

## Request for Quote Conservation (Artworks) Services

National Portrait Gallery and Smithsonian American Art Museum  
Released February 19, 2024

This Request for Quote (RFQ) is issued by the Smithsonian Institution National Portrait Gallery (NPG) and Smithsonian American Art Museum (SAAM), for technical, professional, non-personal conservation services. We seek to contract two individuals or a firm (of two individuals).

The National Portrait Gallery (NPG) and Smithsonian American Art Museum (SAAM) collectively hold an internationally renowned collection of approximately 230,000 artifacts spanning twenty-four centuries. The museums share a leased collections storage facility that contains thousands of these works, including paintings, sculptures, works on paper, and time-based media. The collection facility had a new ultrasonic humidification system installed in February 2023. In July 2023, due to issues related to the system installation, fine, abrasive, particulate dust was found throughout the storage spaces. On some surfaces, such as plastics and wood, the dust is particularly hard to remove and will require careful treatment. The collection is in place at the location and will remain on site throughout the upcoming facility and collections clean-up process.

Preliminary analysis indicates that the dust is a monohydrocalcite. It was evaluated by a Smithsonian Institution Industrial Hygienist and found within acceptable safe health ranges. The concentrations detected during monitoring were significantly below the OSHA limits and would not be expected to produce adverse health effects to occupants of the space. However, individuals who may have sensitivities to low concentrations of nuisance dust or who may wish to voluntarily use personal protective equipment for individual comfort purposes are authorized to wear disposable N95 or P100 filtering masks. Frequent cleaning of work surfaces using damp cloths is also recommended to aid in minimizing any accumulated dusts.

The work will require appropriate documentation including photography and the recording of conservation treatment information in TMS or Conservation Studio. Due to the widespread dust coverage, SAAM and NPG are unable to determine the precise number of works that will require treatment.

### I. SUBMITTING YOUR QUOTE

Price quotes may be submitted by email, preferably in PDF format, to [DWRCLunder@si.edu](mailto:DWRCLunder@si.edu) with the subject line "PC Storage RFQ." **Quotes are due by 11:59pm on Sunday, March 16, 2025.**

Significant questions pertaining to this RFQ must be submitted in writing. Written questions will be received through **11:59pm on March 9, 2025**. All questions having an impact on the RFQ will be responded to and issues to all prospective Contractors on or by **March 12, 2025**. Please submit all questions to the RFQ to [DWRCLunder@si.edu](mailto:DWRCLunder@si.edu) with the subject line "PC Storage RFI."

### II. DESCRIPTION OF REQUIRED SERVICES

The selected contract conservators or team will provide collection care remediation, condition

assessment, and interventive treatment for the stored artworks affected by the particulate dust deposited from the humidifiers. Primary tasks will include dusting the collections using brushes and HEPA Filtered vacuums to remove loose particulates for artworks that range in size from small to large-scale sculptural works to framed paintings and flat file drawers. Services may also include treatments as identified and approved of during the project response time period.

The work will take place at the shared NPG and SAAM storage facility at 9610 Apollo Drive, Upper Marlboro, MD 20774 starting on or about June 2, 2025. An earlier start date may be negotiated, dependent on the contractor's availability. Prospective Contractors should expect to work over the course of 12 months for a not-to-exceed (NTE) total of 800 hours per person. The hours at the NPG and SAAM storage facility are 8am – 5pm.

The selected contractors will work under the direction of the Project Manager and collection staff from both NPG and SAAM.

The contracted services will include the specific tasks outlined in the Statement of Work (SoW) provided with this RFQ packet.

### III. EVALUATION

The SI plans to award based on best value. The SI plans to award without discussions, however, does reserve the right to conduct discussions if later determined by the Contracting Officer to be necessary.

All of the following factors are of equal importance. Evaluation factors are:

#### A. Resumes of potential contractor assignee(s)

1. Resumes should demonstrate:
  - i. Experience preparing condition reports for works of art, to include treatment needs, following conservation documentation standards.
  - ii. Experience assessing the conservation treatments needed for works.
  - iii. Experience in performing conservation treatments.
  - iv. Experience in survey assessment for broad range of materials.

