

# SMITHSONIAN INSTITUTION

## PURCHASE ORDER TERMS AND CONDITIONS

**1. COMPLETE AGREEMENT** - The purchase order and all documents attached represent the entire agreement between the Smithsonian Institution (SI) and the Contractor. Any modification, alteration or amendment to this purchase order must be in writing and signed by an authorized agent of the SI.

**2. INSPECTION AND ACCEPTANCE** - The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The SI reserves the right to inspect, test or evaluate any supplies or services that have been tendered for acceptance. The SI may require repair or replacement of nonconforming supplies or performances of nonconforming services at the Contractors expense. The SI must exercise its post acceptance rights- **(a)** Within a reasonable period of time after the defect was discovered or should have been discovered; and **(b)** Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item. Inspection and acceptance will be at destination, unless otherwise provided in writing. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of the SI. Final acceptance by the SI will be conditional upon fulfillment of the above requirements.

**3. OVERPAYMENT** - If the Contractor becomes aware of a duplicate invoice payment or that the SI has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

**4. USE OF SMITHSONIAN NAME or LOGO PROHIBITED** - The SI owns, controls and/or has registered the trademarks /service marks "Smithsonian," "Smithsonian Institution" and the Smithsonian sunburst logo. Except as may be otherwise provided herein, the Contractor shall not refer to the SI or to any of its museums, organizations, or facilities in any manner or through any medium, whether written, oral, or visual, for any purpose whatsoever, including, but not limited to, advertising, marketing, promotion, publicity, or solicitation without written consent.

**5. WARRANTY** - The Contractor warrants and implies that the goods and services furnished hereunder are merchantable, fully conform to the SI's specifications, drawings, designs, and are fit for intended use described in this contract. The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to all customers for such supplies or services, and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract. Contractor agrees to pass through all warranties from other manufacturers.

**6. TITLE** - Unless otherwise specified in this contract, title to items furnished under this contract shall pass to the SI upon acceptance, regardless of when or where the SI takes physical possession.

**7. EXCUSABLE DELAYS** - The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the SI, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**8. DISPUTES** - Any dispute arising under this contract that the parties are unable to resolve shall be decided by the Contracting Officer. All disputes must be submitted to the Contracting Officer in

the form of a written claim supported by evidence within twelve (12) months following accrual of the claim. The Contracting Officer will provide a written decision to the Contractor, and that decision is the final and conclusive decision of the Smithsonian Institution, which is effective on the date the Contractor receives the decision. The Contractor retains all rights to subsequent judicial review to which it is entitled under federal law. The Contractor shall comply with any decision of the Contracting Officer and otherwise proceed diligently with performance of this contract pending final resolution of any request for relief, claim, or action arising under the contract.

**9. TERMINATION FOR CAUSE** - The SI may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the SI, upon request, with adequate assurances of future performance. In the event of termination for cause, the SI shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the SI for any and all rights and remedies provided by law. If it is determined that the SI improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

**10. TERMINATION FOR THE SMITHSONIAN'S CONVENIENCE** - The SI reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the SI, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the SI any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

**11. CHANGES** - The SI may at any time, in writing, make changes within the general scope of this purchase order to include. **(a)** Technical requirements and descriptions, specifications, statements of work, drawings or designs; **(b)** Shipment or packing methods; **(c)** Place of delivery, inspection or acceptance; **(d)** Reasonable adjustments in quantities or delivery schedules or both; and, **(e)** SI-furnished property, if any. If any such change causes an increase or decrease in the cost of or the time required for performance of this purchase order, the Contractor shall inform the SI in writing within thirty (30) days after receipt of change request. Any additional charges must be approved in writing by the SI authorized procurement officer executing this purchase order. Contractor shall not make any changes without the written consent of the SI authority executing this purchase order.

**12. CONFIDENTIALITY and DISCLOSURE - Confidential Information.** Confidential Information consists of trade secrets, product concepts, customer information, marketing communication material, marketing strategies, and other commercial or financial information that if affirmatively used by a competitor of the disclosing party would cause the disclosing party substantial competitive harm or information the release of which would violate the privacy rights of a third party with no overriding public interest. If Confidential Information is disclosed in tangible form, it shall be

clearly designated in writing as such by the disclosing party. If Confidential Information is disclosed other than in writing, the information deemed to be Confidential Information shall be confirmed in writing as such within thirty days of such disclosure.

**Limited Disclosure** -- Each party agrees that it will not disclose Confidential Information provided to it by the other party to others except to the extent that it is necessary to disclose such Confidential Information to its directors, officers, representatives, legal and financial consultants, and employees having a need to know such Confidential Information ("authorized parties") for the purpose of pursuing a business and contractual relationship between the parties. The parties shall use at least the same degree of care that each party uses to protect its own Confidential Information of similar importance, but no less than a reasonable degree of care. Further, the parties may disclose Confidential Information if required by law, subpoena, order or request of a federal governmental authority or court of competent jurisdiction, and further, provided that the party obligated to disclose such Confidential Information shall (a) assert the confidential nature of the Confidential Information to be disclosed, (b) use reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed, and (c) immediately notify the other party of the requirement, order, or request to disclose in advance of such disclosure in order to afford the other party the opportunity to contest disclosure. No other use or disclosure of Confidential Information may be made by any party without the prior written consent of the disclosing party.

