2 members in a consortium. Only one offer shall be accepted from one organization. A consortium agreement and undertaking has to be attached with the EOI documents (ANNEXURE-E). The consortium members can form a JV or a new business entity to implement the service in the post EOI stage but before execution of agreement with RailTel. However, if any member of the Consortium quits the consortium during the service implementation phase, the Lead bidder shall be responsible to continue the service for the duration of the agreement with the Competent Authority (RailTel). The remaining member may be allowed to induct a new member under intimation to the Competent Authority (RailTel) for the duration of the service. However, at all times, the consortium should meet the eligibility criteria laid in this EoI. No consortium is allowed in 'Start Up / Incubate Category'.	Regarding Consortium: Will DSP be allowed to partner with different partners for different services?	A suitable modification has been done in the EoI clause. May kindly refer Corrigendum III
C4	Clause 2.2 of Annexure C	40	2.2. ROLES AND RESPONSIBILITY OF THE EMPANELLED DSP: The successful bidder has to provide as under		
			2.2.6. Hold monthly Coordination Committee meetings with the Nodal Officer of the Department and update on progress of the work and transfer all data to the Nodal Officer.	What data is intended to be transferred to Nodal officer? this is contrary to term 13.2 wherein if the Content is categorized as confidential information shall always remain the property of the owner.	This clause pertains to the work status and related information thereof.
			2.2.9. The DSP shall be responsible for obtaining the copyrights/IPRs at its own costs, for the entire content of various types provided	The content for CDN and Cloud Services is not in control of DSP thus respective copywriter will be applicable.	The Clause is related to Copy rights/IPR of the offered services by DSP.
C5	Clause 2.3 of Annexure C	40-41	<p>2.3. ROLES AND RESPONSIBILITY OF RailTel: RailTel shall provide all support and enforcement to help execution of the service for the period of contract and all approvals etc as may be required for execution of the said service. This shall include but not limited to the following:</p> <p>2.3.4.1. RailTel Data Centre for hosting Data Centre Managed Services at discounted rates of such facility. Empanelled DSP need to comply with the terms and conditions of the Data Centre Policy of RailTel.</p>	<p>> IS this Optional, the DSP may have their own platforms running at DSP's datacenter facilities, can that be leverages independently or jointly with RailTel Datacenter.</p> <p>> What are the SLAs provided by RailTel for hosting the solutions in their Datacenters?</p> <p>> Will RailTel provide required legal and regulatory clearance from respective govt agencies to DSP as Data Custodian and right of access for collection, processing and storage of data?</p>	RailTel encourage to use RailTel's Data Centre for hosting the DSP services. The SLA will be discussed with the successful DSP. Regarding responsibility towards legal and regulatory clearance, the discussion will be held with successful empanelled DSP based on the offered serviced.
C6	Clause 3. of Annexure C	41	<p>3. SERVICE EXECUTION MODE</p> <p>3.1. The Digital Service Partner (DSP) will develop business in consultation with RailTel. After developing business, the deal can be converted into firm orders, normally in the following ways:</p>	Will there be exclusivity of DSPs for specified categories? This section is bit confusing, RailTel may have multiple DSPs offering the same service as per point #3.1.1 / 3.1.2 and 3.2.1 thus return on the DSP investment for offering that service solely on the RailTel DC might be at risk of losing out on revenue generation opportunities.	There may be multiple DSP in each vertical.
C7	Clause 5.1 of Annexure C	43	Gestation period of 12 months shall be given to the DSP after the date of issue of Empanelment Letter and signing the agreement for business generation and within this period at least Business Work order of ₹ 01 Crore for Open Category and ₹25 Lakhs for Start-Up Category has to be acquired by the efforts of DSP.	Will RailTel offer exclusivity to DSP service to make this possible as joint effort.	There may be multiple DSP in each vertical.
C8	Clause 6.1 of Annexure C	44	<p>6. CUSTOMER COMPLAINT RESOLUTION</p> <p>6.1. That this shall be as per the Service Level Agreement for specific contracts that become operational and as per the roles and responsibilities of the RailTel&DSP.</p>	Need to have a RACI matrix between RailTel and DSP for underlying Non-IT infra and connectivity.	Will be discussed with successful DSP.
C9	Clause 10 of Annexure C	44	EXIT CLAUSE		
C9.1	Clause 10.1 of Annexure C	44	The DSP may exit from this business or prematurely revoke this agreement by giving Six (06) months written notice to RailTel after one year lock in period. Similarly, RailTel can also exit prematurely from this agreement after giving Six(06)months written notice to Partner after one year lock in period. This shall be done without any claim of liability on each other.	What will be the impact on long term customer contracts, whom will DSP provide the transition of services?	This is part of clause 10 and may be read along with full Clause No. 10

C9.2	Clause 10.2 of Annexure C	44	10.2. Exit Option Exercised By DSP: 10.2.1. In case any service is already operational and RailTel wants to acquire the assets and want to continue with the service then in such case RailTel may acquire the asset created by the DSP for delivery of service, on mutually agreed market value or depreciated value whichever is lower, and RailTel will have the first right of acceptance/refusal.	How will the market value of the IP associated with services offered will be determined?	This is part of clause 10 and may be read along with full Clause No. 10
C10	Clause 2.2.5 of Annexure C	40	EBG of Rs 2,00,000/- (Rupees Two Lakhs) and service specific PBG on service to service basis shall be submitted by the DSP to RailTel as per clause 14.3 of the EOI. DSP / PARTNER may have back-end relationship with other specialized entities for providing necessary equipment / services / solutions. These relationships shall not have any liability on RailTel and RailTel shall, in no way, be a party to it and should be indemnified.	Does this mean that DSP has to provide PBG for each and every service separately. Clause is not clear .Kindly elaborate.	A suitable modification has been done in the EoI clause. May kindly refer Corrigendum III
C11	Clause 3.1.1 of Annexure C	41	ON NOMINATION BASIS TO RAILTEL BASED ON EFFORTS OF DSP: In such cases, normally initially the budgeted quote is required to be given. The same will be given to customers by taking the budgeted quote from the concerned DSP. The RailTel may moderate (increase / decrease) the price quoted based on their own experience (if any). Once business is received by RailTel on nomination basis through any DSP, then price discovery will be done by calling the rates from the empanelled DSP's. In case the DSP through whom the business has been secured is not the L1 bidder for select or all the items, then first right of refusal by "Counter Offer" will be given to that DSP through whom the business has been secured for matching the L1 price for that select or all the items. In case the DSP accepts it then the service will be awarded to him, otherwise the service will be given to the actual L1 bidder	We wish to recommend that in case Nomination case is received , then the L1 route should not be exercised by RailTel and it should allow the rates as is .	EOI clause is clear and may be complied.
C12	Clause 14.3	24	14.3 Escrow Account: In case the services rendered to the customer involve any software service, then source code of the software needs to be shared with RailTel through an Escrow Account. However, the requirement of Escrow Account will be on case to case on mutual discussion basis and as per arrangements/requirement of the customer.	We would like to know that in case of analytics, where the source code is proprietary. We would recommend to amend or drop the clause.	EoI clause is clear and need to be complied.
C13	Clause 1.5 of Annexure C	39	The DSP shall not transfer its rights and obligations under this agreement to any other party. In case of a merger of amalgamation of DSP or RailTel with any other entity, the rights and obligations under this agreement will stand transferred to the merged entity.	Is the DSP is allowed to partner with different partners for different services.	The Query is not relevant to this clause. Kindly refer Consortium clause No. 2 of Annexure A of EOI.