#### B. Price

1. The Contractor(s) selected shall perform for up to a period of 12 months beginning on or around June 2, 2025. An earlier start date may be negotiated, dependent on contractor's availability. Quotes shall indicate a fully burdened firm fixed hourly rate, not-to-exceed (NTE) 800 hours per person for conservation services detailed in the SOW.
2. Each Offeror's cost information will be evaluated for: completeness and reasonableness to determine the Offeror's understanding of the work and ability to perform the contract. Reasonableness is evaluated by assessing the compatibility of proposed costs with the technical approach proposed. Completeness is evaluated by assessing the level of detail the Offeror provides in cost information for all requirements. The existence of adequate costs competition may support a determination of reasonableness. This includes both original and final quote revisions (if requested).
3. Since the evaluation of cost will represent a portion of the total evaluation, it is possible that an Offeror might not be selected for award because of unreasonable,

unsupportable, incomplete, inaccurate, or outdated cost quote information.

Failure to furnish complete information requested in the RFQ may cause the Offeror to be judged non-responsive and be removed from further consideration.

Award of a contract shall be made to the responsive, responsible Offeror(s), whose combined price and technical proposal is, in the opinion of the Contracting Officer, determined to be the most advantageous and in the best interest of the Smithsonian Institution.

#### **IV. INSURANCE REQUIREMENTS**

Contractors working on Smithsonian property, or working with sensitive objects or data, must provide proof of adequate professional insurance. Prospective Contractors are required to have Commercial General Liability Insurance including coverage for bodily injury and property damage in the minimum amount of \$1,000,000. The Smithsonian Institution must be listed as additional insured for the General Liability insurance. Proof of insurance must be submitted with quotes.

Independent Contractors who do not have the required insurance may enroll in the Smithsonian's insurance policy for a nominal fee. This insurance will only cover the work completed as a part of the required services.

#### **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](http://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](http://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 Credentialed 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 Smithsonian Institution:

- A. Documentation of your current active SAM registration for "All Awards" and 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, including the date through which pricing submitted is valid
  - a. The quoted hourly rate should be fully burdened, i.e. after the award of the contract no direct expenses such as phone calls or messenger service, or any indirect or overhead expenses will be approved.
  - b. Each individual or firm (of no more than two individuals) should submit a quote for a not-to-exceed (NTE) amount of 800 hours per person.
- F. Qualifications and Price information, as outlined in section III.
- G. Certificates or other documentation confirming appropriate types and levels of insurance required are in effect, and other certificates and documentation requested.

**ATTACHMENT(S):**

- Statement of Work for PC Storage RFQ dated 19 February 2025
- 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)
- OCon 140 Smithsonian Confidentiality Clauses
- Smithsonian Institution Independent Contractor Clauses

## **Statement of Work (SOW) Conservation (Artworks) Services**

National Portrait Gallery and Smithsonian American Art Museum  
Released February 19, 2025

This is a statement of work for professional, technical non-personal art conservation services for the National Portrait Gallery (NPG) and Smithsonian American Art Museum (SAAM). This will not be an employment contract, and the business or individual awarded the services will submit invoices, sometimes with supporting documentation, for billable services rendered. Prospective contractors should submit a fully burdened price quote for their services i.e. a price per deliverable or unit of services (e.g., hourly) that covers all Contractor direct and indirect overhead expenses.

### **Cleaning and Treatment of Permanent Collection Objects Contaminated with Abrasive, Particulate Dust**

#### **Introduction**

The National Portrait Gallery (NPG) and Smithsonian American Art Museum (SAAM) collectively hold an internationally renowned collection of approximately 230,000 artifacts spanning twenty-four centuries. The museums share a leased collections storage facility that contains thousands of these works, including paintings, sculptures, works on paper, and time-based media.

