Archival Collections Support for the Ralph Rinzler Folklife Archives and Collections

This Request for Quote (RFQ) is issued by the Smithsonian Institution (SI), Center for Folklife and Cultural Heritage (CFCH or the Center), Ralph Rinzler Folklife Archives and Collections (RRFAC or Rinzler Archives), for technical professional, non-personal services to provide basic collections management and archival processing services in accordance with the attached Statement of Work (SOW).

I. SUBMITTING YOUR QUOTE

Price quotes may be submitted by electronic mail (email). Quotes are due by 5:00 PM ET on Sunday, August 13, 2023, at:

Smithsonian Institution
Center for Folklife and Cultural Heritage
Attn: Sayem Sharif
Email to: SharifS@si.edu

CC: Greg Adams
Email to: AdamsG@si.edu

Questions or comments pertaining to the RFQ should be submitted via electronic mail (email) to Sayem Sharif (SharifS@si.edu) no later than 5:00 PM ET on Monday, August 7, 2023. All questions having impact on the RFQ will be issued to all vendors via electronic mail (email).

II. DESCRIPTION OF REQUIRED SERVICES

The award will be a Firm-Fixed Price contract. The firm-fixed price shall be a fully burdened price necessary to complete the requirements as outlined in the SOW, over the course of 1,702 hours, for the services to be completed by August 30, 2024. All services must be coordinated directly with the Smithsonian Institution’s Contracting Officer’s
Technical Representative (COTR) and the Technical Point of Contact (TPOC), including mutual approval of all proposed plans of action.

III. BASIS OF AWARD

The basis for the award will be best value to the Smithsonian Institution. The Smithsonian plans to award without discussions; however, does reserve the right to conduct discussions if later determined by the Contracting Officer to be necessary. Failure to furnish complete information requested in the RFQ may cause the Offeror to be judged non-responsive and immediately be removed from further consideration for this award.

Evaluation factors are:

A. Technical Experience

Offeror shall provide a description to include information regarding the offeror’s background and experience providing the services described in the SOW. In addition, the technical approach narrative shall detail the offeror’s approach toward performing the required service under this requirement, clearly demonstrating the offeror’s understanding of, and capability to meet, all stated requirements and goals.

I. Demonstrate an understanding of the services required; and the proposed methodology to rehouse, inventory, barcode, track and create EAD-compliant finding aids for archival papers, photographs, audiovisual media, and electronic records, in accordance with the statement of work (SOW).

II. Describe professional level of experience and provide the resumes, licenses, certifications, education of the contractor being proposed for the performance of this contract, based on providing or performing services of similar size, scope, complexity and type of client that indicates your suitability for this project.

III. Provide resume, which shall highlight education, work experience, qualifications, and technical competence that demonstrates the contractor meets the requirements of the SOW.

B. Past Performance

Contractor shall provide two references (names, current contact telephone and email address) of similar work in size and scope performed within the last three years (or three references in the last five years). Past Performance references are to include but not be limited to the following:

- Agency Name, address
- Contract number
- Contract type
- Period of Performance
- Total contract value
- Contract work (a brief description of the purpose of the contract)
C. Price

The price quote must cover the pricing for a per hour rate for the contract.

IV. INSURANCE REQUIREMENTS

Prospective contractors are required to have General Liability Insurance coverage in the minimum amount of $1,000,000 per occurrence for liabilities arising out of the contractor’s activities pertaining to this contract. This policy shall provide coverage for bodily injury, property damage, contractual liability, products and completed operations, and person and advertising injury. Smithsonian shall be listed as an "additional insured" under this policy. Contractor shall provide a certificate of insurance evidencing the required coverage prior to commencing under the contract. **Proof of insurance must be submitted with quotes.**

Contractor may have the option to enroll in the commercial general liability policy for Smithsonian contractors and agree to pay the enrollment cost of the amendatory endorsement. Insurance coverage would only be for the duration of this contract and would cover the contractor only for work performed for the Smithsonian Institution.

V. SYSTEM FOR AWARD MANAGEMENT (SAM) REGISTRATION

It is a requirement that current and prospective recipients of contracts and purchase orders awarded by the SI must have an active SAM registration to be eligible for awards, and maintain an active record in SAM throughout the period of time the SI award will be in effect. The SAM requires a one-time business registration, with annual updates, and allows vendors to control the accuracy of the business information they enter. The financial data you enter, which includes the electronic funds transfer (EFT) data collected by SAM, will assist the SI with correctly directing payments on your invoices and complying with the Federal Debt Collection Improvement Act of 1996.

Within thirty (30) calendar days after your SAM registration is activated you must mail a notarized letter to SAM. You will receive guidance on this procedure throughout the SAM registration process and again after your SAM registration is activated. Federal agencies, including SI, have been assured that once an entity’s SAM registration is activated, agencies may engage that entity. Notarized letters from registered entities will need to contain specific language. OCon&PPM has provided the preferred language for letters with our form memo OCon 120 – Mandatory Registration in the System for Award Management (SAM) that accompanies this RFQ.