**13. INDEMNITY** - The Contractor shall defend, indemnify, and hold harmless the SI, its Regents, directors, officers, employees, volunteers, licensees, representatives, agents and the United States Government (hereinafter referred to as "Indemnitees") from and against all actions, causes of action, losses, liabilities, damages, suits, judgments, liens, awards, claims, expenses and costs including without limitation costs of litigation and counsel fees related thereto, or incident to establishing the right to indemnification, arising out of or in any way related to:

Any breach of this Agreement, Terms and Conditions, and the performance thereof by Contractor, Subcontractor, other third parties, or any activities of Indemnitees, including, without limitation, the provision of services, personnel, facilities, equipment, support, supervision, or review; any claims of any kind and nature whatsoever for property damage, personal injury, illness or death (including, without limitation, injury to, or death of employees or agents of Contractor or any Subcontractor).

Any claims by a third party of actual or alleged direct or contributory infringement, or inducement to infringe any United States or foreign patent, trademark, copyright, common law literary rights, right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract or any libelous or other unlawful matter contained in such data or other intellectual property rights and damages. The contractor shall notify the SI immediately upon receiving any notice or claim related to this contract.

**14. HAZARDOUS MATERIAL** - The Contractor shall inform the SI in writing at the correspondence address listed on the purchase order prior to shipment and delivery of any hazardous material. Any materials required by this purchase order that are hazardous under federal, state or local statute, ordinance, regulation, or agency order shall be packaged, labeled, marked and shipped by the Contractor to comply with all federal, state and local regulations then in effect.

**15. OTHER COMPLIANCES** - The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

**16. SECURITY CONSIDERATION** - OPS, OCon 520 Contractor's conducting work on the SI premises are required to obtain a temporary or

long-term identification badge. Contractor's employee (s) requiring a long-term identification badge is subject to a fingerprint review. An adverse finding during the fingerprint review may prohibit a contractor's employee (s) from working on the contract. The SI will inform the contractor if a long-term identification badge is required.

**17. INSURANCE and BONDS** - Contractor shall maintain at all times during the performance of this contract Commercial General Liability Insurance. Contractor shall maintain Worker's Compensation Insurance in accordance with statutory requirements and limits. If during the performance of this contract, a vehicle is required, contractor shall maintain business automobile insurance. If this contract relates to any type of media exposure, then Contractor is required to have professional errors and omissions coverage. If this contract requires Contractor to handle Smithsonian funds or guard or protect Smithsonian artifacts, Contractor will also be required to obtain a fidelity bond or crime insurance. Limits of such bonds or insurance policies are to be determined. SI shall be listed as an "additional insured" under the comprehensive general liability and business automobile policies. Proof of insurance shall be in the form of a binder, policy, or certificate of insurance and this is to be submitted to the SI's Procurement Officer prior to work being initiated.

**18. INVOICE INSTRUCTIONS** - Invoices shall be submitted to the bill to address on the face of the purchase order after delivery of supplies and/ or services, and shall contain the following information:

(a) Contractor's name, address, and taxpayer identification number (TIN). (b) Invoice date and number. (c) Purchase order number including contract line item number. (d) Item description, quantity, unit of measure, unit price, and extended price. (e) Name, title, telephone and fax number, and mailing address of point of contact in the event of an invoice discrepancy. (f) Invoice total, payment discount terms and remittance address. (g) Shipping and payment terms (e.g. shipment number, date of shipment, and discount terms). Bill of lading number and weight of shipment should be included when using Smithsonian Institution bills of lading. Prepaid shipping costs shall be indicated as a separate item on the invoice. (h) Any other information or documentation required by other provisions of the contract.

**19. Travel** - (a) If travel is specified under this purchase order; it must be pre-authorized by the Contracting Officer's Technical representative (COTR) prior to occurrence. The Contractor shall be reimbursed for such travel upon receipt of documentation that the expenses were incurred. (b) Rail or air transportation costs shall not be reimbursed in an amount greater than the cost of economy class rail or air travel unless the economy rates are not available and the Contractor certified to this fact in vouchers or other documents submitted for reimbursement. (c) Room and meals (per diem travel allowance) shall be reimbursed in accordance with the Contractor's established policy, but in no event shall such allowances exceed the rates Contractor's established in the Federal Travel Regulations. (d) The contractor shall be reimbursed for the cost of the out-of-town travel performed by its personnel in their privately owned automobiles at the rates established in the Federal Travel Regulations, not to exceed the cost by the most direct economy air route between the points so traveled. If more than one person travels in the same automobile, the Contractor for such travel shall incur no duplication of or otherwise additional charges. (e) The Contractor shall be reimbursed upon receipt of appropriate documentation that the expenses were incurred. Total travel cost will not be reimbursed for an amount that exceeds the estimated amount stated in this purchase order.

**20. RESPONSIBILITY OF SMITHSONIAN PROPERTY** - Contractor assumes full responsibility for and shall reimburse and indemnify the SI for any and all loss or damage whatsoever kind and nature to any and all **SI property**, including any equipment, supplies, accessories, or parts furnished, while in the Contractor's custody and care, or resulting in whole or in part from the negligent acts, omissions of the Contractor, any subcontractor, or any employee, agent, or representative of the Contractor or subcontractor.