The collection facility had a new ultrasonic humidification system installed in February 2023. In July 2023, due to issues related to the system installation, fine, abrasive, particulate dust was found throughout the storage spaces. On some surfaces, such as plastics and wood, the dust is particularly hard to remove and will require careful treatment. The collection is in place at the location and will remain on site throughout the upcoming facility and collections clean-up process.

Preliminary analysis indicates that the dust is a monohydrocalcite. It was evaluated by a Smithsonian Institution Industrial Hygienist and found within acceptable safe health ranges. The concentrations detected during monitoring were significantly below the OSHA limits and would not be expected to produce adverse health effects to occupants of the space. However, individuals who may have sensitivities to low concentrations of nuisance dust or who may wish to voluntarily use personal protective equipment for individual comfort purposes are authorized to wear disposable N95 or P100 filtering masks. Frequent cleaning of work surfaces using damp cloths is also recommended to aid in minimizing any accumulated dusts.

The removal of the dust from artifacts will take place using Nilfisk HEPA vacuums, dust brushes, and other surface cleaning methods within the shared storage facility. The work will require appropriate documentation including photography and the recording of conservation treatment information in The Museum System (TMS) database or Conservation Studio. Due to the widespread dust coverage, SAAM and NPG are unable to determine the precise number of works that will require treatment.

### **Period of Performance**

The contractor shall provide professional, technical and non-personal services to remove dust from the surface of objects, stabilize objects where required due to dust, document the treatments, and replace housing materials as needed. The work will take place at the shared NPG and SAAM storage facility at 9610 Apollo Drive, Upper Marlboro, MD 20774 starting on or about June 2, 2025. An earlier start date may be negotiated, dependent on contractor's availability. Prospective Contractors should expect to work over a 12-month period, for a not-to-exceed (NTE) total of 800 hours per person. The hours at the NPG and SAAM storage facility are 8am – 5pm.

### **Specific Tasks**

The contractor shall meet with the Project Manager, NPG and SAAM Conservators at the start of the contract to discuss the specific tasks.

Specific tasks include:

1. Locate artworks for treatment in the temporary storage area.
2. Remove the loose dust from the artworks for treatment in the storage area.
3. Work with Conservation and Registrar staff to arrange movement of artworks as needed and the return of works to the appropriate permanent storage location when completed.
4. Undertake remedial dusting and treatments as necessary in consultation with NPG and SAAM Conservators, to remove surface dust and stabilize the object for movement to the storage area. No preexisting conditions will be addressed during this project.
5. Maintain a working list of artworks dusted.
6. Replace protective sheeting covering artworks as needed.
7. Document treatments and art movements in the museum database TMS including photo documentation before and after treatment.
8. Maintain a list of works needing remedial treatment.
9. Meet with project team as necessary.

### **Submittals and Deliverables**

1. Create a summary report every two weeks on the progress of the project detailing itemized artworks treated.
2. Create a final report on completion of the contract period detailing itemized artworks treated, and any works identified that still require remedial treatment.

### **Payment Schedule**

For this service, the National Portrait Gallery and Smithsonian American Art Museum will provide the agreed compensation to contractor:

1. The Museums will pay the contractor an hourly rate upon receipt of itemized invoices, detailing time spent on separate deliverable items, listed above.
2. Itemized invoices will not exceed the total of the agreed amount.

### **Performance Standards**



Contractor will provide services in a timely, ethical and efficient manner. All work shall be performed by a qualified conservator, at the highest professional standards, according to the *Code of Ethics and Guidelines of Practice*, American Institute for Conservation.

Acceptance of work and frequency of review is at the discretion of the SAAM Head of Conservation and NPG Interim Head of Conservation. NPG and SAAM Conservators will meet the Contractor regularly to review the work's progress, i.e. the performance of the specific responsibilities for photographic images. Conservation shall assess the pace of the Contractor progress taking into account any other project considerations that may have hindered Contractor access to artworks. The periodic performance meetings shall determine acceptance of work and payment.