D	Queries by Tata Consultancy Services				
D1	Clause 12	23	AGREEMENT: An agreement would be executed simultaneously to ensure successful working of the system between the RailTel and the bidder / consortium selected to implement the system that would also define the terms and conditions for completion of the service in a time-bound manner. In the event that any provision of the agreement is rendered invalid or unenforceable by any law or regulation or declared null and void by any Court of Competent Jurisdiction, that shall be reformed, if possible to conform to law and if reformation is not possible, that part of the Agreement shall be amended/deleted, the remainder of the provisions of the agreement shall remain in full force and effect. That this contract and the agreement shall endure irrespective of change of constitution of the implementing agency or any amendment to the act / rules / regulations / bye laws hereafter made and shall have an arbitration clause in the agreement. That the EOI document and outcomes of all negotiations with the selected bidder shall form a part of the agreement. Amendments / additions may also be necessitated on account of Evaluation Committee deliberations. The contract shall be governed by and construed according to the laws in force in India and subject to exclusive jurisdiction of the Courts of Delhi only. i. Draft Agreement has been enclosed with the EOI documents as Annexure 'J'	Please amend as suggested: A mutually agreed agreement would be executed simultaneously to ensure successful working of the system between the RailTel and the bidder / consortium selected to implement the system that would also define the terms and conditions for completion of the service in a time bound manner. In the event that any provision of the agreement is rendered invalid or unenforceable by any law or regulation or declared null and void by any Court of Competent Jurisdiction, that shall be reformed, if possible to conform to law and if reformation is not possible, that part of the Agreement shall be amended/deleted, the remainder of the provisions of the agreement shall remain in full force and effect. That this contract and the agreement shall endure irrespective of change of constitution of the implementing agency or any amendment to the act / rules / regulations / bye laws hereafter made and shall have an arbitration clause in the agreement. That the EOI document and outcomes of all negotiations with the selected bidder shall form a part of the agreement. Amendments / additions may also be necessitated on account of Evaluation Committee deliberations. The contract shall be governed by and construed according to the laws in force in India and subject to exclusive jurisdiction of the Courts of Delhi only.	EOI clause is clear and may be complied.
D2	Clause 13	23	13. SIGNING OF THE AGREEMENT: i. The signing of agreement as per Annexure-J shall constitute the empanelment of bidder. Agreement will be signed only after submission of Empanelment Bank Guarantee (EBG) by the selected partner. ii. Upon the successful bidder furnishing Empanelment Bank Guarantee (EBG), RailTel shall discharge the EMD submitted by the firm.	Please amend as suggested: i. The signing of a <u>mutually agreed</u> agreement as per Annexure-J shall constitute the empanelment of bidder. Agreement will be signed only after submission of Empanelment Bank Guarantee (EBG) by the selected partner. ii. Upon the successful bidder furnishing Empanelment Bank Guarantee (EBG), RailTel shall discharge the EMD submitted by the firm.	EOI clause is clear and may be complied.

D3	Clause 14	24	<p>14.1 PATENT RIGHTS: The DSP shall indemnify the RailTel against all third-party claims/actions of infringement of patent, trademark or industrial design rights arising from use of the goods or any part thereof in service delivery by the DSP.</p> <p>14.2 INDEMNITY: The DSP shall indemnify, defend and hold RailTel harmless from and against any losses, costs, expenses, damages of whatsoever nature which may be incurred or suffered by RailTel which arises out of or as a result from any breach of contract, warranty, tort (including negligence) or otherwise of DSP's obligation or agreement contained herein.</p> <p>14.3 Escrow Account: In case the services rendered to the customer involve any software service, then source code of the software needs to be shared with RailTel through an Escrow Account. However, the requirement of Escrow Account will be on case to case on mutual discussion basis and as per arrangements/requirement of the customer.</p>	<p>Please amend as suggested:</p> <p>14.1 PATENT RIGHTS: The DSP shall indemnify the RailTel against all third-party claims/actions of infringement of patent, trademark or industrial design rights arising from use of the goods or any part thereof in service delivery by the DSP.</p> <p>14.2 INDEMNITY: The DSP shall indemnify, defend and hold RailTel harmless from and against any losses, costs, expenses, damages of whatsoever nature which may be incurred or suffered by RailTel which arises out of or as a result from any breach of contract, warranty, tort (including negligence) or otherwise of DSP's obligation or agreement contained herein. DSP shall have no obligations with respect to any Infringement Claims to the extent that the Infringement Claim arises or results from: (i) DSP's compliance with RAILTEL's specific technical designs or instructions; (ii) inclusion in a Deliverable of any content or other materials provided by RAILTEL and the infringement relates to or arises from such RAILTEL provided material; (iii) modification of a Deliverable after delivery by DSP to RAILTEL if such modification was not made by or on behalf of the DSP; or (iv) use of the Deliverable in combination with products not provided by DSP or otherwise not contemplated in the applicable specifications or documentation. Additional Obligation of DSP. In the event that RAILTEL is enjoined or otherwise prohibited, or is reasonably likely to be enjoined or otherwise prohibited, from using any Deliverable as a result of or in connection with any claim for which DSP is required to indemnify RAILTEL under Section _____, DSP, may at its own expense and option: (i) procure for RAILTEL the right to continue using such Deliverable; (ii) modify the Deliverable so that it becomes non-infringing without materially altering its capacity or performance; or (iii) replace the Deliverable with work product that is equal in capacity and performance but is non-infringing. If none of the above alternatives are reasonably available, DSP shall refund the fees paid by RAILTEL for the infringing Deliverable and RAILTEL shall cease using such Deliverable. Additional Provisions for Indemnification A party shall not be entitled to seek any indemnification from the other party unless such party provides the other party with (i) prompt written notice of any claim, demand or action for which such party is seeking or may seek indemnification hereunder and gives the indemnifying party the right to control the defense; (ii) reasonably cooperate with the indemnifying party in assisting the defense of the claim and in the negotiations or settlements of any such claim, demand or action; and (iii) allow the other party, at its own expense, to participate in such litigation, negotiations and settlements with counsel of its own choosing. The indemnifying party shall not have the right to settle any claim if such settlement contains a stipulation to, or an admission or acknowledgement of, any wrongdoing (whether in tort or otherwise) on the part of the indemnified party. All intellectual property rights in the software, all tools, processes, software, utilities and methodology including any DSP's proprietary products or components thereof any development carried out by DSP thereto in the course of providing services hereunder, including customisation, enhancement, interface development etc. shall remain the exclusive property of DSP and RailTel shall not acquire any right title or interest of any nature therein except to the extent provided herein. DSP shall however grant in favour of RailTel the right and non exclusive, non transferable, perpetual and irrevocable license to use the software for the purposes agreed hereunder. The foregoing license does not authorizes RailTel to (a) separate DSP pre-existing IP from the deliverable/software in which they are incorporated for creating a stand alone product for marketing to others; (b) independently sell, lease, exchange, mortgage, pledge, license, sub license, assign or in any other way convey, transfer or alienate the DSP pre-existing IP in favour of any person (either for commercial consideration or not (including by way of transmission), and/or (c) except as specifically and to the extent permitted by the DSP in the relevant Statement of Work, reverse compile or in any other way arrive at or attempt to arrive at the source code of the DSP pre-existing IP. All the Intellectual Property Rights (IPR) in the third party software used in providing services</p>	EOI clause is clear and may be complied.
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				<p><u>including those forming part of or incorporated into the deliverables shall remain with the respective third party owners/ DSP's licensor and RailTel shall have user rights in accordance with end user license agreement (EULA) as applicable to use of such software.</u></p> <p>14.3 Escrow Account:</p> <p>In case the services rendered to the customer involve any software service, then source code of the software needs to be shared with RailTel through an Escrow Account. However, the requirement of Escrow Account will be on case to case on mutual discussion basis and as per arrangements/requirement of the customer.</p>	
D4	Clause 14	25	<p>14.4 BANK GUARANTEE:</p> <p>f)f) In case there are more than one work with DSP and in case DSP fails to perform its obligations or unsatisfactory performance and /or withdraws service midway from any of the work awarded, then PBG of works awarded to DSP will be encashed. Further it is clarified that generally PBG will be encashed of the work in default only. However, EBG/ other PBG available may be encashed if loss of the work is not indemnified and a partner may liable to be delisted from Digital Service Partner (DSP) empanelled list</p>	<p>Please ammend as suggested:</p> <p>14.4 BANK GUARANTEE:</p> <p>f) In case there are more than one work with DSP and in case DSP fails to perform its obligations or unsatisfactory performance and /or withdraws service midway from any of the work awarded, then PBG of works awarded to DSP will be encashed. Further it is clarified that generally PBG will be encashed of the work in default only. However, EBG/ other PBG available may be encashed if loss of the work is not indemnified and a partner may liable to be delisted from Digital Service Partner (DSP) empanelled list.</p>	EOI clause is clear and may be complied.