If yours is the acceptable price quote and you are selected for award, your organization's active registration with SAM must be verifiable by SI staff managing this procurement prior to contract or purchase order award being executed, and at the time any modifications or amendments to awards might be required.
You may complete or update your SAM registration information anytime online at http://sam.gov. Questions regarding the process may be directed to the Federal Service Desk online at www.fsd.gov or via toll free call to 1-888-606-8220. There is no charge for registering in SAM.

VI. UNIQUE ENTITY IDENTIFIER (UEI) NUMBER

A UEI number is a unique twelve-digit alpha-numeric identifier that will be assigned to you when your SAM registration is completed. A UEI is available for each physical location of your business (see Section V. of this RFQ). You will need to maintain your assigned UEI(s) in a safe location where they may be easily accessed. Your UEI will be required whenever you need to annually update your SAM registration or make changes to your SAM registration information at any time.

VII. LEGISLATIVE AND/OR ADMINISTRATIVE REQUIREMENTS

A. Service Contract Act of 1965, as amended

If services to be performed are covered by the Service Contract Act (SCA), as amended, the SCA shall apply to all work performed under the contract, purchase order, or GSA schedule task order to be issued. Individuals and companies submitting quotes are encouraged to verify the wages and fringe benefits determined by the U.S. Department of Labor to be payable for the Labor Category and in within the location that work performance will occur as cited in the Statement of Work. The SCA wages and fringe benefits payable shall be part of the order award.

Individuals and companies awarded a contract, purchase order or GSA schedule contract task order for SCA covered services are responsible, and required by law, to deliver to its employee(s) or post a notice of the required compensation in a prominent place at the worksite. The SCA provides authority to contracting agencies to withhold contract funds to reimburse underpaid employees, terminate the contract, hold the contractor liable for associated costs to the government, and debar from future government contracts for a period of three (3) years any persons or firms who have violated the SCA. The contracting officer awarding this order, or the Smithsonian Inspector General, may periodically require contractors to provide information that verifies compliance with the SCA for services provided under the awarded contracts, purchase orders or GSA schedule contract task orders.

B. E-Verify

If at award, or anytime during contract performance, the dollar amount of the contract award exceeds $150,000 or $5,000,000 under GSA Schedule, with a period of performance over 120 days, the successful bidder is required to register in the E-Verify System and verify that all individuals to be hired under the contract award are eligible for employment within the U.S. This requirement is not applicable to work that will be performed outside the U.S. or for Commercial Off the Shelf (COTS) items.
E-Verify is an Internet-based system operated by the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS). It allows employers to verify the employment eligibility of their employees, regardless of citizenship. For more information on e-verify and when, why and how to register and use the system please go to the USCIS site on the World Wide Web at: [E-Verify.gov](#).

Executive Order 13465 and Homeland Security Policy Directive 12 (HSPD-12)

C. **Background Investigations**

If a contractor employee assigned to the SI under this contract will have an association with SI that will be greater than thirty (30) days, determined either at time of contract award or anytime during contract performance, and will need access to staff-only areas of SI controlled facilities and leased spaces, the employee shall be required to receive an SI Credential. Contractor employees who require an SI Credential shall be required to undergo and pass an appropriate background investigation and complete security awareness training before an SI Credential is issued. Employees whose associations with the SI will be less than 30 days shall not receive a background investigation or SI Credential, however, they must be escorted by Credentialled personnel at all times when in staff-only areas of SI facilities. If relevant to this RFQ, a form OCon 520, Background Investigations and Credentials for Contractors’ Personnel, is included.

The following actions shall be required to be completed by the SI Contracting Officer’s Technical Representative (COTR) and successful vendor:

1. The COTR shall provide an OF-306, Declaration for Federal Employment form, for each of the Contractor’s employees who will be assigned to the SI for 30 days or longer. The OF-306 forms must be completed by each person and returned by the Contractor to the COTR, or other designated SI employee, within ten (10) workdays from receipt of the forms by the Contractor.

2. For contractors to SI organizations outside the Washington DC and New York City areas, forms SF-87, Fingerprint Cards, shall be provided to the Contractor by the COTR or other designated SI employee. Each form SF-87 must be returned to the COTR, or other designated SI employee, within ten (10) workdays from receipt of the forms by the Contractor. When necessary, the forms SF-87 shall be submitted by the Contractor with the OF-306.

