



Smithsonian Institution

August 5, 2009

VIA EMAIL

Re: Request for Proposals (RFP) for Premium Fundraising and Seasonal Card Programs,
RFP# R09-9625

Dear Prospective Offerors:

The Smithsonian Institution's Smithsonian Enterprises division (the "Smithsonian") seeks a relationship with a direct response, marketing company to develop, promote, and fully execute a seasonal card program and a year-round premium fundraising program beginning in calendar year 2010 (collectively, the "Programs"). Interested companies must be willing to develop programs and products inspired by or adapted from the Smithsonian collections and its mission.

If your company is interested in working with the Smithsonian to develop, promote and fully executed either or both Programs, please review the attached RFP and submit your qualifications in accordance with the attached instructions and conditions. Please note that this RFP will be conducted in two phases: The first phase involves the submission of qualifications. A short list of offerors will be selected based on these submissions. The second phase, which will be conducted with the short-listed offerors, will include a meeting with Smithsonian representatives and submission of proposals.

DUE DATE FOR SUBMISSION OF QUALIFICATIONS

To be considered, you must submit one (1) original and six (6) copies of your qualifications materials as detailed in the attached RFP via hand delivery or overnight courier to the address below by no later than 2:00 P.M. Eastern time, on August 19, 2009. Requested materials must be received by this deadline in order to be considered.

Contracting Officer
Office of Contracting & Personal Property Management
Smithsonian Institution
2011 Crystal Drive, Suite 350
Arlington, VA 22202
Attn: Susan Engelhardt, Esq.

If you have any questions about this RFP, please submit your questions via email to Susan Engelhardt at engelhardts@si.edu. Questions must be submitted no later than 2:00 P.M. Eastern time on September 16, 2009 to ensure a response. Thank you for your interest.

Sincerely,

Robert Fraga

Director & Contracting Officer

Attachments

Smithsonian Institution

RFP # R09-9625

Affinity Direct Response Programs

I Background

A. About Smithsonian

The Smithsonian Institution is a non-profit trust instrumentality that was created by act of Congress of the United States in 1846. The Smithsonian is the world's largest museum and research complex consisting of 19 museums and galleries, the National Zoological Park and nine research facilities. In 2008, more than 25 million people from around the world visited the museums and the National Zoo; there were nearly 173 million visits to www.smithsonian.org. The total number of objects, works of art and specimens at the Smithsonian is estimated at more than 136 million. The Smithsonian collections are the basis for research, exhibitions and public programs in the arts, history and culture, and the sciences. The Institution's mission is the "increase and diffusion of knowledge."

The Smithsonian's statement of values and code of ethics require that Smithsonian's revenue-generating activities support the Smithsonian mission and protect the Smithsonian's reputation, integrity, and independence. Smithsonian's revenue-generating activities must be consistent with the Smithsonian mission, culture, governance, and status as a trust instrumentality of the United States and a tax-exempt organization.

B. About Smithsonian Enterprises

Smithsonian Enterprises is a division of the Smithsonian Institution. Smithsonian Enterprises operates retail, media, product development, licensing and other services which promote the Smithsonian mission while generating an essential source of unrestricted funding for the Institution. By providing products and services that reflect the mission of the museums and research centers, Smithsonian Enterprises plays a critical role in advancing the Institution's mission: the increase and diffusion of knowledge.

Smithsonian Enterprises' media offerings include *Smithsonian*, *Air & Space* magazines, and *goSmithsonian* visitor guide. With over 7 million monthly readers, the award-winning Smithsonian Magazine has been reporting from around the globe for over 40 years. Smithsonian Books, publishes a select list of narrative non-fiction books and sold over 800,000 books in the past year. Our publishing program includes categories where Smithsonian's authority is unparalleled, such as history, culture, science and technology, art, as well as works based on museums, collections, and artifacts.

Smithsonian Enterprises' Retail Group manages 11 restaurants with a variety of dining experiences; 3 IMAX theatres with 1.35 million annual attendees; simulators offering thrilling experiences to over 500,000 visitors; and 27 museums retail stores handling over 1.8 million annual transactions. Our retail department also includes Smithsonian Catalog, the largest museum mail order catalog, and SmithsonianStore.com with a diverse product offering inspired by Smithsonian's collections.

