

# Request for Proposal



## Selection of Service Provider for Development / Customization and Implementation of Student Academic Management System

*RFP No.: OCAC-SEGP-SPD-0032-2020-ENQ-20050*



### **Volume-III Master Service Agreement**



#### **ODISHA COMPUTER APPLICATION CENTRE**

[TECHNICAL DIRECTORATE OF E&IT DEPARTMENT, GOVERNMENT OF ODISHA]

OCAC Building, Acharya Vihar Square, Bhubaneswar-751013, Odisha, India

**W:** [www.ocac.in](http://www.ocac.in) | **T:** 0674-2567295/2567283 | **F:** 0674-2567842

**Master Service Agreement for Development / Customization and Implementation of Student Academic Management System, Government of Odisha**

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This agreement is made on \_\_\_/\_\_\_/\_\_\_\_\_ between Odisha Computer Application Centre, the Designated Technical Directorate of Electronics and Information Technology Department, Government of Odisha having its office at Plot-N-1/7-D, Po- RRL, Acharya Vihar Square, Bhubaneswar - 751013, Odisha. (hereinafter called "**Purchaser**" or "**OCAC**") which expression shall unless repugnant to the context thereof include his successors, heirs, assigns, administrator, executive & representative of the first part,

And

<**Client Department**>, Odisha represented by <Authorised Officer> (hereinafter referred to as <Name> which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors and permitted assigns) of the second part.

And

M/s <Service Provider>, a company registered under the Provisions of Act,1956 \_\_\_\_\_ is having its registered office at \_\_\_\_\_ India (hereinafter called "**Service Provider**") which expression shall unless repugnant to the context thereof include his successors, heirs, assigns, administrator, executive and representatives of the third part.

WHEREAS OCAC had invited Request for Proposal (RFP) for selection of software firm for Development / Customization and Implementation of Student Academic Management System, Government of Odisha vide RFP No.: OCAC-SEGP-SPD-0032-2020-ENQ-20050. Based on the tender evaluation, M/s \_\_\_\_\_ has been selected as "**Service Provider**".

And in "pursuance of above facts the parties have agreed to enter into this agreement.

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents (collectively referred to as "Contract Documents") shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - a) RFP floated by OCAC vide No.: OCAC-SEGP-SPD-0032-2020-ENQ-20050 dated 11-12-2020, Technical bid and Commercial furnished by Service Provider with respect to RFP
  - b) The General Conditions of Contract
  - c) The Special Conditions of Contract
    - i) Following Appendix to <GC to SC>:
    - ii) Appendix-A: Terms of Reference
    - iii) Appendix-B: Cost of Service
  - d) The mutual rights and obligations of the Purchaser and the Service Provider shall carry out the Services in accordance with the provisions of the Contract;

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year above written.

On behalf of Purchaser

On behalf of Client

On behalf of SP

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Signature:  
Name:  
Designation:

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Signature:  
Name:  
Designation:

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Signature:  
Name:  
Designation:

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Witness -1  
Name & Address:

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Witness -1  
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Name & Address:

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Witness -2  
Name & Address:

## 1. GENERAL CONDITIONS OF CONTRACT

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### 1.1. Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- 1.1.1. "Applicable Law" means the laws and any other instruments having the force of law in India.
- 1.1.2. "Bidder" means the entity bidding for the services under the Contract.
- 1.1.3. "Service Provider" means M/s \_\_\_\_\_ whose proposal to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement and may provide or provides the Services to the Purchaser under this Contract.
- 1.1.4. "Contract" means the Agreement entered into between the Purchaser and the Service Provider, together with the contract documents referred to therein, including General Conditions (GC), the Special Conditions (SC), all the attachments, appendices, annexure, and all documents incorporated by reference therein.
- 1.1.5. "Deliverables" means the services agreed to be delivered by Service Provider in pursuance of the agreement as defined more elaborately in the RFP;
- 1.1.6. "Effective Date" means the date on which this Contract comes into force i.e. Date of issuance of Purchase Order (referred as PO).
- 1.1.7. "Day" means a Govt. of Odisha working day.
- 1.1.8. "GC" mean these General Conditions of Contract.
- 1.1.9. "Government" means the Government of Odisha
- 1.1.10. "In writing" means communicated in written form with proof of receipt.
- 1.1.11. "Intellectual Property Rights" means any patents, copyrights, trademarks, trade names, industrial design, trade secret, permit, service marks, brands, proprietary information, knowledge, technology, licenses, databases, software, know-how, or other form of intellectual property rights, title, benefits or interest, whether arising before or after execution of the Contract.
- 1.1.12. "Member" means any of the entities that make up the joint venture / consortium / association, and "Members" means all these entities.
- 1.1.13. "Man-Month" means one resource working for 1 month (Calendar working days as per Govt. of Odisha).
- 1.1.14. "Party" means the Purchaser or the Service Provider, as the case may be, and "Parties" means both of them.
- 1.1.15. "Personnel" means persons hired or appointed by the Service Provider and assigned to the performance of the Services or any part thereof
- 1.1.16. "Purchaser" means Odisha Computer Application Centre, Designated Technical Directorate of Information Technology Department, Government of Odisha an entity purchasing the services under this Contract.
- 1.1.17. "Resident" means normal resident of Odisha
- 1.1.18. "RFP" means Request for Proposal invited for Selection of Software firm for Development / Customization and Implementation of Student Academic Management System, Government of Odisha, vide RFP No.: OCAC-SEGP-SPD-0032-2020-ENQ-20050.

- 1.1.19. "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented.
- 1.1.20. "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in **Appendix-A** hereto.
- 1.1.21. The "Selected Agency" means Agency which is selected through the tender process i.e. Service Provider.
- 1.1.22. The "Service Provider (SP)" means the Agency engaged for development of software application

## **1.2. Interpretation**

In this Agreement, unless otherwise specified:

- 1.2.1. References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- 1.2.2. Use of any gender includes the other genders;
- 1.2.3. A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- 1.2.4. Any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- 1.2.5. References to a 'business day' shall be construed as a reference to Govt. of Odisha Working Day
- 1.2.6. References to times are to Indian Standard Time;
- 1.2.7. A reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- 1.2.8. All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

## **1.3. Ambiguities within Agreement**

In case of ambiguities or discrepancies within this Agreement, the following principles shall apply:

- 1.3.1. as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- 1.3.2. as between the provisions of this Agreement and the Schedules / Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- 1.3.3. as between any value written in numerals and that in words, the value in words shall prevail.

## **1.4. Law Governing Contract**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of India.

## **1.5. Legal Jurisdiction**

Any dispute arising out of this agreement shall be subject to the exclusive jurisdiction of courts in Bhubaneswar, Odisha.

## **1.6. Language**

This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## **1.7. Notices**

- 1.7.1. Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SC.
- 1.7.2. A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.
- 1.7.3. Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Purchaser or the Service Provider may be taken or executed by the officials specified in the SC.
- 1.7.4. Taxes and Duties: All taxes would be paid on actuals as per applicable laws.

## **1.8. Fraud and Corruption**

### **1.8.1. Definition**

It is the Purchaser's policy to require that the Purchaser as well as Service Provider observe the highest standard of ethics during the selection and execution of the Contract. The Purchaser also requires that the Service Provider does not demand any service charges from the Resident unless the same is agreed with the Purchaser in advance. In pursuance of this policy, the Purchaser: Defines, for the purpose of this provision, the terms set forth below as follows:

- a) "corrupt practice" means the offering, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in contract execution;
- b) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract with the Purchaser; and includes collusive practice among bidders, prior to or after proposal submission, designed to establish bid prices at artificially high or non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.
- c) "collusive practices" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Purchaser, designed to establish prices at artificial, non-competitive levels;
- d) "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;
- e) "unfair trade practices" means supply of services different from what is ordered on, or change in the Scope of Work which was agreed to;

### **1.8.2. Measures to be taken by the Purchaser**

- a) The Purchaser may terminate the contract if it is proven that at any time the representatives or employees of the Service Provider were engaged in corrupt, fraudulent, collusive or coercive

practices during the execution of the contract, without the Service Provider having taken timely and appropriate action satisfactory to the Purchaser to remedy the situation;

- b) The Purchaser may also sanction against the Service Provider, including declaring the Service Provider ineligible stated period of time (as decided by purchaser), to be awarded a contract if it at any time it is proven that that the Service Provider has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Purchaser-financed contract.