*Homeland Security Policy Directive 12 (HSPD-12)*

VIII. **Information to be Submitted with Quotes**

Quotes submitted must include the following information to be deemed responsive to this Request for Quote and accepted by the SI:

A. Documentation of your current active SAM registration with the date it will expire
B. Project Title
C. Business name, address, telephone number, and UEI number
D. Business point of contact name, telephone number, and email address
E. Pricing. Ensure that base year and option year pricing is included.
F. Past Performance information should include the contract number, contact person with telephone number and other relevant information for at least 3 recent relevant contracts for the same or similar goods and/or services.
G. Certificates or other documentation confirming appropriate types and levels of insurance required are in effect, and other certificates and documentation requested.
H. If services are subject to the requirements of the Service Contract Act provide with your quote:
   1. U.S. Department of Labor wage determination hourly rate payable within the location of work performance
   2. Health and Welfare hourly rate payable within the location of work performance
   3. IFF hourly rate payable within the location of work performance
   4. G & A hourly rate payable (e.g., markup, overhead, etc.) within the location of work performance
   5. Vacation hourly rate payable within the location of work performance
   6. Holiday hourly rate payable within the location of work performance
I. If requested in the RFQ, provide résumés of personnel that may be assigned to perform work under the anticipated award.
J. When prices quoted are in accordance with the terms of a General Services Administration (GSA) schedule contract, provide the following information: your GSA contract number, SIN, goods and/or services pricing.
K. Indicate any discounts to your GSA schedule contract pricing that is being extended to the SI by your price quote(s).
L. Cite the date through which pricing submitted is valid.

ATTACHMENT(S)

- Statement of Work for Archival Collections Support for the Ralph Rinzler Folklife Archives and Collections v.7/13/2023
- Form SI 147A, Smithsonian Institution Purchase Order Terms and Conditions
- Form SI 147B, Smithsonian Institution Privacy and Security Clause
- OCon 120, Mandatory Registration in the System for Award Management (SAM)
- Rights in Data Clause
- OCon 140 Confidentiality Clause
Archival Collections Support for the Ralph Rinzler Folklife Archives and Collections

I. SCOPE OF WORK
The Ralph Rinzler Folklife Archives and Collections (RRFAC or Rinzler Archives) at the Center for Folklife and Cultural Heritage (CFCH or the Center) has a requirement for a contractor to provide professional, technical, non-personal, work-for-hire archival services for collections in the Center’s Ralph Rinzler Folklife Archives and Collections. The contractor shall provide technical and professional services for an estimated 1,702-hour project to resolve a 3+ year backlog of mission-critical collections management activities for archival records that include documentation from the Smithsonian Folklife Festival, curatorial research records, and recent acquisitions from Smithsonian Folkways. The term of the contract will need to be completed by August 30, 2024. The Smithsonian may extend services in 30-day intervals.

II. BACKGROUND
The Rinzler Archives at the Center for Folklife and Cultural Heritage serves as a production archive that supports the collections care needs of Smithsonian Folkways Recordings (SFR), the Smithsonian Folklife Festival (SFF), Curatorial Research and Education, and the Cultural Vitality Program. With more than 5,300 cubic feet of collections and a rapidly expanding digital footprint, the RRFAC is a resource for cultural documentation maintained with a commitment to shared stewardship.

The Ralph Rinzler Folklife Archives and Collections was closed to onsite researchers beginning in October 2018 when the Archives’ 2,500 square foot collections storage space (the repository) underwent a $1.8 million renovation (2018-2020). During the renovation, the Center’s then 5,200+ cubic feet of national collections were relocated to seven temporary storage locations within and beyond the Center’s offices at Capital Gallery. Once the overall renovation work was completed by early 2020, but before all of the collections could be returned, the entire Smithsonian shifted to enhanced telework due to the COVID-19 pandemic. As a result, the
Rinzler Archives had to postpone most of its post-renovation collections management work until spring 2022. The purpose of this contract is to acquire archival services to resolve this 3+ year backlog of mission-critical collections management activities for archival records that document the American Experience through music, history, and culture.

III. SPECIFIC TASKS
The contractor shall provide the following:

1. Deliver 1,702 hours of archival services in consultation with the Interim Archives Director to perform basic collections management and processing tasks to appropriately store, track, and access 1,200+ cubic feet of archival collections.

2. Perform basic processing tasks (rehouse, file-level inventory, box-level barcode, and tracking) resulting in EAD-compliant finding aids for 369+ cubic feet of recently acquired archival collections, which predominantly consist of papers, photographs, and audiovisual media. Specific tasks include carrying boxes, moving boxes on carts, opening boxes, handling and rehousing papers, photographs, and audiovisual media, describing content in EAD-compliant spreadsheet templates, uploading templates into Archives Space (ASpace) archival management system, completing collection-level descriptions, and working with Archives staff to ensure finding aids are on display via the Smithsonian Online Virtual Archives (SOVA).

3. Work with the Interim Archives Director, and in consultation with archives staff and Smithsonian Facilities (as needed), to inventory, track, and transfer 900+ boxes of archival collections between the Center's Capital Gallery offices and offsite locations, including Iron Mountain (Boyers, PA), the FolkShop (Lanham, MD), SI Libraries Research Annex (Suitland, MD), and the Museum Support Center in Suitland, MD. Tracking of barcoded boxes shall occur using spreadsheets and Archives Space (ASpace). Specific tasks include carrying boxes, moving boxes on carts, opening and closing boxes to spot check contents with inventories, labeling and placing barcodes on boxes, using barcode scanners to update inventories and tracking spreadsheets, and working with Archives staff to ensure that barcodes are accurately ingested into Archives Space (ASpace) archival management system. Smithsonian will provide moving services to transport palletized collections between storage facilities. Smithsonian moving services will include palletizing and stretch wrapping collections, loading collections into moving vans, and delivering collections to loading docks.