D5	Clause 14	25-26	<p>14.7 FORCE MAJEURE:</p> <p>a) If at any time, during the continuance of this contract, the performance in whole or in part by either party of any obligations under this contract shall be prevented or delayed by reason of any war, or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restriction, strikes, lockouts or act of God (Hereinafter referred to as events) provided notice of happenings, of any such eventuality is given by the either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate this and contract shall be resumed as soon as practicable after such event may come to an end or cease to exist, and the decision of the RailTel as to whether the deliveries have been so resumed or not shall be final and conclusive, provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 60 days either party may, at its option terminate the contract.</p> <p>b) Provided also that if the contract is terminated under this clause, the RailTel shall be at liberty to take over from the DSP at a price to be fixed by the Purchaser, which shall be final, all unused, undamaged and acceptable materials, bought out components and stores in course of manufacturer in possession of the DSP at the time of such termination of such portions thereof as the purchaser may deem fit excepting such materials / bought out components and stores as the contractor may with concurrence of the purchaser elect to retain.</p>	<p>Please amend as suggested:</p> <p>14.7 FORCE MAJEURE:</p> <p>a) If at any time, during the continuance of this contract, the performance in whole or in part by either party of any obligations under this contract shall be prevented or delayed by reason of any war, or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restriction, strikes, lockouts or act of God (Hereinafter referred to as events) provided notice of happenings, of any such eventuality is given by the either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate this and contract shall be resumed as soon as practicable after such event may come to an end or cease to exist, and the decision of the RailTel as to whether the deliveries have been so resumed or not shall be final and conclusive, provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 60 30 days either party may, at its option terminate the contract.</p> <p>b) Provided also that if the contract is terminated under this clause, the RailTel shall be at liberty to take over from the DSP at a price to be fixed by the Purchaser, which shall be final, all unused, undamaged and acceptable materials, bought out components and stores in course of manufacturer in possession of the DSP at the time of such termination of such portions thereof as the purchaser may deem fit excepting such materials / bought out components and stores as the contractor may with concurrence of the purchaser elect to retain.</p>	EOI clause is clear and may be complied.
D6	Clause 14	26-27	<p>14.8 TERMINATION FOR DEFAULT:</p> <p>b) Gestation period of 12 months shall be given to the DSP after the date of issue of Empanelment Letter and signing the agreement for business generation and within this period at least Business Work order of ₹ 01 Crore for Open Category and ₹25 Lakhs for Start-Up Category has to be acquired by the efforts of DSP.</p> <p>i. If the selected DSP fails to generate even one lead of this volume, the DSP shall be given another grace period of additional 3 months to acquire service(s) of at least 1 crore (Open Category)/ ₹25 Lakh (Start-Up category)value. If the DSP fails to deliver even in the extended grace period then the empanelment shall stand terminated without any further notice. In addition to the requirement of generation of business by the efforts of DSP in the gestation period, a DSP partner has to ensure business engagement with RailTel and if the DSP has no service engagement for a period of six months (after successful completion of gestation period) during tenure of the empanelment, RailTel may delist the DSP from the Empanelment list, without any further notice as soon as twelve months non-engagement period completes.”</p> <p>ii. Post the acquisition, DSP should successfully execute the work and payments</p>	<p>Please amend as suggested:</p> <p>14.8 TERMINATION FOR DEFAULT:</p> <p>b) Gestation period of 12 months shall be given to the DSP after the date of issue of Empanelment Letter and signing the agreement for business generation and within this period at least Business Work order of ₹ 01 Crore for Open Category and ₹25 Lakhs for Start-Up Category has to be acquired by the efforts of DSP.</p> <p>i. If the selected DSP fails to generate even one lead of this volume, the DSP shall be given another grace period of additional 3 months to acquire service(s) of at least 1 crore (Open Category)/ ₹25 Lakh (Start-Up category)value. If the DSP fails to deliver even in the extended grace period then the empanelment shall stand terminated without any further notice. In addition to the requirement of generation of business by the efforts of DSP in the gestation period, a DSP partner has to ensure business engagement with RailTel and if the DSP has no service engagement for a period of six months (after successful completion of gestation period) during tenure of the empanelment, RailTel may delist the DSP from the Empanelment list, without any further notice as soon as twelve months</p>	EOI clause is clear and may be complied.

			<p>shall be realized within the stipulated time frame as mentioned in the contract with the client and Non-compliance shall lead to termination of the empanelment.</p> <p>c) Upon occurrence of any of the defaults, the RailTel would follow the procedures of issuing time bound Notice/Show Cause before deciding on termination of the agreement. The decision of the RailTel shall be final and binding on the Bidder.</p> <p>d) In such case the RailTel shall intimate the selected bidder in writing about all issues where performance is below the expected level or is not satisfactory and the selected bidder shall be given 90 days to rectify the same. Failure to rectify the same shall result in termination of the contract.</p> <p>e) The contract shall not be terminated for failure to discharge responsibilities due to force majeure situations or failure by RailTel to meet conditions precedent.</p>	<p>non-engagement period completes.”</p> <p>ii. Post the acquisition, DSP should successfully execute the work and payments shall be realized within the stipulated time frame as mentioned in the contract with the client and Non-compliance shall lead to termination of the empanelment.</p> <p>c) Upon occurrence of any of the defaults, the RailTel would follow the procedures of issuing time bound Notice/Show Cause before deciding on termination of the agreement. The decision of the RailTel shall be final and binding on the Bidder.</p> <p>d) In such case the RailTel shall intimate the selected bidder in writing about all issues where performance is below the expected level or is not satisfactory<u>agreed level</u> and the selected bidder shall be given 90 days to rectify the same. Failure to rectify the same shall result in termination of the contract.</p> <p>e) The contract shall not be terminated for failure to discharge responsibilities due to force majeure situations or failure by RailTel to meet conditions precedent.</p>	
D7	Clause 14	28	<p>14.11 ARBITRATION:</p> <p>a) The parties shall attempt to resolve through good faith and consultation in their behalf, disputes arising in connection with this agreement, and such consultation shall begin promptly after a Party has delivered to another Party a written request for such consultation.</p> <p>b) Without prejudice to the provisions hereof, in the event of any dispute, difference, conflict or question arising between the parties hereto relating to or concerning or arising out of this agreement, the same shall be referred to arbitration, which shall be held in New Delhi. The arbitration proceedings shall be in accordance with the provision of the arbitration and Conciliation Act 1996 and any other statutory amendments or modifications thereof. Arbitrator shall be appointed by CMD/RailTel. The decision of arbitrator shall be final and binding on both parties. The arbitration proceedings shall be conducted in the English language. Each party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrators, shall be shared equally by the parties unless the award otherwise provides.</p>	<p>Please amend as suggested:</p> <p>14.11 ARBITRATION</p> <p>a) The parties shall attempt to resolve through good faith and consultation in their behalf, disputes arising in connection with this agreement, and such consultation shall begin promptly after a Party has delivered to another Party a written request for such consultation.</p> <p>b) Without prejudice to the provisions hereof, in the event of any dispute, difference, conflict or question arising between the parties hereto relating to or concerning or arising out of this agreement, the same shall be referred to arbitration, which shall be held in New Delhi. The arbitration proceedings shall be in accordance with the provision of the arbitration and Conciliation Act 1996 and any other statutory amendments or modifications thereof. Arbitrator shall be appointed by CMD/RailTel<u>parties mutually</u>. The decision of arbitrator shall be final and binding on both parties. The arbitration proceedings shall be conducted in the English language. Each party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrators, shall be shared equally by the parties unless the award otherwise provides.</p>	Suitable amendment has been done in the clause. May kindly refer Corrigendum-III
D8	Clause 10 of Annexure C	45	<p>10.3.1 In cases where RailTel has exercised the exit option, the assets created by the DSP will be of the DSP and they will be free to use it any fashion as deemed fit. However, the services of existing customers will be decided based on agreement terms and conditions</p> <p>10.4. After exit from the agreement as a result of being empanelled under this EOI:</p> <p>10.4.1. Neither party shall represent the other party in any of its dealings.</p> <p>10.4.2. Neither party shall intentionally or otherwise commit any act (s) as would make a third party to believe that the other party is still the former Party's service provider; as the case may be.</p> <p>10.4.3. The expiration or termination of the agreement for any reason whatsoever shall not affect any obligation of either party having accrued under this agreement prior to the expiration or termination shall be without prejudice to any liabilities of either party to the other party existing at the date of expiration or termination of the agreement.</p>	<p>Please ammend as suggested:</p> <p>10.3.1 In cases where RailTel has exercised the exit option, the assets created by the DSP will be of the DSP and they will be free to use it any fashion as deemed fit. However, the services of existing customers will be decided based on agreement terms and conditions.</p> <p>10.4. After exit from the agreement as a result of being empanelled under this EOI:</p> <p>10.4.1. Neither party shall represent the other party in any of its dealings.</p> <p>10.4.2. Neither party shall intentionally or otherwise commit any act (s) as would make a third party to believe that the other party is still the former Party's service provider; as the case may be.</p> <p>10.4.3. The expiration or termination of the agreement for any reason whatsoever shall not affect any obligation of either party having accrued under this agreement prior to the expiration or termination shall be without prejudice to any liabilities of either party to the other party existing at the date of expiration or termination of the agreement.</p>	EOI clause is clear and may be complied.