## 21. INTERNET PROTOCOL VERSION 6 (IPV6)

**COMPLIANCE** - In the event that the Contractor will be developing, acquiring, and/or producing products and/or systems pursuant to this Contract that will be connected to a network or that will interface with the World Wide Web, the following provisions shall apply: [OMB Memo M-05-22](#), dated August 2, 2005, and OMB guidance, dated July 2012 September 28, 2010, that requires procurements of networked IT comply with the [USGv6 Profile and Test Program](#) for the completeness and quality of SI IPv6 capabilities. The Contractor hereby warrants and represents that such products and/or systems to be developed, acquired, and/or produced pursuant to this Contract will be IPv6 compliant. These products and/or systems must be able to receive, process, and transmit or forward (as appropriate) IPv6 packets and must be able to interoperate with other systems and protocols in both IPv4 and IPv6 modes of operation. If the product or system will not be IPv6 compliant initially, the Contractor will provide a migration path and express commitment to upgrade to IPv6 for all application and product features. Any such migration path and commitment shall be included in the Contract price. In addition, the Contractor will have available contractor/vendor IPv6 technical support for development and implementation and fielded product management.

- 52.239-1 Privacy or Security Safeguards (see form SI 147B)
- 52.233-3 Protest After Award
- 52.244-6 Subcontracts for Commercial Items

### Additional FAR clauses that apply when applicable:

- 52.204-6 Universal Numbering System (DUNS) Number/Unique Entity Identifier
- 52.204-7 System for Award Management
- 52.208-4 Vehicle Lease Payments
- 52.208-5 Condition of Leased Vehicle
- 52.208-6 Marking of Leased Vehicles
- 52.208-7 Tagging of Leased Vehicle
- 52.211-6 Brand Name or Equal
- 52.211-17 Delivery of Excess Quantities
- 52.222-54 Employment Eligibility Verification (E-Verify)
- 52.228-8 Liability and Insurance Leased Motor Vehicles
- 52.233-4 Applicable Law for Breach of Contract Claim
- 52.236-5 Material and Workmanship
- 52.247-29 F.o.b. Origin
- 52.247-34 F.o.b. Destination

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**CLAUSES INCORPORATED BY REFERENCE** -This contract incorporates one or more clauses by reference with the same force and effect as if they were given in full text. The applicability of these clauses is effective upon the date of the actual contract award. Upon request the Contracting Official will make the full text available. The full text of the following FAR clauses may be viewed at the [Federal Acquisition Regulation \(FAR\) website](#). For the full text of Smithsonian Institution clauses contact the procurement official. The Contractor shall comply with the FAR clauses incorporated by reference, unless the circumstances do not apply: References herein to the "Government" shall be deemed to mean the Smithsonian Institution.

### SMITHSONIAN Clauses

- Minimum Insurance
- Smithsonian Institution Privacy and Security Clause (form SI 147B, SI Privacy and Security Clause )

### FAR Clauses

- 52.222-3 Convict Labor
- 52.222-19 Child Labor - Cooperation with Authorities and Remedies
- 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Equal Opportunity for Workers with Disabilities
- 52.222-41 Service Contract Labor Standards
- 52.222-50 Combating Trafficking in Persons. (non-commercial services awards that do not exceed \$500,000)
- 52.222-56 Certification Regarding Trafficking In Persons Compliance Plan (when applicable)
- 52.223-1 thru 4 Bio-based Product Certification/Affirmative Procurement of Biobased Products Under Service and Construction Contracts/Hazardous Material Identification and Material Safety Data/Recovered Material Certification
- 52.223-5 Pollution Prevention and Right-to-Know Information
- 52.224-1 Privacy Act Notification
- 52.225-1 Buy American Supplies
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.232-11 Extras

# Smithsonian Institution

## Privacy and Security Clause

**1. Smithsonian Data:** (a) The Smithsonian Institution (“Smithsonian”) retains sole ownership of, and unrestricted rights to, any and all physical or electronic information collected, processed, or stored by or on behalf of the Smithsonian (“Smithsonian Data”), which is defined to include personally identifiable information, *i.e.*, information about individuals, which may or may not be publicly available, that can be used to distinguish or indicate an individual’s identity, and any other information that is linked or linkable to an individual, such as medical, educational, financial or employment information (“PII”). (b) Contractor shall maintain, transmit, and retain in strictest confidence, and prevent the unauthorized duplication, use and disclosure of Smithsonian Data. (i) Contractor shall only access, maintain, use, and disclose Smithsonian Data to the extent necessary to carry out the requirements of this contract, and shall not use Smithsonian Data for testing or training purposes. (ii) Contractor shall only provide Smithsonian Data to its authorized employees, contractors, and subcontractors and those Smithsonian employees, contractors, and subcontractors who have a valid business need to know such information in order to perform duties consistent with this contract. (iii) Contractor shall ensure that all Smithsonian Data is protected from unauthorized access, disclosure, modification, theft, loss, and destruction. (iv) Contractor shall not disclose Smithsonian Data without the Smithsonian’s advance written authorization. If Contractor receives a legal request (such as a subpoena), or becomes subject to a legal requirement or order to disclose Smithsonian Data, Contractor shall (1) immediately notify the Contracting Officer’s Technical Representative (“COTR”) of it and afford the Smithsonian the opportunity to contest such disclosure, (2) assert the confidential nature of the Smithsonian Data, and (3) cooperate with the Smithsonian’s reasonable requirements to protect the confidential and proprietary nature of Smithsonian Data. (v) Contractor shall not transfer access to any Smithsonian Data in the event of a Contractor merger, acquisition, or other transaction, including sale in bankruptcy, without the prior written approval of the Contracting Officer. (c) Contractor shall provide the Smithsonian reasonable access to Contractor facilities, installations, technical capabilities, operations, documentation, records, databases, and personnel, and shall otherwise cooperate with the Smithsonian to the extent required to carry out an audit for compliance with the requirements in this contract. Contractor shall, as requested by the COTR, complete, or assist Smithsonian staff with the completion of, a privacy and/or security review which might include providing requested information and documentation about how Smithsonian Data is used, collected, maintained, stored, or shared. (d) Contractor shall make any Smithsonian Data accessible to the COTR as soon as possible, but no later than ten calendar days of receiving a request from the COTR, and shall transfer all Smithsonian Data to the COTR no later than thirty calendar days from the date of such request from the COTR. Contractor shall, when required to transfer