4. Prepare and submit a monthly status report to the Contracting Officer’s Technical Representative (COTR) and Technical Point of Contact (TPOC) for review. The status report should detail hours worked and listed collections worked on for that month.

IV. DELIVERABLES
1. **Inventory, track, and transfer 400-500 boxes** for offsite storage at Iron Mountain (Boyers, PA) to make room at Capital Gallery for incoming collections (Iron Mountain couriers will pick up the boxes once they are prepared).

2. **Inventory, track, and transfer 200+ boxes of audiovisual media and business records** from the temporary offsite storage at the Center’s Lanham, MD, warehouse to the repository at Capital Gallery.

3. **Inventory, track, and transfer 100+ boxes of 10-inch audiovisual media** from the SI Libraries Research Annex (Suitland, MD) to the repository at Capital Gallery.

4. **Inventory, track, and transfer 123 boxes of the Rinzler Archives most fragile collections – one-of-a-kind acetate and lacquer discs** – from SI Archives’ Capital Gallery vault (third floor) to CFCH’s repository on the second floor.

5. **Inventory, track, and transfer 24 boxes of deteriorating Festival film (1976) to frozen storage at Museum Support Center (MSC) Pod 3 in borrowed space from NAA/HSFA.**

6. **Inventory, track, and transfer 50+ boxes/containers of excess archival supplies and equipment** from Capital Gallery to the FolkShop (Lanham, MD) to maximize Capital Gallery storage, workspaces, and offices for collection care workflows.

7. **Rehouse, inventory, barcode, and create EAD-compliant finding aids** for collections of business papers, manuscripts, photographs, audiovisual media, sound recordings, and electronic media that the Rinzler Archives staff can use to maintain and regulate access to collections.

V. **PERIOD OF PERFORMANCE**

Work is estimated to begin on or about August 28, 2023, and complete the work before August 30, 2024, or when the 1,702 hours have been expended. The contractor’s specific work schedule will be determined by mutual agreement between the TPOC and the contractor and must occur within normal business hours, Monday through Friday, 7:30am-6:00pm, excluding Federal holidays.

VI. **PAYMENT SCHEDULE**

The contractor will invoice the Archives on a monthly basis, submitting the invoice with the above referenced monthly status report. The invoice will reflect the number of hours worked for the month corresponding to the report.

VII. **WORK LOCATION AND WORK ENVIRONMENT**
The bulk of the work shall take place at the Center for Folklife and Cultural Heritage office and storage area located at 600 Maryland Ave, SW, Washington, DC.

Work shall take place primarily in clean, well-lit, ventilated, modern storage areas and processing work areas typical for archival materials with adequate workspace and computer access. The contractor will be provided with a Smithsonian network account, with access to an email account, internet, word processing software, and CFCH/SI databases and templates. Some records are housed in cubic foot archival boxes that may weigh up to 40 lbs.

**CONTRACTOR EMPLOYEE SECURITY CLEARANCE**

All Contractor personnel performing work on Smithsonian Institution premises shall obtain a security clearance from the Smithsonian Institution’s Office of Protection Services (OPS). As a minimum requirement, prospective employees will be expected to complete a “Smithsonian Institution Contractor ID Request Form”, and to provide a clear, legible photocopy of the employee's driver’s license. Should suitability issues be discovered that would preclude an individual from being granted access to the property, the COTR will notify the Contractor so arrangements can be made for a replacement or coordinate other security arrangements. Time must be allowed for the screening of these replacements. Contractor employees receiving a security clearance to work at the Smithsonian Institution will be issued Contractor badges. Badges are deemed government property and shall be immediately returned if the individual leaves the Contractor’s employment or will no longer be performing services under this contract.

**USE OF SMITHSONAIN COMPUTERS AND NETWORKS**

Subsequent to contract award; the contractor shall be required to read Smithsonian Directive 931 "Use of Computers and Networks", the "Rules of the Road for Users of Smithsonian Computers and Networks" (which are derived from SD 931), in order to gain access to Smithsonian's computer network, and sign an affirmation that Contractor agrees to comply with the provisions of SD 931, to act in a responsible manner, and to respect and maintain the security of all systems to which they have access. Contractor is required to complete a short online computer security training program annually.

**CONTRACTOR CONDUCT AND BUSINESS ETHICS**

Smithsonian contractors and subcontractors must conduct themselves with a high degree of integrity, professionalism and civility while collaborating with Smithsonian staff while performing the services required by this SOW.

**SMITHSONIAN INSTITUTION INDEPENDENT CONTRACTOR CLAUSES**

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 form 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.

CONFIDENTIALITY
The "Confidentiality" clause is attached hereto and incorporated by reference herein.

The contractor and all representatives assigned under the contract shall be required to sign the Smithsonian "Confidentiality" Clause and return it to the COTR.