D9	Clause 15 of Annexure C	47	<p>15 LIABILITY:</p> <p>15.1 Except as provided in this agreement, hereinabove, neither party shall be liable to other party or any other party by virtue of termination of this agreement for any reason whatsoever for any claim for loss or profit or on account for any expenditure, investment, leased, capital improvements or any other commitments made by the other party in connection with their business made in reliance upon or by virtue of this agreement.</p>	<p>Please amend as suggested:</p> <p>15.1 Except as provided in this agreement, hereinabove, neither party shall be liable to other party or any other party by virtue of termination of this agreement for any reason whatsoever for any claim for loss or profit or on account for any expenditure, investment, leased, capital improvements or any other commitments made by the other party in connection with their business made in reliance upon or by virtue of this agreement. <u>Neither party shall be liable to the other for any special, indirect, incidental, consequential (including loss of profit or revenue, loss of data), exemplary or punitive damages whether in contract, tort or other theories of law, even if such party has been advised of the possibility of such damages. The total cumulative liability of either party arising</u></p>	EOI clause is clear and may be complied.

				<p><u>from or relating to this Agreement shall not exceed the total amount paid to DSP by the RAILTEL in the preceding twelve months under that applicable work that gives rise to such liability (as of the date the liability arose); provided, however, that this limitation shall not apply to any liability for damages arising from (a) willful misconduct or (b) indemnification against third party claims for infringement.</u></p>	
D10	Annexure -H	54	<p>Ref: Date: To, Executive Director / Enterprise Business RailTel Enterprise Limited, 143,Sector-44, Gurugram-122003 REF: Expression of Interest for Empanelment of Digital Service Partner (DSP) Dear Sir, 1. I/We, the undersigned, having carefully examined the referred EOI offer to participate in the same, in full conformity with the said EOI along with subsequent related corrigenda issued and all the terms and conditions thereof. 2. We agree to abide by this Proposal, consisting of this letter, our Pre-qualification, Technical and Commercial Proposals, for a period of 90 days from the date fixed for submission of Proposals as stipulated in the EOI and modifications resulting from contract negotiations, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period. 3. I/ We acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the DSP for the aforesaid Service, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Proposal are true copies of their respective originals. 4. We have applied underCategory. 5. I/We have enclosed towards Empanelment Processing Fees a Bankers Cheque / Demand Draft No. dated drawn on for Rs/- (RupeesOnly) that is applicable to the category under which this EoI response has been submitted and enclosed with this letter. 6. I/We have also enclosed towards Earnest Money Deposit a Bankers Cheque/ Demand Draft No. dated drawn on for Rs 2,00,000 (Rupees Two Lakh Only) and been enclosed with this letter.(Not applicable for Startup organizations registered with DIPP/Incubatee Organizations registered with DST approved incubation centre/MSME organizations registered with NSIC.) 7. We undertake, if our Bid is accepted, to commence our services as per scope of work as specified in the contract document. 8. Bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement. 9. That Sh working in the capacity of on behalf of our Company / Consortium is hereby authorized to sign all EOI documents.</p>	<p>Please amend as suggested: Ref: Date: To, Executive Director / Enterprise Business RailTel Enterprise Limited, 143,Sector-44, Gurugram-122003 REF: Expression of Interest for Empanelment of Digital Service Partner (DSP) Dear Sir, 1. I/We, the undersigned, having carefully examined the referred EOI offer to participate in the same, in full conformity with the said EOI along with subsequent related corrigenda issued and all the terms and conditions thereof. 2. We agree to abide by this Proposal, consisting of this letter, our Pre-qualification, Technical and Commercial Proposals <u>and deviations</u>, for a period of 90 days from the date fixed for submission of Proposals as stipulated in the EOI and modifications resulting from contract negotiations <u>including deviations</u>, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period. 3. I/ We acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the DSP for the aforesaid Service, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Proposal are true copies of their respective originals. 4. We have applied underCategory. 5. I/We have enclosed towards Empanelment Processing Fees a Bankers Cheque / Demand Draft No. dated drawn on for Rs/- (RupeesOnly) that is applicable to the category under which this EoI response has been submitted and enclosed with this letter. 6. I/We have also enclosed towards Earnest Money Deposit a Bankers Cheque/ Demand Draft No. dated drawn on for Rs 2,00,000 (Rupees Two Lakh Only) and been enclosed with this letter.(Not applicable for Startup organizations registered with DIPP/Incubatee Organizations registered with DST approved incubation centre/MSME organizations registered with NSIC.) 7. We undertake, if our Bid is accepted, to commence our services as per scope of work as specified in the contract document. 8. Bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement. 9. That Sh working in the capacity of on behalf of our Company / Consortium is hereby authorized to sign all EOI documents.</p>	EOI clause is clear and may be complied.
D11	Annexure -I	55-57	<p>ANNEXURE - PROFORMA FOR EMPANELMENT BANK GUARANTEE I</p>	<p>Please amend as suggested: ANNEXURE - PROFORMA FOR EMPANELMENT BANK GUARANTEE I <u>This Bank Guarantee issued by Bank, on behalf of the DSP in favor of RAILTEL is in respect of the Contract/agreement dated . As communicated by DSP on the date of execution of this Bank Guarantee an amount of Rupees (Rupees only) is outstanding and payable to DSP by RAILTEL, in respect of pervious contracts between DSP and RAILTEL. As communicated by DSP on the date of execution of this Bank Guarantee, there are no outstanding disputes related to any pervious contracts between DSP and RAILTEL. Notwithstanding anything contained hereinabove: a) Our liability under this Bank Guarantee shall not exceed and is restricted to Rs. (Rupees only) b) This Guarantee shall remain in force up to and including (including claim period of three months) c) Unless the demand/claim under this guarantee is served upon us in writing before all the rights of RAILTEL under this guarantee shall stand automatically forfeited and we shall be relieved and discharged from all liabilities mentioned hereinabove.</u></p>	EOI clause is clear and may be complied.