Smithsonian Data to the COTR under the terms of this contract, provide that Smithsonian Data in one or more commonly used file or database formats as the COTR deems appropriate. (e) Unless otherwise specified in this contract, Contractor shall purge any Smithsonian Data from its files and shall provide the COTR a Certificate of Destruction confirming the purging of the Smithsonian Data within forty-five calendar days of receiving a request from the COTR or at the expiry of this contract. (f) Contractor shall only be permitted to use non-Smithsonian provided information technology resources to access or maintain Smithsonian Data if Contractor provides, and the COTR approves, the following written certifications about the non-Smithsonian provided information technology resources: (i) Contractor shall maintain an accurate inventory of the information technology resources; (ii) Contractor shall keep all software installed on the information technology resources, especially software used to protect the security of the information technology resources, current and free of significant vulnerabilities; (iii) Contractor shall encrypt all Smithsonian Data stored or accessed on a non-Smithsonian provided mobile device (*e.g.*, phone, laptop, tablet, or removable media) using a Federal Information Processing Standards 140-2 certified encryption method; (iv) Contractor shall utilize anti-viral software on all non-SI information technology resources used under this contract; and (v) Contractor shall encrypt all transmissions of PII using Transport Layer Security 1.2 or higher with secure cyphers. Secure Sockets Layer shall not be used. (g) Unless more substantial requirements are provided for herein, Contractor is responsible for, at a minimum, applying industry best practice background screening, security and privacy training, and other appropriate personnel security safeguards to the services performed under this contract. (h) Contractor shall, if requested by the COTR, require its employees to sign a nondisclosure agreement, sign a conflict of interest agreement, and/or sign an acknowledgement of the requirements in this contract.

**2. Privacy Breach or IT Security Incident:** In the event of (i) any action that threatens or is likely to threaten the confidentiality, integrity, or availability of Smithsonian IT resources (including computer hardware and software, data, communication links, mobile devices, digitized assets, automated processes, physical computing environments, and associated personnel, whether located inside or outside of the Smithsonian); (ii) any activity that violates Smithsonian IT Security policies provided by the COTR; (iii) any suspected or confirmed loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or situation where persons other than authorized users or for an other than authorized purpose have access or potential access to Smithsonian Data or PII in a usable form, whether physical or electronic; or (iv) any suspected loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or situation where persons other than authorized users or for an other than authorized

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purpose have access or potential access to PII in a usable form, whether physical or electronic (collectively, “Incident”), Contractor shall: (a) Immediately, but no later than twenty-four hours after discovery, report the Incident to the Smithsonian Office of the Chief Information Officer (“OCIO”) Help Desk by calling 202-633-4000 and, if the OCIO Help Desk does not answer the telephone, leaving a voicemail which includes the name of Contractor, a brief summary of the Incident, and a return telephone number; (b) The Contractor shall cooperate with Smithsonian investigations and response activities for breaches or incidents that include the Contractor’s IT resources or personnel. (c) Follow industry standard best practices to correct and mitigate any damages resulting from the Incident; and (d) Indemnify and hold the Smithsonian harmless from any costs incurred by the Smithsonian in connection with such Incident caused in whole or part by Contractor’s failure to comply with its obligations under this contract.

**3. Public-Facing Software:** (a) Any application, system, software, or website used to fulfill the terms of this contract and accessed by members of the public (“Public-Facing Software”) shall comply with Smithsonian’s Privacy Statement (located at <http://www.si.edu/Privacy>) and the Smithsonian Kids Online Privacy (“SKOP”) Statement (located at <http://www.si.edu/privacy/kids>), and shall provide the public with privacy notices in locations that are acceptable in accordance with these policies. (b) For kiosks and interactives developed by Contractor, the Contractor shall take all reasonably necessary steps to ensure they will be maintained with antivirus software and routine patching. (c) If Contractor discovers that information was collected from someone under the age of 13 in violation of the SKOP’s parental permission requirements, Contractor shall provide notice to the Smithsonian Privacy Office as soon as possible, but no later than 24 hours after discovery, and delete that information as soon as possible, but no later than 24 hours after discovery. (d) Any Public-Facing Software that employs tracking technology (such as geolocation or a cookie, web bug, or web beacon) or collects contact information shall provide all users with an appropriate and accessible opportunity to accept or decline (“opt-in”) the use of any tracking technology prior to its use (*i.e.*, “just in time” notice and consent) as well as: (i) for those who decline the “opt-in,” reasonable access to the Public-Facing Software; and (ii) for those who “opt-in,” a subsequent and accessible opportunity to request that the tracking or communications cease (*i.e.*, “opt-out”).