## **2. COMMENCEMENT, COMPLETION, MODIFICATION & TERMINATION OF CONTRACT**

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### **2.1. Term of Contract**

The term under this Contract will be for a period of 60 months which shall start from effective date of work order.

### **2.2. Extension of Contract**

- 2.2.1. If required by the Purchaser, an extension of the term can be granted to the Service Provider. The final decision will be taken by the Purchaser.
- 2.2.2. The Purchaser shall reserve the sole right to grant any extension to the term above mentioned and shall notify in writing to the Service Provider, at least one month before the expiration of the term hereof, whether it will grant the Service Provider an extension of the term. The decision to grant or refuse the extension shall be at the Purchaser's discretion.
- 2.2.3. Where the Purchaser is of the view that no further extension of the term be granted to the Service Provider, the Purchaser shall notify the Service Provider of its decision at least one month prior to the expiry of the Term. Upon receipt of such notice, the Service Provider shall continue to perform all its obligations hereunder, until such reasonable time beyond the term of the Contract with the Purchaser.

### **2.3. Termination of Contract**

- 2.3.1. Normal termination of the contract would happen at the end of the tenure.
- 2.3.2. Pre-mature termination of the contract would happen in case of insolvency of bidder or due to conditions of breach happening due to reasons solely and entirely attributable to Bidder, provided prior thirty days written notice to rectify the same is given by the OCAC and failure by Bidder to rectify in the notice period.
- 2.3.3. Termination by Service Provider - The Service Provider may terminate this Contract, by not less than Ninety (90) days' written notice to the OCAC, such notice to be given after the occurrence of any of the following events –
- a) If the Purchaser fails to pay its legitimate due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7.10 hereof within sixty (60) days after receiving written notice from the SI that such payment is overdue.
  - b) If the Purchaser fails to comply with any final decision reached as a result of arbitration pursuant to Clause 7.10 hereof
  - c) If the Purchaser is in material breach of its obligations pursuant to this Contract and has not remedied the same within sixty (60) days (or such longer period as the Service Provider may have subsequently approved in writing) following the receipt by the Purchaser of the Service Provider's notice specifying such breach.
  - d) OCAC failure to give acceptance of deliverables in mutually agreed time schedules

## **2.4. Effects of Termination**

- 2.4.1. In the event of a pre-mature termination of this agreement by OCAC, the compensation payable to bidder will be decided in accordance with the Terms of Payment schedule for the milestones completed services and accepted deliverables till the last effective date of termination.
- 2.4.2. Parties shall mutually agree upon a transition plan and comply with such a plan. The Service Provider shall agree to extend full cooperation in supporting the transition process.

## **2.5. Binding Clause**

All decisions taken by the Purchaser regarding the processing of the Contract shall be final and binding on all parties concerned.

## **2.6. Modifications or Variations**

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may be made by written communication between the Parties and after Prior Mutual consent by both the parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

## **2.7. Force Majeure**

- 2.7.1. Any delay in or failure of the performance shall not constitute default hereunder or give rise to any claims for damage, if any, to the extent such delays or failure of performance is caused by occurrences such as acts of god or an enemy, expropriation or confiscation of facilities by Government authorities, acts of war, rebellion, sabotage or fires, floods, explosions, terrorist activities, military operations, riots, epidemics, civil commotions, strikes etc. The Service Provider shall keep records of the circumstances referred to above and bring these to the notice of Government of Odisha in writing immediately on such occurrences. The amount of time, if any, lost on any of these counts shall not be counted for the Contract period. The decision of the Purchaser arrived at after consultation with the Service Provider, shall be final and binding. Such a determined period of time will be extended by the Purchaser to enable the Service Provider to complete the job within such extended period of time. If a Service Provider is prevented or delayed from performing any of its obligations under the Contract with Purchaser by Force Majeure, then the Service Provider shall notify the Purchaser the circumstances constituting the Force Majeure and the obligations of which is thereby delayed or prevented, within five (5) working days from the occurrence of the events.
- 2.7.2. In the event the Force Majeure substantially prevents, hinders or delays a Service Provider's performance of Services for a period in excess of five (5) working days from the occurrence of any such event, the Service Provider may declare that an emergency exists. Post the emergency is declared to be over, the Purchaser will communicate to the Service Provider to resume normal services within a period of seven (7) days. In the event that the Service Provider is not able to resume services within the next seven days, the Purchaser may terminate the Contract and/or obtain substitute performance from an alternate Service Provider.
- 2.7.3. Service Provider will advise, in the event of his having to resort to this Clause, in writing, duly certified by the statutory authorities, the beginning and end of the causes of the delay, within fifteen (15) days of the occurrence and cessation of such Force Majeure.