The Smithsonian 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 sub-contractors 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 work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Smithsonian using its standard record keeping system, have resulted from the termination. This paragraph does not give the Smithsonian any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

#### **Smithsonian Furnished Materials**

The Smithsonian will make the following property available to the Contractor at the start of the contract for use on-site. The Contractor shall identify, use, and protect such property in accordance with the Smithsonian-furnished property clause of this contract. The contractor will return all property to the Smithsonian upon completion of the work and prior to final payment.

1. Smithsonian contractor credential
2. Access to the Smithsonian network account and software
3. Use of conservation treatment supplies, materials, and lab equipment deemed necessary by

Heads of NPG and SAAM Conservation to complete the conservation tasks assigned appropriately and within safety guidelines

Please note: **The Smithsonian is unable to provide PPE for contractors.** The Contractor shall provide and ensure proper use of all PPE as determined necessary and operate all equipment under the safety guidelines and recommendations, and at the contractor's own risk. Negligence, misuse, or misappropriation of materials or equipment will be considered the liability of the contractor.

# 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-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, or is added at any time during the term of the agreement to be listed on a denied parties list maintained by any US security agency. 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 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

# Smithsonian Institution

## Purchase Order Terms and Conditions

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:**

**12.1 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.

**12.2 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:

13.1. 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).

13.2. 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. Countries of Concern:** Contractor represents and warrants that it is not, and for the duration of this contract shall not be, owned, controlled, funded by, or subject to, the jurisdiction or direction of a U.S. Government Country of Concern ("CoC") or an entity located within a CoC. Covered countries are identified based on U.S. Government lists (the Department of State's State Sponsors of Terrorism and the National Science Foundation's Implementation Guidance for NSPM-33), which

## Smithsonian Institution

### Purchase Order Terms and Conditions

are dynamic and as of October 2024 include China, Cuba, Iran, North Korea, Russia, and Syria. Contractor further represents that it is not, and for the duration of this contract shall not be owned, controlled, funded by, or subject to, the direction of any entity or individual subject to U.S. or international sanctions or embargo lists, including but not limited to the Department of Defense Countering Unwanted Foreign Influence in Department-Funded Research at Institutions of Higher Education (defense.gov) list. Contractor shall ensure that all subcontractors providing goods or services under this contract adhere to these requirements. The Smithsonian shall have the right to terminate this Agreement immediately upon written notice in event of any breach of this representation and warranty by Contractor or any subcontractor.

**16. Civility:** The Smithsonian is committed to maintaining a work environment where people feel welcome, respected, safe, and valued. Harassment, threats of violence, incidents of intimidation, retaliation, or other concerning behaviors that negatively affect the work environment will not be tolerated. Contractor shall ensure that its employees, representatives, agents, and subcontractors performing under this contract are informed of and adhere to this requirement. Contractor is encouraged to have all of its employees, representatives, agents, or subcontractors under this contract who interact with the Smithsonian or with the general public on the Smithsonian's behalf take Smithsonian's free online training course: Fostering a Culture of Respect at the Smithsonian: SI Civil Training for Employees and Affiliated Staff. This course is available on Smithsonian's internal and external e-learning system <https://moodlex.si.edu>.

**17. 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.

**18. 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.

**19. 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. If this contract includes the SI 147B Privacy and Security Clause the contractor must comply with the insurance requirements listed therein, if applicable. 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.

**20. 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.

**21. 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.

**22. Responsibility of Smithsonian Property:** Contractor assumes full responsibility for and shall reimburse and

# Smithsonian Institution

## Purchase Order Terms and Conditions

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.