**4. Cardholder Data and PCI Sensitive Authentication Data:** (a) Any Contractor that collects, processes, stores, transmits, or affects the security of cardholder data or Payment Card Industry (“PCI”) sensitive authentication data, either directly or through a third party, in order to carry out the requirements of this contract shall provide the COTR: (i) before this contract begins and annually thereafter, for Contractor and for any third party vendor that processes,

stores, transmits, or affects the security of cardholder data or PCI sensitive authentication data, a current, complete, comprehensive, and signed PCI Data Security Standard (“DSS”) Attestation of Compliance (AOC), a template for which may be accessible in the online document library of the PCI Security Standards Council (“SSC”); (ii) the *PCI DSS Requirement Management Form* provided by the COTR, which asks whether Contractor or a third party shall be responsible for ensuring that certain key DSS requirements are met; (iii) for each Payment Application, *i.e.*, application, system, software, or website used to electronically process, store, or transmit cardholder data or PCI sensitive authentication data as defined by the SSC, the listing from the SSC website’s List of Validated Payment Applications; (iv) for each payment device, the listing from the SSC website’s Approved Personal Identification Number Transaction Security (“PTS”) Devices list; (v) for each system used to process Point of Sale card-present transactions, the listing from the SSC website’s Point-to-Point Encryption Solutions list; and (vi) if requested, any additional evidence needed to determine the PCI compliance of activities related to this contract. (b) All credit card-present transactions at the Smithsonian must be processed through a PCI SSC P2PE solution and be EMV compatible. (c) Contractor shall provide the documents and listings identified in Paragraph 4(a) before it shall be permitted to use the relevant technology, and shall provide updated documents and listings to the COTR for review and approval before a system change results in one or more of the required documents or listings becoming inaccurate. (d) Each payment device that collects, processes, stores, transmits, or affects the security of cardholder data or PCI sensitive authentication data, either directly or through a third party, must adhere to the current PTS standard maintained by the SSC. (e) Each system used to process Point of Sale card-present transactions must comply with the Smithsonian Office of the Chief Information Officer (“OCIO”) standards provided by the COTR, to include the Technical Note IT-930-TN99, *Implementation of P2PE Devices and TransArmor Services*, or its successor. (f) Contractor shall be responsible for securing cardholder data or PCI sensitive authentication data any time Contractor possesses or otherwise stores, processes or transmits on behalf of the Smithsonian, or to the extent that Contractor could impact the security of the Smithsonian’s cardholder data environment, *i.e.*, the people, processes and technologies that store, process, or transmit cardholder data or PCI sensitive authentication data by, or on behalf of, the Smithsonian. (g) Additional requirement for service providers only: Service providers acknowledge in writing to customers that they are responsible for the security of cardholder data the service provider possesses or otherwise stores, processes, or transmits on behalf of the customer, or to the extent that they can impact the security of the customer’s cardholder data environment.

**5. IT Systems and Cloud Services:** (a) For any Cloud System (*i.e.*, computing service provided on-demand via a

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shared pool of configurable resources instead of via separate dedicated computing resources or information technology system) Contractor develops, operates, or maintains on behalf of the Smithsonian, Contractor shall provide the necessary documentation, security control evidence, and other information needed to complete federal security Assessment and Authorization activities in accordance with the National Institute of Standards and Technology Risk Management Framework. (b) For Cloud Systems that have been Federal Risk and Authorization Management Program (“FedRAMP”) certified, Contractor shall provide FedRAMP documentation to the Smithsonian for review and shall cooperate with Smithsonian requests for clarification or further evidence. (c) For Cloud Systems which are not FedRAMP certified, and all other Contractor-hosted systems and websites, Contractor shall complete all requested Smithsonian Assessment and Authorization documentation and shall fully cooperate with the Smithsonian’s security assessment process, including providing requested security control evidence and access to interview appropriate Contractor personnel about security controls. (d) For websites or web servers hosted outside of the Smithsonian Herndon Data Center, the Contractor must allow OCIO to perform vulnerability scanning and penetration testing. Website owners should consult with information technology security staff to determine specific needs for their environment. (e) The Contractor shall maintain all Smithsonian Data inside the United States. (f) For Contractor custom developed (non-COTS) systems and websites to be hosted at the Smithsonian, Contractor shall complete all requested Smithsonian Assessment and Authorization documentation for the components/aspects of the system provided by Contractor, and shall fully cooperate with the Smithsonian’s security assessment process, including providing requested security control evidence and access to interview appropriate Contractor personnel about security controls. (g) For Contractor developed applications or Contractor built interactive systems (e.g., public-facing exhibit technology incorporated through digital signage, custom interactives, content players, media players, audio streaming devices, lighting or control automation systems), Contractor shall not circumvent the security of system (e.g., the use of backdoor or maintenance hook provisions are prohibited). (h) Contractor shall not implement into live production or use any system or website operated for the Smithsonian or containing Smithsonian Data until security and privacy authorization has been granted in writing by the Smithsonian Office of the Chief Information Officer (“OCIO”) and the Smithsonian Privacy Officer via the COTR. Contractor will resolve security deficiencies in order to successfully meet the applicable requirements of this section.