D12	Annexure-J	58-59	<p>This agreement is made at Delhi on the/...../2018 for implementation of the work FOR IMPLEMENTAION OF SERVICES AS PER THE EXPRESSION OF INTEREST ENQUIRY NO. RailTel/.....DATED .../...../20119 - Expression of Interest for Empanelment of Digital Service Partner (DSP) RailTel Corporation of India Ltd. (CIN : _____), having its registered office at 6th Floor, Block – III, Delhi Technology Park, Shastri Park, Delhi – 110053 and corporate office at Plot no. 143, Institutional Area, Sectore-44 Gurgaon-122003) (hereinafter referred to as RailTel , which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors, administrators or permitted assignees) of the FIRST PARTY'. AND M/s(CIN : _____ as applicable)having office at(herein after called as ".....", which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors, administrators or permitted assignees) of the SECOND PARTY. RailTel and being referred to individually as "PARTY", and jointly as "PARTIES". WHEREAS 1.In response to the EXPRESSION OF INTEREST ENQUIRY NO. RailTel/.....DATED .../...../2019 - Expression of Interest for Empanelment of Digital Service Partner and RailTel informed the SECOND PARTY through Letter of Empanelment vide letter no:..... Dated 2. That the SECOND PARTY has consented to implement the same vide acceptance letter Nodated 3. With this objective both the parties are desirous of recording their understanding, agreed terms and conditions of the EOI _____ dated _____by way of this agreement. 4. Pursuant to clause 12 of EOI No. RailTel/EOI/MKTG/2019-20/DSP/493 dated _____, an agreement was required to be entered between RailTel and _____ for successful working of the system. NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES AND COVENANTS HEREINAFTER SET FORTH, "RailTel" AND "....." INTENDING TO BE LEGALLY BOUND HEREBY AGREE AS FOLLOWS. SALIENT FEATURES: 1. That the SECOND PARTY shall work with the FIRST PARTY and source / execute services 2. That both the PARTIES shall abide by the terms and conditions as per the EOI _____dated _____annexed with this agreement, which shall form an integral part of the agreement. 3. That once any service becomes operational, then a separate service agreement shall be executed between the PARTIES which shall be the governing guidelines for deliverables related to that specific service.</p>	<p>Please amend as suggested: This agreement is made at Delhi on the/...../2018 for implementation of the work FOR IMPLEMENTAION OF SERVICES AS PER THE EXPRESSION OF INTEREST ENQUIRY NO. RailTel/.....DATED .../...../20119 - Expression of Interest for Empanelment of Digital Service Partner (DSP) RailTel Corporation of India Ltd. (CIN : _____), having its registered office at 6th Floor, Block – III, Delhi Technology Park, Shastri Park, Delhi – 110053 and corporate office at Plot no. 143, Institutional Area, Sectore-44 Gurgaon-122003) (hereinafter referred to as RailTel , which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors, administrators or permitted assignees) of the FIRST PARTY'. AND M/s(CIN : _____ as applicable)having office at(herein after called as ".....", which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors, administrators or permitted assignees) of the SECOND PARTY. RailTel and being referred to individually as "PARTY", and jointly as "PARTIES". WHEREAS 1.In response to the EXPRESSION OF INTEREST ENQUIRY NO. RailTel/.....DATED .../...../2019 - Expression of Interest for Empanelment of Digital Service Partner and RailTel informed the SECOND PARTY through Letter of Empanelment vide letter no:..... Dated 2. That the SECOND PARTY has consented to implement the same vide acceptance letter Nodated 3. With this objective both the parties are desirous of recording their understanding, agreed terms and conditions of the EOI _____ dated _____by way of this agreement. 4. Pursuant to clause 12 of EOI No. RailTel/EOI/MKTG/2019-20/DSP/493 dated _____, an agreement was required to be entered between RailTel and _____ for successful working of the system. NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES AND COVENANTS HEREINAFTER SET FORTH, "RailTel" AND "....." INTENDING TO BE LEGALLY BOUND HEREBY AGREE AS FOLLOWS. SALIENT FEATURES: 1. That the SECOND PARTY shall work with the FIRST PARTY and source / execute services2. That both the PARTIES shall abide by the terms and conditions as per the EOI _____dated _____annexed with this agreement, which shall form an integral part of the agreement subject to the deviations submitted vide our proposal dated _____. 3. That once any service becomes operational, then a separate service agreement shall be executed between the PARTIES which shall be the governing guidelines for deliverables related to that specific service.</p>	EOI clause is clear an may be complied.
D13	Clause 3 a. of Annexure A	30	<p>3. Mandatory Criteria: a. Offers of only those bidders (the consortium members may meet the mandatory criteria jointly i.e. any one of the consortium members must have this average turnover) shall be shortlisted who have a minimum cumulative annual turnover of 5 Crores for the last three audited financial years. Copy of Income Tax returns as downloaded from Income Tax Website should be submitted in this regard. A certificate issued by CA(APPENDIX-F) has to be attached along with signed copy of Balance Sheet, Profit & Loss account and ITR for the same. In case the company has only two years ITR (Income Tax Returns), then the provisional balance sheet of the current financial year duly certified by Statutory Auditor of the DSP shall be accepted.</p>	<p>Please remove the requirement of submission of copy of ITR and CA Certificate. Bidder can submit the audited financial statement (Balance Sheet and Profit and loss statement) as a documentary evidence for the required annual turnover criteria.</p>	EOI clause is clear amy may be complied.
D14	Clause 3 c (7) of Annexure A	32	<p>The DSP have provided Services Individually to enterprise/retail customers Telco /ISP for a period of at least 6 months. Documentary Evidence Required in Open Category: Attach work orders/Certificates specifying “completion” or “satisfactory work in progress” OR Reference Details on DSP’s letter head with contact details for reference.</p>	<p>As some of the projects are under NDA, so the Work Order copy and the customer contact detais for the reference can not be provided. Please allow the Bidders to submit self certificate from the Authorised Signatory for the stated criteria.</p>	EOI clause is clear and may be complied. However copy of Work order with price masked may be submitted.
D15	Clause 1 A(I) (a) of Annexure B	33	<p>a) Capability for Execution of Commercial Work Orders Documentary Evidence Required Commercial Work Order and Confirmation from client on letter head confirming deployment.</p>	<p>As some of the projects are under NDA, so the commercial Work Order copy for the reference can not be provided. Hence please allow the Bidders to submit self certificate from the Authorised Signatory for the stated criteria.</p>	EOI clause is clear and may be complied. However copy of Work order with price masked may be submitted.

D16	Clause 1 A(II) (c) of Annexure B	34	c) Experience in Deployment of Proposed Digital Services Documentary Evidence Required Commercial Work Order and Confirmation from client on letter head confirming deployment.	As some of the projects are under NDA, so the commercial Work Order copy for the reference can not be provided. Hence please allow the Bidders to submit self certificate from the Authorised Signatory for the stated criteria.	EOI clause is clear and may be complied. However copy of Work order with price masked may be submitted.
D17	Clause 1 A(II) (d) of Annexure B	34	d) Maturity of proposed Services: The proposed solution working commercially Documentary Evidence Required Commercial Work Order and Confirmation from client on letter head confirming deployment.	As some of the projects are under NDA, so the commercial Work Order copy for the reference can not be provided. Hence please allow the Bidders to submit self certificate from the Authorised Signatory for the stated criteria.	EOI clause is clear and may be complied. However copy of Work order with price masked may be submitted.
D18	SN- 6 , Part C of Annexure D	49-50	6. Annual Turnover for last three years Documents to be attached in Annexure Balance sheet, Profit & Loss Account& ITR for the financial Years (a) 2016-17 (b) 2017-18 (c) 2018-19 It should be certified by the CA in letter head of the CA firm as per Annexure-F	Bidder can provide the Audited financial statement (Balance sheet and Profit and Loss Statement). Please remove the requirement of submission ITR and the certificate by the CA.	EOI clause is clear and may be complied.
D19	Clause 9(ii)	21	ii. Wilful misrepresentation of any fact in the EOI will lead to the disqualification of the applicant without prejudice to other actions that the RailTel may take. The applicants shall be deemed to license, and grant all rights to RailTel, to reproduce the whole or any portion of their product/solution for the purpose of evaluation and to disclose and/ or use the contents of submission as the basis for EOI process.	Will it mean the end product will be shared with other stakeholders like competitors etc?	EOI clause is clear and may be complied.
D20	Clause 1 of Annexure C	39-40	SCOPE OF WORK: (pl refer EoI for full clause)	Is Empanelment against one specific 'vertical' or is it for overall? If it is against one 'vertical' only, will vendor require multiple empanelment separately.	Bidder may propose more than one services falling in different verticals in their offer. However the evaluation will be done for each vertical separately as per EoI terms.
D21	Clause 2 & 3 of Annexure C	40-42	2. ROLES AND RESPONSIBILITIES 2.2. ROLES AND RESPONSIBILITY OF THE EMPANELLED DSP: 2.2.5. 2.2.5. EBG of Rs 2,00,000/- (Rupees Two Lakhs) and service specific PBG on service to service basis shall be submitted by the DSP to RailTel as per clause 14.3 of the EOI. DSP / PARTNER may have back-end relationship with other specialized entities for providing necessary equipment / services / solutions. These relationships shall not have any liability on RailTel and RailTel shall, in no way, be a party to it and should be indemnified. 3. SERVICE EXECUTION MODE: 3.2. Additional Notes: 3.2.6. No part of the contract nor any share or interest therein shall, in any manner or degree, be transferred, assigned or sub-let by the seller directly or indirectly to any person, firm or corporation whatsoever without the consent of RailTel in writing.	Can DSP get into sub-contracting / sub-letting with third parties/non-empanned entities on its own for any/some part of services? (These listed sections may be referred here)	EOI clause is clear and may be complied.
D22	Clause 3 of Annexure C	41-42	SERVICE EXECUTION MODE: (pl refer EoI for full clause)	What will be the revenue sharing model? Are there any guidelines in this direction? Is it envisaged or not? If 'yes', what it is eiter of the 'execution mode' as listed in sec 3.1.1, 3.1.2 or 3.1.3 or 3.1.4	The revenue share will be discussed with empanelled DSP and will be mutually agreed.
D23	Clause 4 of Annexure C	42-43	4. EXCLUSIVITY/BASIC PRINCIPLES FOR FUTURE ADAPTATIONS 4.2. The initial period of empanelment under this EOI is Three (03) years, unless terminated earlier, and it can be extended on mutual terms and conditions.	If services are 'ON' with DSP as part of empanelment, does DSP need to empanel again with same process beyond mentioned limit of 3 years for empanelment?	It is already mentioned that the period of empanelment may be extended on mutual agreement.