The Smithsonian Networks HD channel, available to 39 million households, offers award winning non-fiction programs about art, history, scientific research, and conservation from locations around the world. Smithsonian Journeys has offered tours for 40 years, providing over 250 international and domestic trips annually. The Licensing division includes 43 licensees whose various products are available through over 1,400 retailers nationwide. Products include home décor, reproductions and collectibles, children's toys and activities, books and media, as well as our successful domestic Smithsonian Student Travel program.

With over 7.3 million electronic messages marketing our various businesses, Smithsonian Enterprises continues to grow and reach new consumers of every generation throughout the world.

C. About the Project

Smithsonian seeks to promote to its affinity audience direct response programs that leverage the Smithsonian brand, Smithsonian imagery and collection assets, and *Smithsonian* Magazine subscriber list. The two programs currently operated under license for the Institution involve the sale of 4th quarter holiday cards and the offering of premium fundraising products to solicit donations. These programs will end in 2009, and the Smithsonian is interested to pursue similar programs in 2010 and beyond. The income generated from these programs will help to support Smithsonian's various mission activities.

II Scope of Work

- A. The Smithsonian is seeking a direct response, marketing company to develop, promote, and fully execute a 4th quarter holiday card program (the "Seasonal Card Program") and a year round premium fundraising program (the "Premium Fundraising Program") beginning in calendar year 2010 (collectively, the "Programs"). Programs and products will reflect holiday traditions, rather than religious traditions. The foundation of the products developed under these Programs will benefit from incorporating images or other resources from the Smithsonian collections that reflect the values of the Smithsonian's "increase and diffusion of knowledge" mission.
- B. The Smithsonian seeks a company who can, in promoting and selling the products developed under these Programs:
1. Reach a broad target audience;
 2. Support the Smithsonian mission for "the increase and diffusion of knowledge" and the Smithsonian's core values for revenue-generating activity;
 3. Utilize recycled materials to the extent possible in the development and implementation of the Programs (e.g. in specific products, in marketing materials, etc.)
 4. Support marketing and promotional activities with financial strength and allocable resources;
 5. Maximize market positioning, demographic placement, and cohesion and/or harmony with the established characteristics of the Smithsonian brand;

6. Provide environment and opportunity to grow the Programs and market during the course of the relationship; and
 7. Establish a product approval process that allows Smithsonian to evaluate the proposed products within each Program for compliance with the Smithsonian mission and brand identity. A mutually agreed upon schedule for concept and design approvals will be established with the selected company(ies) that incorporates the time necessary to meet the production schedule and to ensure proper review and comment by Smithsonian.
- C. The Smithsonian anticipates that the products developed pursuant to these Programs will incorporate Smithsonian images and/or other resources from the Smithsonian collections ("Smithsonian Content"). Smithsonian Content is obtained from many sources and may be protected by copyright, trademark, or related interests not owned by the Smithsonian. Smithsonian will work with the selected company to provide Smithsonian Content that has been cleared for purposes of the Programs. To the extent that the selected company desires to use Smithsonian Content that has not been cleared, it will be the selected company's responsibility to ascertain whether any such rights exist, and to obtain any permissions necessary to reproduce and publish Smithsonian Content as part of the Programs. The Smithsonian will provide whatever information regarding third party rights it has in its possession to facilitate such clearances.
- D. The Smithsonian anticipates entering into a contract(s) that includes certain "Key Terms and Conditions", attached hereto in Exhibit A (Key Contract Terms and Conditions for the 4th Quarter Seasonal Card Program) and Exhibit B (Key Contract Terms and Conditions for the Premium Fundraising Program) and incorporated by reference herein. Please read Exhibits A and B carefully, as they contain information essential to the conduct of the Programs.

III Instructions and Conditions

A. General Instructions and Conditions

1. The purpose of this RFP is to provide interested parties with sufficient information to enable them to prepare and submit proposals for consideration by the Smithsonian. This RFP is being issued to companies interested in marketing and promoting Smithsonian products as described in these documents and in the accompanying cover letter. Your proposal should only address the services described herein.

2. Proposals prepared in response to this RFP shall comply with the instructions and proposal requirements contained in this document. Proposals that deviate from these instructions and requirements may be disqualified at the Smithsonian's discretion.