**6. Credentials and Network Access:** (a) Contractor and Contractor’s employees who have access to Smithsonian network/systems shall, when requested by the COTR, complete Smithsonian-provided privacy and security training

course(s), sign a nondisclosure agreement, sign a conflict of interest agreement, sign an acknowledgement of the requirements in this contract, provide fingerprints, pass a Smithsonian background check, and/or provide notice of the results of that background check to the COTR. The content and timing of the course(s), agreement, or background check shall be substantially similar to one that would be required of a Smithsonian employee with access to similar Smithsonian networks/systems. (b) Contractor shall notify the COTR at least two weeks before any of Contractor’s employee requiring a Smithsonian credential, network account or other access, or other Smithsonian-furnished equipment stops supporting the work of this contract. In the event that Contractor is not provided two weeks’ notice by its employee, Contractor will notify the COTR as soon as Contractor becomes aware of the employee’s departure from the contracted work. (c) Contractor shall, when any employee requiring a Smithsonian credential, network account or other access, or other Smithsonian furnished equipment stop supporting the work of this contract, provide such employee’s Smithsonian credential and any Smithsonian furnished equipment to the COTR within three business days.

**7. Additional Terms:** The bolded headings at the start of each section of this Smithsonian Institution Privacy and Security Clause are included only to assist the reader in navigating this Smithsonian Institution Privacy and Security Clause. The Parties intend the bolded headings to have no legal effect, and agree that the bolded headings are not intended to limit or modify any other language in this Smithsonian Institution Privacy and Security Clause.

## SMITHSONIAN CONFIDENTIALITY AND DISCLOSURE CLAUSES

The Smithsonian Institution is a trust instrumentality of the United States and has adopted a written policy for responding to requests for Smithsonian Institution records, including paper documents, electronic data, email, contracts, and other information stored or maintained by the Smithsonian, consistent with the principles of disclosure under the Freedom of Information Act, 5 United States Code (U.S.C.), § 552 and available at <http://www.si.edu/OGC/Records-Requests>:

1. **Confidential Information.** Confidential Information consists of trade secrets and commercial or financial information that is customarily treated as private and provided under an assurance of privacy, as well as information the release of which would violate the privacy rights of the disclosing party or a third party with no overriding public interest. Confidential Information shall be designated in writing by the disclosing party as confidential. To have information disclosed other than in writing treated as Confidential Information, the disclosing party must confirm the status of that information as Confidential Information within thirty (30) calendar days of the original disclosure.
2. **Exceptions to Confidential Information.** Confidential Information shall not include any information, whether or not designated in writing as Confidential Information, which:
  - (a) was publicly available at the time of disclosure to the receiving party;
  - (b) was known by the receiving party prior to such disclosure;
  - (c) becomes publicly available after disclosure to the receiving party through no fault of the receiving party;
  - (d) is obtained by the receiving party from a third party who acquired the information without committing a wrongful or tortious act; or
  - (e) is developed independently by the receiving party without reference to or use of Confidential Information.

The receiving party shall notify the disclosing party promptly in writing of any misappropriation, unauthorized disclosure, or use by any person of the Confidential Information disclosed to the receiving party which may come to the receiving party's attention. The receiving party will take all steps reasonably requested by the disclosing party to stop, limit, or otherwise remedy such misappropriation, unauthorized disclosure, or use.

3. **Limited Disclosure.** In maintaining Confidential Information, each party shall use at least the same degree of care that each party uses to protect its own Confidential Information of similar importance, but no less than a reasonable degree of care. Each party agrees that it will not disclose Confidential Information provided to it by the other party to others except to the extent that it is necessary to disclose such Confidential Information to its Regents, directors, officers, representatives, legal and financial consultants, and employees having a need to know such Confidential Information ("authorized parties") for the purpose of pursuing a relationship between the parties. Further, the parties may disclose Confidential Information if required by law, subpoena, order or request of a federal governmental authority or court of competent jurisdiction, and provided that the party obligated to disclose such Confidential Information shall (i) assert the confidential nature of the Confidential Information to be disclosed, (ii) use reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed, and (iii) immediately notify the other party of the requirement, order, or request to disclose in advance of such disclosure in order to afford the other party the opportunity to contest disclosure. In the event disclosure of Confidential Information is requested in accordance with Smithsonian's records disclosure policy, Smithsonian will provide the disclosing party the opportunity to identify Confidential Information prior to release, but final decisions regarding release shall be made by Smithsonian in accordance with its policy. No other use or disclosure of Confidential Information may be made by any party without the prior written consent of the disclosing party.
4. **Return of Confidential Information.** The receiving party will either return or destroy all tangible materials embodying Confidential Information within ten (10) business days of receipt of the disclosing party's written request to do so and, if further requested by the disclosing party, the receiving party will provide written certification of such destruction.