D24			General	Should provide a list of acronyms used in EOI	Wherever it is required, it is already provided.
D25	Para 3 of SCHEDULE OF EVENTS	5	Earnest Money Deposit (EMD) to be submitted along with EOI Rs. 2,00,000/- (Rupees Two Lakhs only) in the form of Demand Draft (DD) drawn on any scheduled bank in favor of RailTel Corporation of India Limited. payable at New Delhi. No EMD is required for applying under Start Up Category. Start Up Category includes Start Up Organizations registered with DIPP / Incubatee	Please allow bidder to submit EMD in the form of a bank guarantee.	EOI clause is clear any may be complied.

D26	Para 3 of SCHEDULE OF EVENTS	5	<p>registered with DST approved Incubation Centre / MSME Organizations registered with NSIC.</p> <p>It will be the responsibility of the organization to submit documentary evidence to avail EMD exemption. The registration certificate or relevant documents should be valid as on opening date of EoI. EMD of unsuccessful participants will be returned to the authorised representative of the organization.</p>	Please clarify on the validity period of the EMD.	Normally the DDs issued by any bank is valid for three months.
D27	Clause 2.4	13-14	Indicative Verticals: It is expected that Digital Service Partner(DSP) will work with RailTel to acquire new businesses at DSP's own cost and will make investments to execute such services on revenue sharing basis. RailTel is also open to the idea of utilizing the infrastructure of RailTel to rollout such services. The following list is illustrative only and any services/vertical can be added / deleted to achieve the business objectives of the RailTel. (pl refer EoI for full clause)	We would not work on revenue sharing basis. We would require explicit approval from management before bidding. Please Clarify.	EOI clause is clear any may be complied.
D28	Clause 9(i)	21	Terms & Conditions of EOI i. Submission of an EOI is evidence of an applicant's consent to comply with the terms and condition of Request for EOI process and subsequent bidding process. If an applicant fails to comply with any of the terms, its EOI may be rejected.	Please clarify.	EOI clause is clear any may be complied.
D29	Clause 14.4 (f)	25	14.4 BANK GUARANTEE: f) f) In case there are more than one work with DSP and in case DSP fails to perform its obligations or unsatisfactory performance and /or withdraws service midway from any of the work awarded, then PBG of works awarded to DSP will be encashed. Further it is clarified that generally PBG will be encashed of the work in default only. However, EBG/ other PBG available may be encashed if loss of the work is not indemnified and a partner may liable to be delisted from Digital Service Partner (DSP) empanelled list.	PBG should be encashed of the work in default only. EBG/ other PBG available will not be encashed.	EOI clause is clear and may be complied.
D30	Clause 14.5 (a)	25	14.5 PAYMENT TERMS: a) Normally, RailTel shall not make any financial investments in the services acquired through DSP. The Goto Market Strategy and pricing of services will be done jointly with the DSP once the price is discovered	Please Clarify.	EOI clause is clear and may be complied.
D31	Clause 14.5 (b)	25	14.5 PAYMENT TERMS: b) The Payments due to the DSP's will be on back to back basis: i Payment will be made only after receipt of amount from the Customer ii Payment will be made to the Partner within two weeks from the receipt of Invoice of the Partner iii All other arrangements between RailTel and DSP will be on back to back basis and should be mutually agreed before delivery of the services to the customer.	The bidder requests the following modification: i) The payment for the services delivered as per the contract have to be processed by RailTel immediately upon completion of the services and submission of invoice by the bidder. These shall not be back to back with the customer. ii) The terms and conditions like SLA, penalties etc between DSP and RailTel will be mutually discussed and agreed before signing the agreement and delivery of services to the customer. iii) In the event of delay in payment of undisputed amount beyond 30 days, bidder shall be entitled to a late payment interest of 2% per month of the total invoice value from the date of completion of 30 days after submission of invoice.	EOI clause is clear and may be complied.
D32	Clause 14.5	25	14.5 PAYMENT TERMS: c) RailTel reserves the right to adjust any amount due to RailTel and payable by partner to RailTel from the any payments due from RailTel and the Performance Bank Guarantee to RailTel.	The bidder requests the deletion of this clause.	EOI clause is clear and may be complied.
D33	Clause 14.7 (b)	26	14.7 FORCE MAJEURE: b) Provided also that if the contract is terminated under this clause, the RailTel shall be at liberty to take over from the DSP at a price to be fixed by the Purchaser, which shall be final, all unused, undamaged and acceptable materials, bought out components and stores in course of manufacturer in possession of the DSP at the time of such termination of such portions thereof as the purchaser may deem fit excepting such materials / bought out components and stores as the contractor may with concurrence of the purchaser elect to retain.	The bidder requests the following modification: b) Provided also that if the contract is terminated under this clause, the RailTel shall be at liberty to take over from the DSP at a price mutually agreed between the parties, all unused, undamaged and acceptable materials, bought out components and stores in course of manufacturer in possession of the DSP at the time of such termination of such portions thereof as the purchaser may deem fit excepting such materials / bought out components and stores as the contractor may with concurrence of the purchaser elect to retain.	EOI clause is clear and may be complied.
D34	Clause 14.8 (a) (iii)	26	14.8 TERMINATION FOR DEFAULT: a) iii If the DSP, in either of the above circumstances, does not remedy his failure within a period of 30 days (or such longer period as the RailTel may authorize in writing) after receipt of the default notice from the RailTel.	The bidder would request the following modification: Where despite the issuance of a default notice to the DSP by the RailTel, the DSP materially fails to remedy the default as per the agreed milestone the RailTel may where it deems fit, issue to the defaulting party another default notice or proceed to adopt such remedies as may be available to the RailTel;	EOI clause is clear and may be complied.

				provided such default is solely attributable by the DSP. Notwithstanding the above, DSP may terminate this Agreement for cause if RailTel materially breaches this Agreement, provided DSP gives RailTel notice of such breach and it remains uncured after 30 days following notice. If any amount due and payable by RailTel under the Agreement is more than 30 days overdue; and there is no dispute between RailTel and DSP in relation to that amount, DSP may issue to RailTel a notice that payment is overdue. If RailTel fails to pay DSP within 7 days after the date of such notice, DSP may by a further notice to RailTel terminate the Agreement or at its election withdraw services or stop performance of its obligations until payment is made. In the event of this assignment being terminated, RailTel shall be liable to make payments of all the amount due under this assignment for which services have been rendered by DSP's Consultant's. Forthwith on the expiry or earlier termination of this agreement, each party shall, return to the other party all documents and materials, belonging to the other party with regard to this assignment, or shall at the option of the disclosing party destroy all documents or materials in connection with this assignment.	
D35	Clause 14.8 (b) (i)	26	14.8 TERMINATION FOR DEFAULT: b) Gestation period of 12 months shall be given to the DSP after the date of issue of Empanelment Letter and signing the agreement for business generation and within this period at least Business Work order of ₹ 01 Crore for Open Category and ₹25 Lakhs for Start-Up Category has to be acquired by the efforts of DSP. i. If the selected DSP fails to generate even one lead of this volume, the DSP shall be given another grace period of additional 3 months to acquire service(s) of at least 1 crore (Open Category)/ ₹25 Lakh (Start-Up category)value. If the DSP fails to deliver even in the extended grace period then the empanelment shall stand terminated without any further notice. In addition to the requirement of generation of business by the efforts of DSP in the gestation period, a DSP partner has to ensure business engagement with RailTel and if the DSP has no service engagement for a period of six months (after successful completion of gestation period) during tenure of the empanelment, RailTel may delist the DSP from the Empanelment list, without any further notice as soon as twelve months non-engagement period completes.”	TCS will be under no obligation to generate business for RailTel and this should not be grounds for default. We will no participate for empanelment under such conditions. Please Clarify.	EOI clause is clear and may be complied.