## **2.8. No Breach of Contract**

The failure of a Party to full fill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### Measures to be Taken

- 2.8.1. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 2.8.2. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- 2.8.3. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 2.8.4. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider, upon instructions by the Purchaser, shall either:
  - a) Demobilize or
  - b) Continue with the Services to the extent possible, in which case the Service Provider shall continue to be paid proportionately and on pro rata basis, under the terms of this Contract.
- 2.8.5. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GC 8 (Settlement of dispute).

## **3. OBLIGATIONS OF THE SERVICE PROVIDER**

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### **3.1. Scope of Work and Deliverables**

This will be in conformity with the Scope of Work and Deliverables specified in the Terms of Reference i.e. Volume-II of the RFP document and shall include the submissions made by the bidder in their proposal and work plans, further refined during the negotiations. Deliverables and milestones shall be established with a process of formal acceptance or measurable criteria. In case of any conflict between RFP and Proposal submitted by the Bidder in relation to Scope of Work or Deliverables, the Proposal submitted by Bidder (including clarifications, if any) shall prevail and apply.

### **3.2. Norms Governing Service Delivery**

- 3.2.1. Provide necessary performance guarantees on signing of the agreement;
- 3.2.2. Shall deliver the services in a professional manner commensurate with accepted industry practices and/or technical standards which are generally expected of such an engagement;
- 3.2.3. Bidders shall establish a formal team structure with a named Project Manager who will serve as single point of contact and staff with competent resources to provide effective and expert service delivery, in tune to the requirements;
- 3.2.4. Provide a roadmap and project plan for this engagement, describing clearly the responsibilities, timelines, dependencies, milestones and risks;

3.2.5. The cost of travel & accommodation during visit to various places of Odisha for various works like system study, training etc. should be borne by the bidder.

### **3.3. Standard of Performance**

The Service Provider shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Purchaser, and shall at all times support and safeguard the Purchaser's legitimate interests in any dealings with third Parties.

### **3.4. Conflicts of Interest**

The Service Provider will be barred from participating in any Bid Process (downstream activities) falling within the Scope of Work / assisted by the Service Provider or its personnel, till the duration of their Contract with the Purchaser in the department in which the Service Provider is providing its services under this Contract. The Service Provider would not be barred from executing existing projects for which it is already selected within the department, however it would be barred from any future projects / Bid Process (downstream activities) falling within the Scope of Work / assisted by the Service Provider or its personnel, till the duration of their Contract with the Purchaser. The Service Provider, if selected for any consultancy work, shall not be allowed to work in any downstream activity like application development, maintenance, support, hardware/software supply etc. in the same project. Similarly, the Service Provider selected as the consultant shall not be allowed to work as Service Provider and vice-versa in the same project.

### **3.5. General Confidentiality**

Except with the prior written consent of the Purchaser or its client department/organisation, the Service Provider and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Service Provider and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

### **3.6. Intellectual Property Rights (IPR)**

The source code of entire applications (except OEM products/solutions) along with necessary documentations developed under this RFP/Contract should be shared with OCAC after Go-live of the application.

### **3.7. Assignment**

The Service Provider shall not assign, in whole or in part, their obligations under this Contract without the permission of Purchaser.

### **3.8. Force Majeure**

Neither Party to this agreement shall be liable to the other for delay or default in performance of its obligations or any loss or damage which may be suffered by the other directly due to a Force Majeure event provided that the affected Party notifies the other Party of such event and its likely effects and duration as soon as possible and takes all reasonable steps to mitigate the losses/disruption.

### **3.9. Governing Law and Jurisdiction**

This agreement and all questions of its interpretation shall be construed in accordance with the Laws of India in the High Court at Cuttack having jurisdiction. Suits, if any arising out of the contract / agreement shall be filed by either party in a court of Law to which the Jurisdiction of the High Court of Odisha extends.