SMITHSONIAN INSTITUTION TECHNICAL POINT OF CONTACT (TPOC) DELEGATION OF AUTHORITY CLAUSE
< Name> ______ to be completed at award ________________________, of the Smithsonian Institution, is hereby designated Technical Point of Contact (TPOC) on PO # ______________________ to ________< contractor name > __________________ for ______ < services >__________________ during the period of performance.

The duties and responsibilities of the TPOC are as follows:
- Provide technical guidance to the contractor on the requirements as set forth in the statement of work (SOW). Any disputes between yourself and the contractor must be resolved by the Contracting Officer’s Technical Representative (COTR) or the Contracting Officer (CO).
- Notify the COTR immediately if it appears the contractor is arbitrarily enlarging or changing the scope of the contract or delivery schedule.
- Act as a liaison between the COTR and the contractor. Forward to the COTR all questions, comments, requests for additional information on contract content, deliverables, etc.
- Conduct inspections and accept supplies or services specified for this contract.
- Systematically monitor the contractor’s efforts to ensure the technical requirements and intent of the SOW is on schedule.
- Promptly reject, in writing, all work that does not comply with the SOW requirements to the contractor and supply a copy to the COTR. Assure that the contractor takes appropriate corrective action to resolve the discrepancies.
- Review contractor invoices and submit recommendations for approval to the COTR for payment.
This delegation shall remain in effect only during the life of this contract, unless specific circumstances dictate earlier revocation. This authority as TPOC is not re-delegable.

This delegation of authority does not authorize the above named individual to modify any of the contract clauses, provisions, terms or conditions of this contract. All authorities not herein delegated are retained and shall be executed only by the Contracting Officer.

SMITHSONIAN INSTITUTION DELEGATION OF CONTRACTING OFFICER’S TECHNICAL REPRESENTATIVE (COTR) CLAUSE (March 2010)

1). ___________________________ of the Smithsonian Institution, is hereby designated Contracting Officer’s Technical Representative (COTR) and authorized to act for and on behalf of the contracting officer in the administration of this contract with respect to:
   a) Resolution of issues that may arise between the contractor and the Smithsonian Institution in connection with such matters as acceptability of workmanship and other technical requirements;
   b) Evaluation on an overall basis of the acceptability of workmanship and contractor compliance with technical requirements; and
   c) The acceptance of all work performed under the contract and approval of all invoices.

2.) The contractor shall make available such records, reports and facilities as may be required by the above named individual to effectively and efficiently fulfill COTR duties and responsibilities.

3). This delegation of authority does not authorize the above named individual to modify any of the contract clauses, provisions, terms or conditions of this contract. All authorities not herein delegated are retained and shall be executed only by the contracting officer.
Delegation of Contracting Officer’s Technical Representative (COTR) Clause

Delegation of Contracting Officer’s Technical Representative (COTR):

1. Sayem Sharif, Director of Finance & Operations, Smithsonian Institution, shall act for and on behalf of the contracting officer in the administration of this contract with respect to:

   1a. Resolution of issues that may arise between the contractor and the Smithsonian Institution in connection with such matters as acceptability of workmanship and other technical requirements;
   1b. Evaluation on an overall basis of the acceptability of workmanship and contract compliance with technical requirements; and
   1c. Acceptance of all work performed under the contract and approval of all invoices.

2. The contractor shall make available such records, reports and facilities as may be required to carry out this assignment.

3. This delegation does not authorize the modification of any of the contract clauses, provisions, terms or conditions. All authorities not herein delegated are reserved to the contracting officer.
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 re-performance 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 (e) 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 “Indemnities”) 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 Indemnites, 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 all 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.