D36	Clause 14.12 (e)	28	14.12 SET OFF: e) Upto the point the final determination is arrived out by the Dispute Redressal Mechanism, RailTel may provisionally withheld the disputed amount, as it reasonably believes to be the liability of the DSP.	In the event that RailTel disputes, RailTel shall notify DSP reasons for disputing any amount within fifteen (15) days after receipt of applicable invoice, where upon Parties shall promptly seek to resolve the dispute by mutual discussion. If no dispute, substantiated in writing, is made by RailTel within a period of fifteen (15) days of having received that invoice about any inaccuracy or any defect in the invoice, each such invoice shall be deemed to have been accepted as correct by RailTel. Any such dispute shall not relieve RailTel from paying when due any undisputed portion of the invoice. Any invoice remaining unpaid after the aforesaid period of thirty days shall be treated as a debt owed by the RailTel to the DSP and the DSP shall be, without prejudice to any other remedies that it may have in this regard, entitled to recover it as such with a monthly interest of 2% calculated from the date the payment became due until the recovery is made in full with interest. Without prejudice to the other rights available, DSP also reserves the right to withhold the provision of Services till such time all the payments due to it under this Agreement have been made by RailTel and any such withholding by the DSP shall not be treated as breach by it of the provisions of this Agreement.	EOI clause is clear and may be complied.
D37	Para 1 (A) (III) (b) of Annexure B	35	III. Proposed Business Model: Open Category -20 Marks Parameter: b) Projected Business Commitment in first Two years Documentary Evidence Required: Self-declaration with supporting data.	We cannot commit revenue forecasts, committed revenue for RailTel etc. We will no particiapte for empanelment under such conditions. Please Clarify.	EOI clause is clear and may be complied.

D38	Para 1 (B) (III) (b) of Annexure B	37	IV. Solution Presentation (Maximum Marks: 30 for Open Category and Start Up Category) 4. RailTel would evaluate the commercial model based on the factors including: i) Projected revenue forecasts ii) Committed revenue for RailTel iii) Projected cost heads iv) Completeness of assumptions made for the commercial model v) Uniqueness and USP of the service vi) Social Impact	We cannot commit revenue forecasts, committed revenue for RailTel etc. We will no particiapte for empanelment under such conditions. Please Clarify.	EOI clause is clear and may be complied.
D39	Para 1 (B) (IV) (3) of Annexure B	38	IV. Solution Presentation (Maximum Marks: 30 for Open Category and Start Up Category) 3. Commercial Model proposed by the DSP (i.e. Market Size, USP of Service, Current Market Price, Flexibility on proposed Selling price, revenue projections etc.) a) Bidder is required to share the revenue model that they propose for RailTel including the total projected revenues. b) The Bidder shall propose the functional model for financial payouts (Income distribution, transactions, collections and payouts, timelines etc.) c) Social Impact if any	We will not work on revenue sharing models. We will no particiapte for empanelment under such conditions. PI take explicit approval from management before engaging. Please Clarify.	EOI clause is clear and may be complied.
D40	Clause 1.4 of Annexure C	39	DSP shall bear all costs/ expenses pertaining to all statutory permissions/clearance from the competent Government Agencies/ Statutory Bodies and other Local bodies for setting up/operating the proposed empanelled services.	All such costs/expenses to be part of our proposal. Please Clarify.	EOI clause is clear and may be complied.
D41	Clause 1.3 of Annexure C	39	The SLA's (Service Level Agreements) as well as penalty will be on back to back basis. Adequate process of customer complaint resolution by the partner will be established on mutual discussions with RailTel.	The bidder requests the following modification: 1.3. The SLA's (Service Level Agreements) as well as penalty will be discussed and mutually agreed before signing of the every service contract. Adequate process of customer complaint resolution by the partner will be established on mutual discussions with RailTel.	EOI clause is clear and may be complied.
D42	Clause 1.2 of Annexure C	39	The terms and conditions with the DSP in the individual contracts will be as per customer's contract terms and conditions. In cases where there is any conflict between the customers' requirements and the provisions mentioned in this EOI then the customers' requirements will prevail and will be settled between RailTel and DSP through mutual discussions.	The bidder requests the following modification: 1.2. The terms and conditions with the DSP in the individual contracts will be will be discussed and mutually agreed. In cases where there is any conflict between the customers' requirements and the provisions mentioned in the contract, then the requirements will be settled between RailTel and DSP through mutual discussions.	EOI clause is clear and may be complied.
D43	Clause 2 of Annexure C	40	2. ROLES AND RESPONSIBILITIES 2.2. ROLES AND RESPONSIBILITY OF THE EMPANELLED DSP: 2.2.7. All taxation and other Governmental Statutory Tax compliances in its domain shall be the liability of the bidder. Since this is an arrangement on revenue share basis, the ownership of equipment / stores supplied by the partner for partner's share of work will be with partner. Their proper up keep and maintenance along with replacements if any, as and when needed, will be the partner's responsibility.	We will not engage in revenue share basis models until unless we have explicit management approval. Please Clarify.	EOI clause is clear and may be complied.
D44	Clause 2 of Annexure C	40	2. ROLES AND RESPONSIBILITIES 2.2. ROLES AND RESPONSIBILITY OF THE EMPANELLED DSP: 2.2.1. Securing Business in consultation with RailTel at their own cost, acting as strategic partner of RailTel. 2.2.2. Make all investments in service acquisition and execution.	Why are we required to secure business for RailTel? Our understanding is that a DSP will get work order from RailTel to provide services. Please Clarify.	EOI clause is clear and may be complied.
D45	Clause 3.2 of Annexure C	42	3. SERVICE EXECUTION MODE: 3.2. Additional Notes: 3.2.4. Unless otherwise specified all prices quotes must remain firm except for statutory variation in taxes during the contractual delivery period. Any increase in taxes after expiry of the delivery period will be to supplier's account. This will be without prejudice to the rights of RailTel for any other action including termination. Price variation clauses if any should be clearly quantified without any ambiguity with ceiling limits.	The bidder requests the following modification: Prices shall be quoted in Indian rupees and Charges quoted should be exclusive of all types of Taxes. All fees payable to DSP are exclusive of any sales, use, value added tax, service , GST or taxes of a similar nature measured by the services, deliverables or charges thereon, imposed by any applicable taxing jurisdiction and where such taxes are applicable, RailTel shall be responsible to pay or reimburse bidder the amount of such taxes. Taxes to be applied on actual at the time of invoicing during the entire duration of the contract and extensions. For any change in the tax structure, during the tenure of the contract, the RailTel will be liable to release the payments based on the revised taxes. DSP will not	EOI clause is clear and may be complied.

				revise the base price of the invoices to accommodate the additional taxes and duties imposed by Government.	
D46	Clause 3.2 of Annexure C	42	3. SERVICE EXECUTION MODE: 3.2. Additional Notes: 3.2.2. At the time of inviting quotation, wherever the indirect taxes are not specifically indicated, the prices quoted will be presumed as Inclusive of all taxes and no statutory variation will be payable by RailTel. The rates of taxes should be clearly mentioned. HSN/SAC no. should be indicated in the offer.	The bidder requests the following modification: 3.2.2. At the time of inviting quotation, The DSP will submit all quotations without taxes. The taxes will be applied on actuals as per the applicable tax structure at the time of invoicing during the entire duration of the contract. Also, the HSN/SAC codes will be indicative and may change at a later stage during the contract period. Such changes shall be communicated in advance to RailTel by DSP and RailTel will have to accept these changes.	EOI clause is clear and may be complied.
D47	Clause 5 of Annexure C	43-44	5. TARGET TO ACHIEVE CUSTOMERS 5.1. Gestation period of 12 months shall be given to the DSP after the date of issue of Empanelment Letter and signing the agreement for business generation and within this period at least Business Work order of ₹ 01 Crore for Open Category and ₹25 Lakhs for Start-Up Category has to be acquired by the efforts of DSP. 5.1.1. If the selected DSP fails to generate even one Order of this volume, the DSP shall be given another grace period of 3 months to acquire service(s) of at least 1 crore (Open Category)/ ₹25 Lakh (Start-Up category)value. If the DSP fails to deliver even in the extended grace period then the empanelment shall stand terminated without any further notice.In addition to the requirement of generation of business by the efforts of DSP in the gestation period, a DSP partner has to ensure business engagement with RailTel and if the DSP has no service engagement for a period of six months (after successful completion of gestation period) during tenure of the empanelment, RailTel may delist the DSP from the Empanelment list, without any further notice as soon as twelve months non engagement period completes. 5.3. The above-mentioned targets are the minimum targets for determining the satisfactory working of the partner. 5.4. If conditions above are not met in stipulated time from the date of signing the agreement despite all support of RailTel made available to the DSP as mentioned in the EOI Documents then RailTel shall have the right to terminate the Empanelment agreement.	If we are unable to generate orders and business for RailTel, then RailTel can terminate this empanelment agreement. Are we generating business for RailTel or are we supposed to get orders from RailTel? Why do we have target to achieve customers? Please Clarify.	EOI clause is clear and may be complied.