**23. 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.

**24. 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.

### 22.1 Smithsonian Clauses:

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

### 22.2 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
- 52.239-1 Privacy or Security Safeguards (see form SI 147B)
- 52.233-3 Protest After Award
- 52.244-6 Subcontracts for Commercial Items

### 22.3 Additional FAR clauses that apply when applicable:

- 52.204-6 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

# 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 personal information, also referred to as personally identifiable information (PII), *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, online identifiers such as IP address, device IDs, and cookie data, and any other information defined as “personal information,” “personal data” (or other analogous variations of such terms) under the applicable privacy, security and data protection laws (“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 any other purposes, including 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 and will provide assurance and evidence of such protections upon the Smithsonian’s request. (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 (“COD”), 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 vulnerabilities; (iii) Contractor shall encrypt all Smithsonian Data stored or accessed on non-Smithsonian provided mobile devices and back-up devices (*e.g.*, phone, laptop, tablet, or removable media) using a Federal Information Processing Standards compliant encryption method; (iv) Contractor shall utilize anti-virus 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

# Smithsonian Institution

## Privacy and Security Clause

or for an other than authorized 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 24 hours after discovery, report the Incident to the designated COTR and Smithsonian Office of the Chief Information Officer (“OCIO”) Service Desk by calling 202-633-4000 and, if the OCIO Service 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 preserve evidentiary information to support forensics analysis, correct and mitigate any damages resulting from the Incident, provide a final report or summary of the incident to include lessons learned and corrective actions taken and planned; (d) Contractor shall acquire applicable forensics services in the event the Contractor does not have adequate resources or capabilities to respond to the Incident; and (e) Indemnify and hold the Smithsonian harmless from any costs incurred by the Smithsonian in connection with such Incident or corrective actions the Contractor must deploy to safeguard SI information.

**3. Public-Facing Software:** (a) Any application, system, software, or website used to fulfill the terms of this contract, which can be accessed by members of the public (Public-Facing Software) shall comply with Smithsonian’s Privacy Statement (located at [Smithsonian Institution's Privacy Statement | Smithsonian Institution \(si.edu\)](#)) and the Smithsonian Kids Online Privacy (“SKOP”) Statement (located at <http://www.si.edu/privacy/kids>), and such Public-Facing Software 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 a cookie, pixel, web bug, or web beacon) or collects contact information shall provide all users with legally-compliant notice of its data collection and tracking practices, and any required consumer choices (including the opportunity to opt-in or opt-out, as required), as well as: (i) for those who opt-out or 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, before this contract begins and annually thereafter, for the 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”); (b) any Contractor that works as a PCI Third-party Service Provider (“TPSP”), in order to carry out the requirements of this contract, shall provide the COTR: (i) the duly authorized contact responsible for the Contractor’s maintenance of PCI DSS compliance; (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) before this contract begins and for each bespoke and custom software developed for the Smithsonian *i.e.*, application, system, software, or website, the validation for the use of the PCI SSC’s Software Security Framework standards (the Secure Software Standard or the Secure SLC standard); (iv) for each Payment Application hosted by the Smithsonian, the listing from the SSC website’s Validated Payment Software List of Validated Payment Applications or the Report on Validation (“ROV”) from a PCI Secure Software Assessor; (v) for each payment device, the listing from the SSC website’s Approved Personal Identification Number Transaction Security (“PTS”) Devices list; (vi) 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 (vii) if requested, any additional evidence needed to determine the PCI compliance of activities related to this contract; (c) Contractor shall provide the documents and listings identified in Paragraph 4(b) 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.

**5. IT Systems and Cloud Services:** (a) Contractor is responsible for applying industry best practices to secure their systems and services provided to or used for the Smithsonian. (b) For any Cloud Service (*i.e.*, computing service provided on-demand via a shared pool of configurable resources instead of via separate dedicated computing resources or information technology system) or IT system Contractor develops, operates, or maintains on behalf of the Smithsonian, or which Contractor uses to collect or store information on the Smithsonian’s behalf, Contractor shall provide the requested documentation, security control evidence/artifacts, and other information needed to complete Security Assessment and Authorization activities. (c) For Systems that have been Federal Risk and Authorization Management Program (“FedRAMP”) certified or have received other independent third party assessments (*e.g.*, SOC2, HITRUST, etc.), Contractor shall provide FedRAMP documentation or relevant third party assessment report(s) to the Smithsonian for review and shall cooperate with