### **3.10. Audit**

- 3.10.1. The software and documents prepared for this project are subject to audit. The bidder should help OCAC during preparation of compliances of audit without any additional cost.
- 3.10.2. Software including source code, licenses (if any) and all technical documents/manuals shall be in favour of the OCAC and shall be submitted to the OCAC before final payment or on demand.
- 3.10.3. All records pertaining to this work shall be made available to the OCAC and its authorized agencies upon request for verification and/or audit, on the basis of a written request.

### **3.11. Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

### **3.12. Operation of the Contract**

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

## **4. SETTLEMENT OF DISPUTES**

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- 4.1. The Purchaser and the Service Provider shall make every effort to resolve amicably by direct informal negotiation on any disagreement or dispute arising between them under or in connection with the Contract.
- 4.2. If, after thirty (30) days from the commencement of such informal negotiations, the Purchaser and the Service Provider have been unable to resolve amicably a Contract dispute, the dispute should be referred to the Chief Executive Officer, OCAC for resolution.
- 4.3. If, after thirty (30) days from the commencement of such reference, Chief Executive Officer, OCAC have been unable to resolve amicably a Contract dispute between the Purchaser and the Service Provider, either party may require that the dispute be referred to the Commissioner-cum-Secretary to Govt., E&IT Department, Govt. of Odisha.
- 4.4. Any dispute or difference whatsoever arising between the parties (Purchaser and Service Provider) to the Contract out of or relating to the construction, meaning, scope, operation or effect of the Contract or the validity of the breach thereof, which cannot be resolved through the process specified above, shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. In the event the parties cannot agree to sole arbitrator, such arbitrator shall be appointed in accordance with the Indian Arbitration and Conciliation Act, 1996.
- 4.5. The arbitration proceedings shall be held at Odisha and the language of the arbitration shall be English

## **5. ADHERENCE TO SAFETY PROCEDURES, RULES & REGULATIONS**

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- 5.1. The Service Provider shall take all measures to ensure compliance with all applicable laws and shall ensure that the Personnel are aware of consequences of non-compliance or violation of laws including Information Technology Act, 2000 (and amendments thereof).
- 5.2. Statutory Audit
  - a) The deliverables prepared for this project are subject to audit (by CAG or other entities). The bidder should help OCAC during preparation of compliances of audit without any additional cost.
  - b) All technical documents/deliverables shall be in favour of the OCAC and shall be submitted to the OCAC before final payment or on demand.
  - c) All records pertaining to this work shall be made available to the OCAC and its authorized agencies upon request for verification and/or audit, on the basis of a written request.

## **6. LIMITATION OF LIABILITY**

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Except in cases of gross negligence or wilful misconduct: -

- 6.1. Neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier/ selected bidder to pay liquidated damages to the Purchaser; and
- 6.2. Maximum liability of the bidder for this project will be limited to the total value of the contract or the amount actually paid to the bidder whichever is lower and will not include any indirect or consequential clause or damage, loss or profit, data or revenue.

## **7. INDEMNITY**

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- 7.1. The Service Provider shall indemnify the Purchaser from and against any costs, loss, damages, expense, claims including those from third parties or liabilities of any kind howsoever suffered, arising or incurred inter alia during and after the Contract period out of:
  - a) Any negligence or wrongful act or omission by the Service Provider or any third party associated with Service Provider in connection with or incidental to this Contract or;
  - b) Any breach of any of the terms of this Contract by the Service Provider, the Service Provider's Team or any third party
  - c) Any infringement of patent, trademark/copyright arising from the use of the supplied goods and related services or any party thereof
- 7.2. The Service Provider shall also indemnify the Purchaser against any privilege, claim or assertion made by a third party with respect to right or interest in, service provided as mentioned in any Intellectual Property Rights and licenses
- 7.3. All indemnification obligations shall be subject to the Limitation of Liability clause.

## **8. CHANGE REQUEST MANAGEMENT**

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Any requirement beyond the scope mentioned in the RFP will be treated as Change Request and the process to address the change request is as follows:

- 8.1. Identification and documentation of change request requirement– The details of scope of change will be analysed and documented
- 8.2. Effort Estimate – OCAC will ask the successful bidder to submit the effort estimate in terms of man month rate using Function Point Analysis.
- 8.3. Approval or disapproval of the change request – Technical Committee constituted by OCAC will approve or disapprove the change requested including the additional payments, after analysis and discussion with the bidder on the impact of the change on schedule.
- 8.4. Implementation of the change Request– The change will be implemented in accordance to the agreed cost, effort, and schedule. The vendor shall consolidate all approved CRs and raise invoice to OCAC accordingly.
- 8.5. The costing of change request shall be finalised as per cost mentioned in financial bid format- Software Enhancement Service.