D48	Clause 4 of Annexure C	42-43	4. EXCLUSIVITY/BASIC PRINCIPLES FOR FUTURE ADAPTATIONS 4.3 If the DSP fails to meet the deadlines of the said service or is not able to implement the service in stipulated time then RailTel in addition to invoking of the EBG and Service PBG, may get the contract implemented, upon such terms and in such manner as it deems appropriate from any other party. Any excess amount, which it may incur in doing so, will be paid by the DSP, limited to 100% of Contract Value of the Work Awarded.	This bidder requests the following modification: 4.3 If the DSP fails to meet the deadlines of the said service or is not able to implement the service in stipulated time then RailTel in addition to invoking of the EBG and Service PBG, may get the contract implemented, upon such terms and in such manner as it deems appropriate from any other party. Any excess amount, which it may incur in doing so, will be paid by the DSP, limited to the contract value of the services underlivered by the DSP only provided the reasons for failure to meet its deliverables should be attributable to the DSP only.	EOI clause is clear and may be complied.
D49	Clause 10 of Annexure C	44-45	10. EXIT CLAUSE 10.2. Exit Option Exercised By DSP: 10.2.1. In case any service is already operational and RailTel wants to acquire the assets and want to continue with the service then in such case RailTel may acquire the asset created by the DSP for delivery of service, on mutually agreed market value or depreciated value whichever is lower, and RailTel will have the first right of acceptance/refusal. 10.2.2. The depreciated value of equipment – the net value of the equipment as determined by charging depreciation at rates specified in Companies Act of India, 2013 as amended from time to time under the Written Down Value method.	The bidder requests the following modification: 10.2.1. In case any service is already operational and RailTel wants to acquire the assets and want to continue with the service then in such case RailTel may acquire the asset created by the DSP for delivery of service, on mutually agreed value. 10.2.2. To be deleted. The value shall be mutually agreed between RailTel and DSP.	EOI clause is clear and may be complied.
D50	Clause 8 of Annexure C	44	8. VALIDITY OF THE AGREEMENT 8.1.Agreement shall remain in force initially for a period of Three(03) years on non-exclusive basis from the date of award of work and can be extended further with mutual consent. This agreement shall be valid for its full term unless revoked as per the clauses and mechanism defined in this Agreement. RailTel reserves the right to enter in agreement with other partners also except in respect of services which have already been made operational with the DSP.	8.1.Agreement shall remain in force initially for a period of Three(03) years on non-exclusive basis from the date of signing of the agreement and can be extended further with mutual consent. This agreement shall be valid for its full term unless revoked as per the clauses and mechanism defined in this Agreement. RailTel reserves the right to enter in agreement with other partners also except in respect of services which have already been made operational with the DSP.	Suitable amendment has been done in the clause. May kindly refer Corrigendum-III

D51	Clause 8 of Annexure C	44	8. VALIDITY OF THE AGREEMENT 8.3 RailTel shall have the right of first refusal and settle all financial obligations within 60 days of having communicated its willingness to exercise the option to buy any operational service from the DSP.	What is the purpose of this clause under Validity of the agreement? Please Clarify.	EOI clause is clear and may be complied.
D52	Clause 11 of Annexure C	45	11. TRANSFER AND TERMINATION OF AGREEMENT: 11.3 RailTel reserves the right to terminate the agreement for 11.1.1. Any breach or non-observance or non-fulfillment of agreement conditions related to service deliverables. 11.1.2. Any other violation of clauses of this EOI / agreement 11.1.3. RailTel may suspend / terminate the agreement with sixty days' notice. In case of the case leading to termination then further action will be taken as per exit clause of this EOI document.	The bidder requests addition of the following clause: DSP may terminate this Agreement for cause if RailTel materially breaches this Agreement, provided DSP gives RailTel notice of such breach and it remains uncured after 30 days following notice. If any amount due and payable by RailTel under the Agreement is more than 30 days overdue; and there is no dispute between RailTel and DSP in relation to that amount, DSP may issue to RailTel a notice that payment is overdue. If RailTel fails to pay DSP within 7 days after the date of such notice, DSP may by a further notice to RailTel terminate the Agreement or at its election withdraw services or stop performance of its obligations until payment is made. In the event of this assignment being terminated, RailTel shall be liable to make payments of all the amount due under this assignment for which services have been rendered by DSP's Consultant's. Forthwith on the expiry or earlier termination of this agreement, each party shall, return to the other party all documents and materials, belonging to the other party with regard to this assignment, or shall at the option of the disclosing party destroy all documents or materials in connection with this assignment.	EOI clause is clear and may be complied.
D53	Clause 15 of Annexure C	47	15 LIABILITY: 15.1 Except as provided in this agreement, hereinabove, neither party shall be liable to other party or any other party by virtue of termination of this agreement for any reason whatsoever for any claim for loss or profit or on account for any expenditure, investment, leased, capital improvements or any other commitments made by the other party in connection with their business made in reliance upon or by virtue of this agreement.	The bidder requests the following addition to the clause: Neither party shall be liable to the other for any special, indirect, incidental, consequential (including loss of profit or revenue, loss of data), exemplary or punitive damages whether in contract, tort or other theories of law, even if such party has been advised of the possibility of such damages. The total cumulative liability of either party arising from or relating to this Agreement shall not exceed the total amount paid to DSP by the RAILTEL in the preceding twelve months under that applicable work that gives rise to such liability (as of the date the liability arose); provided, however, that this limitation shall not apply to any liability for damages arising from (a) willful misconduct or (b) indemnification against third party claims for infringement.	EOI clause is clear and may be complied.
E	Queries by M/s iRAM Tech				
E1	Clause 14.11	28	14.11 ARBITRATION a) The parties shall attempt to resolve through good faith and consultation in their behalf, disputes arising in connection with this agreement, and such consultation shall begin promptly after a Party has delivered to another Party a written request for such consultation. b) Without prejudice to the provisions hereof, in the event of any dispute, difference, conflict or question arising between the parties hereto relating to or concerning or arising out of this agreement, the same shall be referred to arbitration, which shall be held in New Delhi. The arbitration proceedings shall be in accordance with the provision of the arbitration and Conciliation Act 1996 and any other statutory amendments or modifications thereof. Arbitrator shall be appointed by CMD/RailTel. The decision of arbitrator shall be final and binding on both parties. The arbitration proceedings shall be conducted in the English language. Each party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrators, shall be shared equally by the parties unless the award otherwise provides.	A) Arbitration & Conciliation Act 2015 is now in force which overrides Arbitration Act 1996 . So please refer to Arbitration amendment act 2015. B) Arbitrator shall be appointed as per the Arbitration Act 2015.	Suitable amendment has been done in the clause. May kindly refer Corrigendum-III

E2	Clause 3 (a) of Annexure A	30	3. Mandatory Criteria: a. Offers of only those bidders (the consortium members may meet the mandatory criteria jointly i.e. any one of the consortium members must have this average turnover) shall be shortlisted who have a minimum cumulative annual turnover of 5 Crores for the last three audited financial years. Copy of Income Tax returns as downloaded from Income Tax Website should be submitted in this regard. A certificate issued by CA (APPENDIX-F) has to be attached along with signed copy of Balance Sheet, Profit & Loss account and ITR for the same. In case the company has only two years ITR (Income Tax Returns), then the provisional balance sheet of the current financial year duly certified by Statutory Auditor of the DSP shall be accepted.	Please clarify whether the Turn Over over last 3 financial years shall be cumulative or average.	It is cumulative
E3	SN 4 of table under clause 3 (c) of Annex-A	32	The DSP must have profitable operations in India for at least 2 of the last 3 years preceding the date of submission of EoI.	We request you to kindly delete this requirements as this will pose a challenge for many Startups and MSMEs.	Kindly refer table under para 3 c. of Annexure A
F	Queries by JKLM Technology				
F1			I	in reference to RailTel EOI “RailTel/EOI/MKTG/2019MKTG/2019-20/DSP/493” Pre-Qualification Criteria asked for Cumulative turnover of at least INR 5 Crores in last 3 years will block innovative/technically qualified organization from participation. Our request is to provide relaxation to MSME registered companies from prior turnover of Rs. 5CR clause from DSP EOI.	Relaxation for Start-ups and / Incubate category is already given.