# Smithsonian Institution

## Privacy and Security Clause

Smithsonian requests for clarification or further evidence. (d) For Systems which are not FedRAMP certified, 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/artifacts and access to interview appropriate Contractor personnel about security controls. (e) For websites or web servers hosted outside of the Smithsonian's 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. (f) The Contractor shall maintain all Smithsonian Data inside the United States. (g) 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/artifacts and access to interview appropriate Contractor personnel about security controls. (h) 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 the system (e.g., the use of backdoor or maintenance hook provisions are prohibited) and will ensure that the system can be protected from malware and vulnerabilities while it is in use at the Smithsonian. (i) Contractor shall not implement into live production or use for the Smithsonian or any system containing Smithsonian Data until security and privacy authorization has been granted in writing by the Smithsonian OCIO via the COTR. Contractor will resolve security deficiencies in order to successfully meet the applicable requirements of this section. (j) Contractor consents to and will cooperate with ongoing monitoring for security, privacy, cyber supply chain risk management, and contractual requirement compliance by the Smithsonian, including providing periodic updated evidence/artifacts, third party assessment reports, and questionnaire responses as requested. Contractor will resolve findings from monitoring, assessments, and Smithsonian web vulnerability scans in a timely manner. The Smithsonian may use third party risk intelligence tools to monitor risk and control compliance by the Contractor. Contractor will address issues as necessary to maintain an acceptable risk rating in these tools. (k) Contractor will provide at least one point of contact to receive and respond to requests related to these requirements.

**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. California Consumer Privacy Act:** (a) The California Consumer Privacy Act as amended by the California Privacy Rights Act, including any regulations and amendments implemented thereto ("CCPA") shall apply to any information collected from California residents on behalf of the Smithsonian. (b) For purposes of the CCPA, Contractor shall be considered a service provider and the Smithsonian is a business. (c) Contractor shall not collect, maintain, store, use, disclose, or share PII for a commercial purpose other than providing the services or performing its obligations to the Smithsonian. (d) Without limiting the foregoing, Contractor: (i) will not sell or share PII (as "sell," "sale," or "share" is defined by the CCPA); (ii) will not retain, use, or disclose Personal Information outside of the direct business relationship between Contractor and the Smithsonian; and (iii) certifies that it understands the restrictions in this section and will comply with them. (e) Contractor agrees: (i) that the personal information disclosed is only for limited and specified purposes; (ii) to comply with applicable CCPA obligations; (iii) to grant the Smithsonian the right to take reasonable and appropriate steps to help ensure that Contractor uses the PII transferred in a manner consistent with the Smithsonian's CCPA obligations; (iv) to notify the Smithsonian if it makes a determination that it can no longer meet its obligations; and (v) to grant the Smithsonian the right (upon notice) to take reasonable and appropriate steps to stop and remediate unauthorized use of PII. (f) Upon request by the Smithsonian, Contractor will assist the Smithsonian in the Smithsonian's fulfillment of any individual's request to access, delete, or correct PII. (g) Contractor will promptly notify the Smithsonian following Contractor's receipt of any request or complaint relating to any PII (unless applicable law prohibits such notification). Contractor will not respond to any such request or complaint, other than to redirect to the Smithsonian, unless expressly authorized to respond by the Smithsonian.

**8. Required Insurance Coverage:** Contractor shall maintain at all times during the performance of this contract and for three years following its expiration or termination the following insurance coverage:



# Smithsonian Institution

## Privacy and Security Clause

8.1. If Contractor will be providing hardware, pre-packaged software, portal access, website development or data storage, as a part of this contract, IT Professional Liability Insurance and Cyber Liability Insurance with limits of no less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate, including coverage for the following:

8.1.a Security and privacy liability, including privacy breach response costs, regulatory fines and penalties; and coverage for unauthorized access, unauthorized disclosure, denial of service attacks, computer viruses, Trojan horses, worms, transmission of any other type of malicious or damaging code, ransomware and failure of security;

8.1.b Hostile action or threat of hostile action;

8.1.c Dishonest, fraudulent, malicious, or criminal use of a computer system;

8.1.d Failure to prevent access to a computer system or computer system resources by an unauthorized person or an authorized person in an unauthorized manner;

8.1.e Breach of privacy and/or the failure to protect any disclosure of personally identifiable information;

8.1.f Cyber extortion coverage, which must include the ability to reasonably meet a hacker's ransom demand, to pay for extortion-related expenses and to bring damaged computer hardware or databases back to their original working condition; and

8.1.g Failure to address any known vulnerabilities.