## **9. ACTION AND COMPENSATION IN CASE OF DEFAULT**

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- 9.1. Conditions for default:
  - a) The deliverables at any stage of the project as developed/ implemented by the Service Provider do not take care of all or part thereof of the Scope of Work as agreed and defined under the Contract with the Purchaser.
  - b) The deliverables at any stage of the project as developed/ implemented by the Service Provider fails to achieve the desired result or do not meet the intended quality and objective as required by the Purchaser.
  - c) The documentation is not complete and exhaustive.
  - d) There is a change in resource before the completion of a pre-defined period.
- 9.2. The Purchaser may impose penalties on the Service Provider providing the Services as per the Service Levels defined under this Contract.

## **10. SERVICE LEVEL AND PENALTY**

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As per Terms of Reference , i.e. Volume-II of the RFP

## **11. PAYMENT TERM**

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- 11.1. The total fees payable to the bidder including a milestone based payment in the RFP would be specified. Such payments shall be inclusive of all taxes / levies and other out of pocket expenses. Rate of taxes will be applicable as per the rate prevailing at the time of submission of Bill.
- 11.2. Payments for additional services in case of change in scope will also be specified.
- 11.3. In case of a bona fide dispute regarding any invoice, OCAC shall be entitled to delay or withhold payment of the invoice or part of it, limited to the extent of the disputed amount.

## **12. MISCELLANEOUS PROVISIONS**

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- 12.1. Any failure or delay on part of any Party to exercise right or power under this Contract shall not operate as waiver thereof.

- 12.2. The Service Provider shall notify the Purchaser of any material change in their status, in particular, where such change would impact performance of obligations under this Contract.
- 12.3. The Service Provider shall at all times indemnify and keep indemnified the Purchaser against all claims/damages for any infringement of any copyrights while providing its services under the Project.
- 12.4. The Service Provider shall at all times indemnify and keep indemnified the Purchaser against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its employees or agents or by any other third Party resulting from or by any wilful action or gross negligence by or on behalf of the Service Provider.
- 12.5. The Service Provider shall at all times indemnify and keep indemnified the Purchaser against any and all claims by Employees, agent(s), employed engaged or otherwise working for the Service Provider, in respect of wages, salaries, remuneration, compensation or the like.
- 12.6. All claims regarding indemnity shall survive the termination or expiry of the Contract.
- 12.7. All materials provided to the Purchaser by Service Provider are subject public disclosure laws such as RTI etc. except in respect of exclusions set out in such laws.
- 12.8. The Service Provider shall not make or permit to be made a public announcement or media release about any aspect of the Contract without a written consent from the Purchaser
- 12.9. The Service Provider shall not assign/outsource/sub-contract the project to any other agency, in whole or in part, to perform its obligation under this agreement.

### **13. SPECIAL CONDITIONS OF CONTRACT**

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The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

#### **13.1. The addresses are**

<b>For the Purchaser</b>	<b>For the Service Provider</b>
Odisha Computer Application Centre (OCAC) Designated Technical Directorate of Electronics & Information Technology Department, Government of Odisha, Plot No.: N-1/7-D, PO: RRL, Acharya Vihar Square, Bhubaneswar-751013, Odisha, India, Tel: 0674 - 2567064 / 2567858/ 2586838, Email: gm_ocac@ocac.in	

#### **13.2. The Authorized Representatives are**

<b>For the Purchaser</b>	<b>For the Service Provider</b>
General Manager (Admn.) Odisha Computer Application Centre (OCAC) Designated Technical Directorate of Electronics & Information Technology Department, Government of Odisha, Plot-N-1/7-D, Po-RRL, Acharya Vihar Square, Bhubaneswar - 751013, Odisha, India	

#### **13.3. Contract Schedule**

The Service Provider	M/s
The effective date of the Contract/Work Order	



As per Terms of Reference , i.e. Volume-II of the RFP



As per the Commercial Bid of the successful bidder.