Contractor's Name:		
Purchase Order #:		
Individual's Name:		
Individual's Signature:		Date:

## Background Investigations and Credentials for Contractors' Personnel

This information applies to the Contractor's employees and subcontractors, who provide services for the Smithsonian Institution (SI). All contractors are subject to SI security directives in effect during the duration of their contracts with the SI.

1. **Background Investigations.** Specifically, all Contractor's employees to be assigned to the SI under this contract shall be required to receive an SI Credential if their association with SI will be greater than thirty (30) days and they will need access to staff-only areas of SI controlled facilities and leased spaces. Prior to being issued this SI Credential, the Contractor's employees shall be required to undergo and pass an appropriate background investigation and complete security awareness training. The Contractor's employees whose associations with the SI shall be less than 30 days shall not receive a background investigation or SI Credential, however, they must be escorted by Credentialed personnel at all times when in staff-only areas of SI facilities. Upon successful completion of a background investigation, the Contractor's employees to be assigned to SI shall be issued an SI Credential that must be worn and visible at all times while on duty and within staff-only areas of SI facilities. If the nature of the work does not require escorted access to SI facilities, or when SI Credentialed staff can accompany contractors at all times, the Contractor and/or Contractor's employees may begin work prior to receiving an SI Credential. Contractor's and subcontractor's employees shall not be allowed unescorted access to SI staff-only areas until they undergo an adjudicated background check and receive an SI Credential.
2. **Forms, Information and Reviews Required.** The Contracting Officer's Technical Representative (COTR), or other designated SI employee, shall furnish the Contractor with an OF-306 (Declaration for Federal Employment form). An OF-306 must be completed by each person employed by the Contractor who shall be assigned to SI. Completed forms OF-306 must be returned by the Contractor to the COTR, or other designated SI employee, within ten (10) workdays from receipt of the forms. Upon notification from the COTR or designated SI employee the Contractor shall send each employee to be assigned to this contract to the SI Personnel Security and ID Office for fingerprinting. For contractors to SI organizations outside the Washington DC and New York City areas, SF-87 Fingerprint Cards shall be provided to the Contractor by the COTR or other designated SI employee. If necessary, the forms SF-87 shall be submitted by the Contractor with the OF-306. Based on the information furnished, the SI shall conduct a background investigation referred to as Special Agreement Checks (SAC). The SAC includes but is not limited to:
  - Security Agency Checks (record of previous suitability determinations)
  - FBI National Criminal History Check
  - Law Enforcement Checks

SI shall review the investigation results and determine if the contractor and contractor's employees did not provide their true identities, or are otherwise not suitable for an SI Credential. SI shall provide the contractor with reasonable notice of the determination, including specific reason (s) the individual(s) has been determined to not have provided his/her true identity or is otherwise unsuitable for an SI Credential. The contractor or subcontractor has the right to answer the notice in writing and may provide documentation that refutes the validity, truthfulness, and/or completeness of the SI initial determination. After consideration of the initial determination and any documentation submitted by the contractor for reconsideration, the Director, Office of Protection Services (OPS), SI, or his/her designee, shall issue a written decision. The reconsideration decision by the Director, OPS, shall be final.

3. **Term Requirement for SI Credentials.** Throughout the life of the contract, the Contractor shall provide the same data for each new employee(s) or subcontractor(s) who will be assigned to this contract. The Contractor's SI Credentials shall expire annually and must be renewed, if necessary. It is the Contractor's responsibility to initiate the renewal process. The Contractor is not required to submit another set of background investigation forms for the Contractor's employees who have already been through this process.
4. **Relinquishing SI Credentials.** Upon expiration of the contract, or removal or termination of the Contractor's employees assigned to SI facilities, the Contractor shall return all SI Credentials issued to the Contractor's and /or subcontractor's employees to the COTR or other designated SI employee.

## SMITHSONIAN INSTITUTION RIGHTS-IN-DATA CLAUSE

As used herein, the term “Subject Data” includes, but is not limited to, literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works, as each of those terms are used and defined by the Copyright Act of the United States (17 USCS §101, et. seq.) (the “Copyright Act”) and works of any similar nature (whether or not copyrighted) which are included in the material to be delivered under this contract.

(a) Work for Hire. All Subject Data first produced, composed, or created in the performance of this contract, where such Subject Data consists of a work: (i) specially ordered or commissioned for use as a contribution to a collective work; (ii) as part of a motion picture or other audiovisual work; (iii) as a translation; (iv) as a supplementary work; (v) as a compilation; (vi) as an instructional text; (vii) as a test; (viii) as answer material for a test; or (ix) as an atlas, as each of those terms are used and defined by the Copyright Act, shall be considered a “work made for hire,” as that term is defined under the Copyright Act. The copyright to such Subject Data shall be the exclusive property of Smithsonian and may be registered by the Smithsonian Institution in its own name.

(b) Other Copyrightable Works. All Subject Data first produced in the performance of this contract, where such Subject Data consists of copyrightable materials that do not fall within the enumerated categories for work for hire, shall become the property of Smithsonian. Contractor hereby transfers to Smithsonian full legal title and all right, title, and interest in the copyright to all such Subject Data, including without limitation, all preliminary renditions of the Subject Data whether or not such renditions are actually delivered to Smithsonian. The copyright to such Subject Data shall be the exclusive property of Smithsonian and may be registered by the Smithsonian Institution in its own name.