8.2. If Contractor will be providing colocation services, cloud services, or managed dedicated servers as a part of this contract, Professional Liability Insurance with a limit of no less than \$1,000,000 per occurrence. Coverage must encompass all of the duties and obligations that are the subject of the contract.

8.3. If Contractor will be allowing a third party to use, store, process or access PII or sPII as a part of this contract, Cyber Liability Insurance with a limit of no less than \$2,000,000 per occurrence and must include coverage for the acts or omissions of the third party.

8.4. SI may increase the required minimum policy limit amounts based on the level of risk exposure to SI upon written notice to Contractor. Contractor will provide SI a certificate(s) of insurance showing compliance with SI's increased minimum policy requirements within thirty (30) days of such written notice.

As this is a professional liability policy, the requirement for additional insureds is waived and the following language should be included in the contract: Contractor agrees that upon the event that Contractor and Smithsonian are named as co-defendants in any claim, damages or losses related to any matter arising from work performed by Contractor under this contract, that Contractor's insurance shall take all appropriate action on behalf of the Smithsonian. Contractor shall immediately advise Smithsonian of any claims presented or suits filed as relates to this contract. Contractor agrees and acknowledges that U.S. Federal Law requires that the U.S. Department of Justice, as the legal representative for Smithsonian, must defend or settle any such claims, damages, or losses unless the United States agrees otherwise.

**9. European Economic Area.** This contract does not include the collection or processing of Personal Information relating to individuals located in the European Economic Area.

**10. 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 Institution  
*Office of Contracting and Personal Property Management*

Notice to all Current and Prospective Smithsonian Institution Contractors

Subject: Mandatory Registration in the System for Award Management (SAM)

Individuals and companies that want to do business with U.S. government agencies, including the Smithsonian Institution, are required to maintain active and valid registrations in the System for Award Management (SAM). We are informing you of this requirement because you are a vendor who has been requested to present pricing and/or proposals for goods or services, is currently participating in a Smithsonian solicitation for goods or services, or is already providing goods or services to the Smithsonian.

Registration with SAM is free and accomplished via <https://www.sam.gov>. Included with this letter are tips on how to register in SAM. These have been written by the Smithsonian Office of Contracting and Personal Property Management and are intended to convey specific information on how to register with SAM to do business with the Smithsonian. Full guidance on how to register in SAM is available from the Federal Services Help Desk (FSD) and Professional Technical Assistance Centers, as described in the tips.

Thank you for your attention to this matter. If you received this letter in conjunction with a solicitation or Request for Quote, please address any questions you may have to the Smithsonian point of contact whose name and telephone number are provided therein.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas E. Dempsey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas E. Dempsey  
Director

## General Tips for Businesses To Register in SAM

1. **There is assistance directly on the SAM website to start registration.** Look for quick start guides and the SAM user manual using the Help tab on the SAM.gov website. These guides are helpful for vendors in completing the SAM registration process.
2. **Registration in SAM is Free.** If you search online for SAM registration your search might return businesses that will assist you with SAM registration for a fee. You are not required to utilize these services, and the Smithsonian does not reimburse for their use. The easiest way to ensure you are in the right location is to navigate directly to [www.SAM.gov](http://www.SAM.gov).
3. **Free assistance with SAM registration is available via the Federal Service Desk (FSD).** This is available at <http://www.fsd.gov>, or at the toll-free number 1-866-606-8220
4. **APEX Accelerators offer free assistance with SAM registration.** These offices are non-profit, non-governmental organizations established to assist you with doing business with the government. You must use the local or regional office closest to your business address. Locate the center nearest at <https://www.apexaccelerators.us/#/>.
5. **You control all information entered into SAM, and may opt out of public searches.** If you choose to opt out of public searches, please notify the Smithsonian employee you are working with and provide confirmation of your SAM registration.
6. **Be sure to keep your SAM registration up-to-date.** After you have completed registration you will be required to update your information if it ever changes (such as mailing address or banking records) and notify Smithsonian staff as soon as possible. Keep your Unique Entity Identifier Number in a safe place, you will need it to renew or update your registration.