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
- 52.222-20 Walsh-Healey Public Contracts Act
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
- 52.222-36 Affirmative Action for Workers with Disabilities
- 52.222-41 Service Contract Act of 1965, As Amended
- 52.223-1 thru 4 Bio-based Product/Hazardous Material ID and Safety/Recovered Materials Certifications
- 52.223-5 Pollution Prevention and Right-to-Know Information
- 52.224-1 Privacy Act Notification.
- 52.225-1 Buy American Act-Supplies
- 52.225-13 Restrictions on Certain Foreign Purchases
- 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)
- 52.232-11 Extras
- 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 Data Universal Numbering System (DUNS) Number
- 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 52-233-4 Applicable Law for Breach of Contract Claim
- 52.222-54 Employment Eligibility Verification (E-Verify)
- 52.228-8 Liability and Insurance Leased Motor Vehicles
- 52.236-5 Material and Workmanship
- 52.247-29 F.o.b. Origin
- 52.247-34 F.o.b. Destination
1. Definitions: The definitions included in this Clause are applicable to performance of the statement of work. Other terms and conditions of this contract, purchase order, or agreement are not changed by this Clause. (a) Breach: A confirmed loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users, and for an other than authorized purpose, have access or potential access to Smithsonian Data in a usable form whether physical or electronic. (b) Cardholder Data Environment (CDE): The people, processes and technologies that store, process, or transmit cardholder data or Payment Card Industry (PCI) sensitive authentication data by, or on behalf of, the Smithsonian. (c) Cloud: Computing services provided on-demand via a shared pool of configurable resources (e.g. networks, servers, storage, applications, and services) instead of via separate dedicated computing resources. (d) Information Technology (IT) Security Incident: Any action that threatens the confidentiality, integrity, or availability of Smithsonian IT resources, whether located inside or outside of the Smithsonian, or any activity that violates Smithsonian IT Security policies. IT resources include computer hardware and software, data, communication links, mobile devices, digitized assets, automated processes, physical computing environments, and associated personnel. (e) Payment Application: An application, system, software, or website used to electronically process, store, or transmit cardholder data or PCI sensitive authentication data as defined by the PCI Security Standards Council (SSC). See https://www.pcisecuritystandards.org/pci_security/glossary#Pm. (f) Personally Identifiable Information (PII): Information about individuals, which may or may not be publically 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. It includes sensitive PII (sPII), a subset of PII defined as certain PII data elements that, if disclosed or used in combination with other data, could lead to harm to the individual (e.g., identity theft with the intention to do financial harm). (g) Privacy Incident: A suspected loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users are suspected of having access or potential access to PII or sPII in a usable form, whether physical or electronic, for an other than authorized purpose. (h) Public-Facing Software: An application, system, software, or website used by members of the public. (i) Smithsonian Data: Any physical or electronic information collected, processed, or stored by or on behalf of the Smithsonian. This includes, but is not limited to, PII. (j) Smithsonian Data for testing or training purposes. (ii) The Contractor shall only access, maintain, use, and disclose Smithsonian Data to the extent necessary to carry out the requirements of this contract. (ii) The Contractor shall not use Smithsonian Data for testing or training purposes. (iii) The Contractor shall not transfer access to any Smithsonian Data for testing or training purposes. (iv) The Contractor shall not disclose Smithsonian Data to any 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. (v) The 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, the Contractor shall (i) 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. (c) The Contractor and Contractor’s employees who have access to Smithsonian network/systems shall, when requested by the COTR, complete SI-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 background check, and provide notice or 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 Data. (d) 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. (e) 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 of the requirements in this contract.

3. If the Contractor uses, collects, maintains, stores, or shares Smithsonian Data in any form: (a) The Contractor shall, as requested by the COTR, complete, or assist Smithsonian staff with the completion of, a privacy review which might include providing requested information and documentation about how Smithsonian Data is used, collected, maintained, stored, or shared.

Additional requirements for contracts that involve cardholder data or PCI sensitive authentication data are included in Section 6.
(b) Contractor shall make any Smithsonian Data not previously accessible to the Smithsonian, accessible to the COTR as soon as possible, but no later than ten (10) calendar days of receiving a request from the COTR. (c) Contractor shall transfer all Smithsonian Data to the COTR no later than thirty (30) calendar days from the date of the request from the COTR. (d) 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 (45) calendar days of receiving a request from the COTR or at the expiry of this contract. (e) The 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. (f) The Contractor shall only be permitted to use non-Smithsonian provided information technology assets to access or maintain Smithsonian Data if Contractor provides, and the COTR approves, the following written certifications about the non-Smithsonian provided information technology assets: (i) The Contractor shall maintain an accurate inventory of the information technology assets. (ii) The Contractor shall keep all software installed on the information technology assets, especially software used to protect the security of the information technology assets, current and free of significant vulnerabilities. (iii) The 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) The Contractor shall utilize anti-viral software on all information technology assets used under this contract. (v) The Contractor shall encrypt all transmissions of PII using Transport Layer Security (TLS) 1.1 or higher with secure cyphers. Secure Sockets Layer (SSL) shall not be used.

4. If the Contractor uses or provides Public-Facing Software in order to carry out the requirements of this contract, the Contractor shall ensure that: (a) The Public-Facing Software and its usage comply with Smithsonian’s Privacy Statement located at: http://www.si.edu/Privacy. (b) The Public-Facing Software and its usage comply with the Smithsonian Kids Online Privacy (SKOP) Statement located at: http://www.si.edu/privacy/kids. (c) The Public-Facing Software provides the public with accurate privacy notices in locations that are acceptable to the Smithsonian Privacy Office. (d) If the Contractor discovers that information was collected from someone under the age of 13 in violation of the SKOP’s parental permission requirements, the Contractor shall: (i) Provide notice to the Smithsonian Privacy Office as soon as possible, but no later than 24 hours after discovery. (ii) Delete that information as soon as possible, but no later than 24 hours after discovery.

5. If the Contractor uses Public-Facing Software that employs tracking technology (such as geolocation or a cookie, web bug, or web beacon), or collects contact information, in order to carry out the requirements of this contract: (a) The Contractor shall ensure that the Public-Facing Software (i) Provides all users with an accessible opportunity to accept or decline (“opt-in”) the use of any tracking technology, and (ii) Provides users who decline with reasonable access to the Public-Facing Software. (b) If any tracking technology uses geolocation data, the Contractor shall design the Public-Facing Software to provide an accessible opportunity for users to accept or decline the use of such data prior to use (i.e., “just in time” notice and consent), and shall disclose the use of geolocation data in the Public-Facing Software’s static privacy notice. (c) The Contractor shall ensure that the Public-Facing Software provides all users who opt-in to the use of persistent web tracking or geolocation technology, or the receipt of communications, a subsequent and accessible opportunity to request that the tracking or communications cease (“opt-out”).

