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: (1) Within a reasonable period of time after the defect was discovered or should have been discovered; and (2) 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 - Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer. All disputes must be submitted within 12 months after accrual of the claim to the Contracting Officer for a written decision. The Contracting Officer shall mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and conclusive, unless within 60 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary of the Smithsonian Institution. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined to have been fraudulent, or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

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: (1) Technical requirements and descriptions, specifications, statements of work, drawings or designs; (2) Shipment or packing methods; (3) Place of delivery, inspection or acceptance; (4) Reasonable adjustments in quantities or delivery schedules or both; and, (5) 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 authorizing 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. DISCLOSURE - Information relating to this purchase order shall only be used by the Contractor or subcontractor solely for the performance of this contract. Neither party shall disclose any information concerning this agreement to include the release, reproduction, distribution of any data produced in the performance of this purchase order to any third party without securing the prior written consent of the SI Contracting Officer or his/her Representative. Use or disclosure of information shall be solely for the purpose of carrying out this purchase order agreement. The SI information is provided and received in confidence, and the Contractor, subcontractor or other third parties shall at all times preserve and protect the confidentiality thereof. Any such confidential information, copies or transcripts thereof, shall be returned to the SI upon completion of the work, or immediately destroyed upon request by the SI.

13. INDEMNITY - The Contractor shall defend, indemnify, and hold harmless the SI, its Regents, directors, officers, employees, volunteers, licensees, representatives, agents and the United States Government (hereinafter referred to as “Indemnitees”) from and against all actions, causes of action, losses, liabilities, damages, suits, judgments, liens, awards, claims, expenses and costs including without limitation costs of litigation and counsel fees related thereto, or incident to establishing the right to indemnification, arising out of or in any way related to: Any breach of this Agreement, Terms and Conditions, and the performance thereof by Contractor, Subcontractor, other third parties, or any activities of Indemnitees, including, without limitation, the provision of services, personnel, facilities, equipment, support, supervision, or review; any claims of any kind and nature whatsoever for property damage, personal injury, illness or death [including, without limitation,
injury to, or death of employees or agents of Contractor or any Subcontractor).

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

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

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

16. SECURITY CONSIDERATION - 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 - (1) 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 under receipt of documentation that the expenses were incurred. (2) 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. (3) 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. (4) 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. (5) The Contractor shall be reimbursed upon receipt of appropriate documentation that the expenses were incurred. Total travel cost will not be reimbursed for an amount that exceeds the estimated amount stated in this purchase order.

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

21. Internet Protocol Version 6 (IPv6) Compliance. In the event that Contractor will be developing, acquiring, and/or producing products and/or systems pursuant to this Contract that will be connected to a network that will interface with the World Wide Web, the following provisions shall apply: OMB Memo M-05-22, dated August 2, 2005, requires that all agencies’ infrastructure must be using IPv6 and all agency networks must interface with this infrastructure by June 2008. The Contractor hereby warrants and represents that the 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 compliant initially, the Contractor will provide a migration path and express commitment to upgrade to IPv6 for all application and product features by June 2008. 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. Upon request the Contracting Officer will make their full text available. The full text of the following FAR clauses may be viewed at www.arnet.gov/far. For the full text of Smithsonian Institution clauses contact your procurement delegate. The Contractor shall comply with the following Smithsonian Institution and Federal Acquisition Regulation (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

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
- 52.223-5 Pollution Prevention and Right-to-Know Information
- 52.225-1 Buy American Act-Supplies
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.221-11 Extras
- 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 Central Contractor Registration
- 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
- 52.222-50 Trafficking Victims Protection Act (applicable to non-commercial services)
- 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