## Tips on Valid Registrations:

7. **Your registration must be active before the purchase can be made.** Obtaining a Unique Entity Identifier only is only the first step to a complete registration. You must complete all steps thereafter and be listed in SAM with a record labeled “Active.”
8. **If you have a registration that inactive, then your registration must be made active before you can receive a procurement.** Inactive records cannot be used for a purchase. Your SAM registration must be active throughout the term of the award.
9. **If you have a registration that requires updates then your updates must be complete before you can receive a procurement.** Changes to information including (but not limited to) company or contact names, banking information, and addresses must be completed before you may receive an award. If changes to any information in your SAM registration must be made during the timeframe of an award then you must notify the Procurement Officer who issued the award within two business days of the change in information.
10. **You must register as eligible to receive “All Awards” to qualify for Smithsonian Awards.** In the SAM registration process, you will be asked for your purpose of registration. The question is “Why are you registering this entity to do business with the U.S. Government?” You must answer this question with “I want to be able to bid on federal contracts or other government opportunities. I also want to be able to apply for grants, loans, and other financial assistance programs.” This option will allow you to accept procurements issued by the Smithsonian. Do not select “I only want to apply for federal assistance opportunities like grants, loans, and other financial assistance programs.” If you register for assistance opportunities only then procurements may be delayed until your record is corrected.

11. **The name of your business (entity) that you enter in SAM must match your IRS Tax Payer Consent Name.** This will be the name that Smithsonian will use to register your entity in our internal payment and tax reporting system. If your SAM entity name and your Tax Payer Consent Name differ this can create problems during the Smithsonian vendor enrollment and tax reporting processes, as well as for you when paying taxes. (These two names may be allowed to differ only if you are a single member LLC, and you report and pay taxes to the IRS using the owners name and tax id. In this case, IRS will count the owners name and tax id as the legal business name while disregarding the legal business name of the LLC registered in SAM.)

### **Tips on Entity Administrators**

SAM requires each non-federal entity to have someone with the role of Entity Administrator. SAM will appoint the Entity Administrator role to the first individual who registers a new business entity. They will have the capability to update, renew and end your registration. They will also have the authority to appoint administrative roles with SAM to your entity's staff and to assign other users within your entity to become an Entity Administrator. This administrator must be an employee of your entity. Information for new Entity Administrators and on role assignment is found in the FSD knowledge base.

It is important that your entity always have a current Entity Administrator. If, for any reason your, Entity Administrator leaves your entity before appointing a replacement and you do not have a current administrator, then you must follow the process to appoint a replacement. This process includes submitting a notarized Entity Administrator Appointment Letter and may take several weeks to complete. Your SAM registration will not be editable or renewable until you have a new Entity Administrator. Information on appointing a replacement Entity Administrator is found in the FSD knowledge base.

## 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 it 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 for redaction prior to release. To the extent the Smithsonian Institution determines that the records requested contain Disclosing Party's Confidential Information, the Smithsonian will redact and withhold such Confidential Information from 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 business days of receipt of the disclosing party's written request to do so. Notwithstanding the preceding sentence, the receiving party (i) may retain one copy of any portion of the Confidential Information that the receiving party is required to retain by applicable law, rule or regulation, or their internal compliance policies and (ii) shall not be obligated to erase Confidential Information contained in an electronic archiving or backup system operating in the ordinary course of business.

5.

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

## **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 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.