(c) Except as specified herein, no Subject Data first produced in the performance of this Agreement may be published or reproduced by Contractor in whole or in part, in any manner or form, without Smithsonian’s prior written consent. Contractor agrees that no right at common law or in equity shall be asserted, and no claim to copyright by statute shall be established by Contractor in any such Subject Data without Smithsonian’s prior written consent. Contractor shall secure Smithsonian’s legal title and interests in and to all Subject Data that is produced for Contractor by third parties pursuant to this Agreement.

(d) License for Other Subject Data. Excluding the Subject Data which Smithsonian owns or has already obtained a license for, Contractor hereby grants to Smithsonian a royalty-free, non-exclusive, perpetual, and irrevocable license in all copyrighted or copyrightable Subject Data not first produced, composed, or created in the performance of this Agreement, but which is incorporated in the material furnished under this Agreement. Such license includes, without limitation, the rights to reproduce, publish, translate, broadcast, transmit, distribute, exploit, display, use, sell, and/or dispose of such Subject Data in any manner, and to authorize others to do so. In the event that Contractor does not have the right to grant such a license with respect to any such Subject Data, Contractor shall immediately notify the Smithsonian of this fact and

obtain Smithsonian's prior written permission to incorporate such Subject Data in the work. Without this notification, Smithsonian will be acting in reliance on this contract and will presume that it possesses all necessary rights and is free to make whatever use of the Subject Data that Smithsonian determines is in its best interests.

(e) The Contractor hereby warrants that the Subject Data delivered to Smithsonian pursuant to this contract does not infringe statutory copyrights or common law literary rights of Contractor or others and contains no matter libelous or otherwise unlawful. Contractor agrees to indemnify the Smithsonian Institution, its Board of Regents, officers, agents, and employees against any liability, including costs and expenses, for: (i) violations of copyright or any other property rights arising out of the use, reproduction, or disposition of any Subject Data furnished under this contract; or (ii) based upon any libelous or other unlawful matter contained in said Subject Data.

(f) The Contractor agrees to report in writing to the Smithsonian Office of the General Counsel, promptly and in reasonable detail, any notice or claims of copyright infringement received by Contractor with respect to any Subject Data or other material delivered under this contract.

<b>SMITHSONIAN INSTITUTION INDEPENDENT CONTRACTOR CLAUSES</b>
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It is understood that Contractor is undertaking the work hereunder as an independent contractor, not as an employee of the Smithsonian, and neither Contractor nor Contractor's employees are eligible for Smithsonian benefits, including coverage under FECA (workers compensation) and FTCA (Federal Tort Claims Act), or coverage under any Smithsonian workers compensation, medical, liability, or other insurance policy, or for legal protections afforded to employees under law applicable to employment relationships.

- (1) Contractor is responsible for providing, at Contractor's own expense and as necessary, disability, unemployment, workers compensation and other insurance, including adequate liability and property insurance, training, permits, and licenses for Contractor and for Contractor's employees.
- (2) Contractor is responsible for paying all taxes and income taxes, including estimated taxes, incurred as a result of the payments by Smithsonian to Contractor for performance of this contract.

The parties, by this contract, do not intend to create a partnership, principal/agent, or joint venture relationship, and nothing in this contract shall be construed as creating such a relationship between the parties. Neither party may incur any obligation on behalf of the other.

Contractor agrees and acknowledges that Smithsonian assumes no responsibility whatsoever for the acts, errors and/or omissions of Contractor beyond those that the Smithsonian is responsible for at law.

#### **WARRANTIES AND REPRESENTATIONS**

Contractor warrants the following: (1) He or she has full right and authority to enter into this Agreement; (2) he or she has full right and authority to grant all of the rights granted herein; (3) he or she is not under any obligation to any other party which may interfere with the performance of his or her obligations hereunder or conflict with or injure the work performed under this contract; and (4) he or she has not previously assigned, pledged or otherwise encumbered any rights herein granted to Smithsonian. Contractor represents that he or she has diligently taken prudent, responsible and customary measures to ensure that the materials provided by the Contractor contain no matter that is libelous or in violation of the copyright, patent right, or any property or personal right of any person or entity nor a violation of any statutory copyright, nor are otherwise contrary to law.

#### **RESPONSIBILITY FOR SMITHSONIAN PROPERTY**

Contractor assumes full responsibility for and shall reimburse and indemnify the Smithsonian for any and all loss or damage of whatsoever kind and nature to any and all Smithsonian property, including any equipment, supplies, accessories, or parts furnished, while in Contractor's custody and care, or resulting in whole or in part from the negligent acts or omissions of the Contractor, any subcontractor, or any employee, agent, or representative of the Contractor or subcontractor.

#### **NO WAIVER OF RIGHTS**

Neither the Smithsonian's review, approval, acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any cause of action arising out of the Contractor's performance of this contract.

#### **INDEMNIFICATION**

Contractor shall defend, hold harmless, and indemnify Smithsonian Institution, its Regents, directors, officers, employees, volunteers, licensees, representatives and agents, and the Government of the United States, against any and all claims, loss and expense (including attorney's fees and litigation expenses), from loss or liability or injury to any persons (including employees or agents of the Contractor or his subcontractors) and from loss of or damage to any property (including property owned by Smithsonian) arising out of any act or omission of the Contractor, his employees, agents or subcontractors in the performance of this contract.