6. If the Contractor collects, processes, stores, transmits, or affects the security of cardholder data or PCI sensitive authentication data, either directly or through a third party, in order to carry out the requirements of this contract: (a) The Contractor shall provide the COTR, before this contract begins and annually thereafter, a current, complete, comprehensive, and signed PCI Data Security Standard (DSS) Attestation of Compliance (AOC).2 (b) Each payment device must adhere to the current Personal Identification Number Transaction Security (PTS) standard.4 (c) Each system used to process Point of Sale card-present transactions must comply with the Smithsonian’s, Office of the Chief Information Officer (OCIO) standards as provided by the COTR, to include the Technical Note IT-930-TN99, Implementation of P2PE Devices and TransArmor Services, or its successor. (d) The Contractor shall complete the PCI DSS Requirement Management Form, which asks whether Contractor or a third party shall be responsible for ensuring that certain key PCI DSS requirements are met. The COTR shall provide and receive the form. (e) The Contractor shall provide the COTR, if requested, any evidence needed to determine the PCI compliance of activities related to this contract. (f) The Contractor shall provide the following documents to the COTR for review and approval before the Contractor may use the following payment processing solutions in order to carry out the requirements of this contract

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2 When this Clause was written, a template for the PCI DSS AOC was found in the PCI Security Standards Council's Document Library (https://www.pciscanners.org/document_library).

4 The PTS standard is maintained by the PCI Security Standards Council.
Smithsonian Institution
Privacy and Security Clause

(i) A current, complete, comprehensive, and signed PCI DSS AOC for each third party vendor who processes, stores, transmits, or affects the security of cardholder data or PCI sensitive authentication data.  
(ii) The listing from the PCI SSC website’s List of Validated Payment Applications for each Payment Application.  
(iii) The listing from the PCI SSC website’s Approved PTS Devices list for each payment device.  
(iv) The listing from the PCI SSC website’s Point-to-Point Encryption Solutions list for each system used to process Point of Sale card-present transactions.  
(g) The Contractor 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 becoming inaccurate.  
(h) The Contractor acknowledges the responsibility to secure cardholder data or PCI sensitive authentication data any time the contractor possesses or otherwise stores, processes or transmits on behalf of the Smithsonian, or to the extent that the contractor could impact the security of the Smithsonian’s cardholder data environment.

7. If the Contractor develops, operates, or maintains an IT system or cloud service on behalf of the Smithsonian, the 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 (NIST) Risk Management Framework:  
   (a) For cloud solutions 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.  
   (b) For cloud systems which are not FedRAMP certified, and all other Contractor-hosted systems and websites, the 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.  
   (c) For Contractor custom developed (non-COTS) systems and websites to be hosted at the Smithsonian, the 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.  
   (d) The Contractor shall not implement into live production 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 OCIO and the Smithsonian Privacy Officer via the COTR.  
   (e) For contracts that do not require Contractor personnel to have access to Smithsonian-managed systems, the Contractor is responsible for applying industry best practice background screening, security and privacy training, and other appropriate personnel security safeguards to the services performed under this contract.  
   (f) The Contractor shall, if requested by the COTR, require its employees to sign a nondisclosure agreement, sign a conflict of interest agreement, and sign an acknowledgement of the requirements in this contract.

8. In the event of a Privacy Incident, Security Incident or Breach involving Smithsonian Data, the Contractor shall immediately, but no later than twenty-four (24) hours after discovery, report the Incident through the following process:  
   (a) Contractor shall report the Privacy Incident, Security Incident, or Breach to the Smithsonian OCIO Help Desk (OCIO Help Desk) by calling 202-633-4000.  
   (b) If the OCIO Help Desk does not answer the telephone, Contractor shall leave a voicemail which includes, at a minimum, the name of the Contractor, a brief summary of the Incident or Breach, and a return telephone number.  
   (c) The Contractor shall follow industry standard best practices to correct and mitigate any breach resulting from Contractor’s access to Smithsonian Data.  
   (d) The Contractor shall indemnify and hold the Smithsonian harmless from any costs incurred by the Smithsonian in connection with a Privacy Incident, Security Incident, or Breach caused in whole or part by the Contractor’s failure to comply with its obligations under this contract.

9. If any of the Contractor’s employees require a Smithsonian credential, network account or other access, or other Smithsonian furnished equipment in order to complete the work of this contract:  
   (a) The Contractor shall notify the COTR at least two weeks before any employee stops supporting the work of this contract.  
   (b) The Contractor shall, when employees stop supporting the work of this contract, provide their Smithsonian credential and any Smithsonian furnished equipment to the COTR within three (3) business days.
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.
INDEPENDENT CONTRACTOR NOT AN EMPLOYEE

A. 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 benefit, 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.

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.