3. The Smithsonian reserves the right to enter into negotiations with any or all companies at its discretion and based upon the best interests of the Smithsonian. *While the Smithsonian's preference is to award one contract for both Programs, the Smithsonian may choose to award multiple contracts to multiple offerors – e.g., one contract for the Seasonal Card Program and one contract for the Premium Fundraising Program.*

4. The Smithsonian is not responsible for paying any proposal preparation costs or any other costs associated with a response to this request. This RFP does not obligate the Smithsonian to enter into any agreement, nor shall it be construed as authorization for companies to proceed with any work directly or indirectly related hereto.

5. All information and materials submitted in response to this RFP for consideration by the Smithsonian will become the Smithsonian's property and will be returned only at the Smithsonian's discretion. Please clearly identify any and all information that falls under private business information category versus information that may be released under the Freedom of Information Act ("FOIA").

6. Submission Process. This RFP will be conducted in two phases.

(i) *Phase 1.* In Phase 1 we ask that you submit your company's qualifications as set forth in Section III.B. below and a letter notifying SI of your intent to submit a proposal for either the Seasonal Card Program, the Premium Fundraising Program, or both Programs if selected to proceed to Phase 2. One (1) original and six (6) copies of these materials must be submitted via courier in sealed envelopes or packages addressed to the office specified below, by **2:00 P.M. Eastern time on August 19, 2009**, with the subject matter of the RFP and the name and address of the company clearly identified on the packaging. Materials sent via email, fax or to any other address will not be considered. *Smithsonian will select a short list of candidates from these submissions to move on to Phase 2 of the process.* Materials shall be sent to:

Susan Engelhardt, Esq.
Office of Contracting & Personal Property Management
Smithsonian Institution
2011 Crystal Drive, Suite 350
Arlington, VA 22202

(ii) *Questions.* All substantive and administrative questions about this RFP must be submitted in writing by email to the attention of Susan Engelhardt at engelhardts@si.edu. Questions must be submitted by 2:00 P.M. Eastern time on September 16, 2009 in order to ensure a response.

(iii) *Phase 2.* If selected for the short list, in Phase 2 we will ask you to meet with Smithsonian staff, either in Smithsonian offices in Washington, D.C. or via teleconference, to learn more about Smithsonian and the Programs and for the Smithsonian to learn more about your company and its capabilities. Additional information regarding the meetings will be provided at a later date. Following the meeting, company shall submit one (1) original and six (6) copies of its proposal as set forth in Section III.C. below. Proposals and proposal modifications shall be submitted via courier in sealed envelopes or packages addressed to the office specified below, by **2:00 P.M. Eastern time on September 30, 2009**, with the subject matter of the RFP and the name and address of the company clearly identified on the packaging. Proposals and modifications sent via email, fax, or to any other address will not be considered. Proposals shall be sent to the address identified in III.A.6(i) above.

7. Smithsonian reserves the unconditional right to cancel this RFP or to terminate negotiations at any time without cost or liability of Smithsonian. Participation in this RFP or any

resulting contract constitutes an affirmative waiver by participants of any claim to proposal preparation costs. Interested offerors should note that this is not a solicitation for a federal contract and is therefore not governed by federal procurement procedures.

8. The Smithsonian reserves the right to reject any and all proposals received as a result of this request. Noncompliance with the instructions and conditions of this RFP may result in disqualification of your proposal. The Smithsonian may refuse to consider any proposal received after the exact date and time specified for receipt.

9. At Smithsonian's option, any or all of the companies that are selected to proceed to Phase 2 may be invited to meet with Smithsonian representatives in person or over the telephone in Washington D.C. to discuss their proposals and answer questions. Travel and per diem for any such meeting will be the responsibility of each company.

10. Authorized Negotiators. Companies are hereby placed on notice that the only persons authorized to conduct discussions and/or make commitments on behalf of the Smithsonian regarding this RFP and all matters incident hereto are the Smithsonian Contracting Officer and his designated representatives from the Office of Contracting & Personal Property Management.

B. Phase 1 Qualifications Submittal Requirements. The Smithsonian's requirements and expectations are set forth herein. All qualifications submittals must include the following:

1. A letter indicating whether your company intends to submit a proposal, if selected to proceed to Phase 2, for the Seasonal Card Program, the Premium Fundraising Program, or both Programs.

2. A narrative describing your company's strategy and brand vision concept for the Seasonal Card Program and Premium Fundraising Program, as applicable, consistent with the Scope of Work set forth in Section II above. Programs and products should reflect holiday traditions rather than religious traditions. Please note whether your company is able to utilize recycled materials in conjunction with the development and implementation of the Programs.

3. A narrative describing your company's overall qualifications and experience. This section must also include what in-house capabilities your company has to support this type of turn key program versus what will be outsourced, i.e. creative/product design, printing, caging, list management, marketing, etc. For any capabilities that would be outsourced, please identify the vendors proposed for outsourcing.

4. A company profile, including the number of years your company has been in business, bios of key personnel, location(s) of company office(s), and your company's most recent corporate financial statement.

5. A creative portfolio of your company's previous marketing materials, and samples of seasonal cards or premium products.

6. A list and brief description of the clients who currently conduct similar programs with your company (including a description of the types of programs operated for that client and the length of time in business with that client).

7. A narrative describing your company's customer service policies and standards as well as the procedures used in the resolution of customer service issues or complaints. Include any past or current Better Business Bureau listings and explanations of anything noted as not acceptably closed.

8. References. Three (3) references from companies that provide support services to your company and three (3) references from clients who currently operate programs with your company, with contact name and title, address, phone number, and a brief description of the services provided and/or program operated. References provided should demonstrate performance relative to the subject matter of this RFP.

C. **Phase 2 Proposal Requirements.** The Smithsonian's requirements and expectations are set forth herein. All proposals must include the following:

1. A statement confirming whether your company is submitting a proposal for the Seasonal Card Program, the Premium Fundraising Program, or both Programs. If submitting a proposal for both Programs, please clearly delineate in all proposal information which Program(s) the information relates to.

2. A narrative describing your company's strategy and brand vision for the 2010, 2011, and 2012 (calendar year) Seasonal Card Program and Premium Fundraising Program, as applicable, consistent with the Scope of Work set forth in Section II above. It is anticipated that this narrative will be significantly more detailed than that provided in Phase 1. Programs and products should reflect holiday traditions rather than religious traditions. This narrative must include a description of each proposed Program, and a timeline for each proposed Program that details the development, quality standards, and execution of the various products starting in 2010, as well as the key staff dedicated to support the Programs. As part of the description for the fundraising program, clearly indicate what products are recommended. Please also describe the extent to which your company is able to utilize recycled materials in conjunction with the development and implementation of the Programs.

3. To the extent that your company would like to propose opportunities for added value relative to the Programs, please provide a narrative describing such opportunities and how such opportunities as well as products would fit within the strategy and brand vision identified in #2 above.

4. A detailed marketing plan stating how you plan to market the specific products you envision creating for the applicable Programs. This must also include marketing strategies your company utilizes that involve:

- a. Direct mail, print ads, product catalogs, and websites; and
- b. Other concepts for revenue generating products that may be added to these types of programs.

5. Your proposed business and financial terms for the proposed Programs, including but not limited to royalty rate; term of agreement; 2010, 2011, and 2012 (calendar year) financial projections; assumptions behind 2010, 2011, and 2012 (calendar year) projections; advance and annual guarantees.

6. An explanation of any exceptions or deviations your company will require with respect to Exhibit A and Exhibit B, attached. Exceptions will not automatically cause a proposal to be deemed unacceptable. However, exceptions not providing obvious benefit to the Smithsonian Institution may result in rejection of a proposal as unacceptable.

7. A statement from your company certifying that there is no material litigation, either pending or threatened, or any contractual or business relationship involving your company or any of its principals, shareholders, partners, officers, or employees which would prevent or limit your company from providing any services described in this RFP, or would hinder your company's ability to achieve fully the stated objectives and an affirmative statement that your company is responsible and able to conduct business in the District of Columbia and throughout the United States. To be provided as a signed, certified document with your proposal.

IV. **Evaluation Criteria.** Subject to the discretion of the Smithsonian, any company may be selected who is deemed responsible, whose proposal conforms to the requirements in all of the RFP documents, and is judged, based on the evaluation criteria below, to represent the best value to the Smithsonian. The Smithsonian will not select a company whose proposal is determined to be unacceptable to the Smithsonian.