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 Agreement.

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

C. Contractor agrees and acknowledges that Smithsonian assumes no responsibility whatsoever for the acts, errors and/or omissions of Contractor beyond those which 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 Agreement; 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 use of materials provided by the Contractor contains 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 is otherwise contrary to law.

RESPONSIBILITY FOR SMITHSONIAN PROPERTY

Contractor assumes full responsibility for and shall reimburse and
PO Independent Contractor Clause

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 form the negligent acts or omissions of the Contractor, any subcontractor, or any employee, agent, or representative of the Contractor or subcontractor.

RESPONSIBILITIES OF THE CONTRACTOR

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.
MINIMUM INSURANCE REQUIREMENTS AND POLICY ENROLLMENT INFORMATION
Contractor has agreed to either (i) maintain the Required Coverages and Limits set forth below; or (ii) enroll in the Smithsonian’s Commercial General Liability Policy for Smithsonian Contractors. The insurance requirements provided herein are the Contractor’s minimum requirements and shall not be considered indicative of the ultimate amounts and types of insurance needed by the Contractor. Neither failure to comply nor full compliance with the insurance provisions of this contract shall limit or relieve the Contractor from the requirement to indemnify the Smithsonian nor from other obligations under this contract.

A. REQUIRED COVERAGES AND LIMITS

(1) General Liability Insurance as broad as the standard (ISO Form) Commercial General Liability coverage for (a) bodily injury and property damage; and (b) advertising injury and personal injury pertaining to all activities under this contract.
Minimum Limit: $300,000 per occurrence

(2) If autos are used in the furnishing of deliverables under this contract, Auto Liability Insurance.
Minimum Limit: $300,000 per accident.

(3) Contractor shall maintain Worker’s Compensation Insurance in accordance with statutory requirements and limits.

(4) Insurance policies shall be maintained with insurers of recognized responsibility and shall have an A.M. Best’s rating of B+ or higher. Contractor may use combination or package policies to achieve the minimum limits and coverage specified. Contractor shall require the Contractor’s insurance broker or agent to provide the Smithsonian with a Certificate of Insurance evidencing the required coverages and limits set forth above prior to commencing the work.

(5) Should Smithsonian not receive the Certificate of Insurance evidencing the liability insurance specified in this Section A. prior to commencing the work, the Contractor automatically shall be enrolled in the Commercial General Liability Policy for Smithsonian Contractors and Smithsonian shall bill the Contractor for the liability insurance coverage as stated in Section B. below.

B. COMMERCIAL GENERAL LIABILITY POLICY FOR SMITHSONIAN CONTRACTORS. If the Contractor has chosen to enroll in the Commercial General Liability Policy for Smithsonian Contractors, Smithsonian shall bill the Contractor for the coverage based on the contract amount, as set forth below.

<table>
<thead>
<tr>
<th>Contract Amount</th>
<th>$0- $1,000</th>
<th>$1,001- $5,000</th>
<th>$5,001- $12,500</th>
<th>$12,501- $20,000</th>
<th>$20,001- $40,000</th>
<th>$40,001- $50,000</th>
<th>$50,001- $75,000</th>
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</thead>
<tbody>
<tr>
<td>Insurance Payment</td>
<td>$15.00</td>
<td>$25.00</td>
<td>$30.00</td>
<td>$45.00</td>
<td>$85.00</td>
<td>$115.00</td>
<td>$160.00</td>
</tr>
</tbody>
</table>

The Commercial General Liability Policy for Smithsonian Contractors covers (a) bodily injury and property damage and (b) advertising injury and personal injury with a limit of $1 million per occurrence and $2 million in the aggregate. The policy’s terms, conditions, obligations, rights, and duties of insurer and insured conform to ISO Standard Form No. CG 00 01 96 issued by the Insurance Services Office. (The Commercial General Liability Policy is not a workers compensation or automobile insurance policy.)

By enrolling as a named insured in the Commercial General Liability Policy for Smithsonian Contractors, the Contractor acknowledges that he or she accepts the rights, duties, and obligations of a named insured under the policy’s terms and conditions, and will conduct the relationship of named insured directly with the insurer’s representative without involvement of the Smithsonian, except as otherwise stated herein. Other than enrolling the Contractor in this policy and paying the full premium to the insurer for all named insureds under the policy, the Smithsonian accepts no responsibility for the fulfillment of rights, duties or obligations of either the Contractor or the Insurer of the Commercial General Liability policy, nor does the Smithsonian accept responsibility for the adequacy, types, limits of this or other insurance policies, or lack of coverages maintained by the Contractor.

The Contractor may reject enrollment in the Commercial General Liability Policy for Smithsonian Contractors in writing prior to commencing work on the contract. In this case, no contract may be issued by the Smithsonian unless the Smithsonian waives the requirement for general liability insurance specified in Section A. above and a waiver form is signed by both parties. However, the Smithsonian’s waiver does not relieve the Contractor from the requirement to indemnify the Smithsonian nor from any other obligation under the contract.

(Ocon. Revised 11/00)