A. Phase 1 evaluation factors considered in descending order of importance will be:

1. Proposed strategy and brand vision concept's fit with the Institution's brand, mission and core values;
2. Company reach (ability to reach a broad target audience) and financial strength;
3. Ability to develop, sell, execute, and expand programs similar to the proposed Programs;
4. Quality and creative design of your company's portfolio;
5. Customer service policies, standards, and industry reputation related to same, including ability to fully resolve customer issues and complaints; and
6. Past performance of your company (e.g., compliance with contract requirements, quality of products/services provided, timeliness of performance, cost control, business relations). The Smithsonian may use past performance information obtained from other than the references identified by the offeror.

B. Phase 2 evaluation factors considered in descending order of importance will be:

1. Proposed Programs' fit with Institution's brand, mission and core values;
2. Ability to effectively infuse the Smithsonian's mission and core values into individual products for the proposed Programs;
3. Financial and business terms, and commitment of allocable resources to the proposed Programs;
4. Company reach (ability to reach a broad target audience) and financial strength (note that companies submitted information relative to this criteria in Phase 1, but it will be evaluated again in Phase 2);
5. Quality and creativity of your company's portfolio and product development plan (note that companies submitted portfolio information relative to this criteria in Phase 1, but it will be evaluated again in Phase 2) ;
6. Marketing plan and demonstrated ability to develop, sell, execute, and expand programs similar to the proposed Programs;

7. Customer service policies, standards, and industry reputation related to same, including ability to fully resolve customer issues and complaints; and
8. Past performance of your company (e.g., compliance with contract requirements, quality of products/services provided, timeliness of performance, cost control, business relations). The Smithsonian may use past performance information obtained from other than the references identified by the offeror.

The Smithsonian reserves the right in all cases to be the sole judge determining whether a company meets the evaluation criteria.

V. DEADLINES

PHASE 1

August 19, 2009 **Notification of Intent to Submit a Proposal and Qualifications Due:**
Notification must be received at the email address engelhardtS@si.edu by 2:00 P.M. Eastern time on August 19, 2009.

September 16, 2009 **Questions Due:** All questions regarding the RFP and attachments must be received at the email address engelhardtS@si.edu by 2:00 P.M. Eastern time on September 16, 2009.

PHASE 2

September 8-11, 2009 **Meetings:** Meetings are anticipated to be scheduled for one hour in Washington, D.C. or via teleconference during this week.

September 30, 2009 **Proposals Due:** All proposals must be received via courier at 2011 Crystal Drive, Suite 350 Arlington, VA 22202 by **2:00 P.M. Eastern time on September 30, 2009** in order to be considered.

VI. ATTACHMENTS

Exhibit A: Key Contract Terms and Conditions (Seasonal Card Program)

Exhibit B: Key Contract Terms and Conditions (Premium Fundraising Program)

- END -

**EXHIBIT A –
KEY CONTRACT TERMS AND CONDITIONS FOR SEASONAL CARD PROGRAM**

1. GRANT OF LICENSE

SI grants to Licensee for the term of this Agreement, subject to the terms and conditions herein contained, a personal, non-transferable and non-exclusive license to use the names “Smithsonian Institution,” and “Smithsonian” (the “Names”), SI logo (the “Logo”) and certain SI images and materials as specified herein solely in connection with the design, development, manufacture, distribution and sale (“Development”) of the products specified in Schedule A of this Agreement (hereinafter such products are called “SI Products”), under the Licensee label.

2. COSTS

Except as expressly stated in Paragraph 11 with regard to indemnification expenses, it is understood that all costs associated with the Development of SI Products, whether approved or disapproved at any stage by SI, shall be borne by Licensee, and SI has no responsibility for any such costs.

3. APPROVALS

a. Product Development. All manufacturing shall be of fine quality and comply with the highest product specifications, standards, and quality control procedures. Licensee agrees to furnish SI with samples of SI Products in their consecutive planned stages of development for inspection and judgment of accuracy, quality, style and appropriateness by curatorial and other SI staff. No SI Product will be manufactured or sold by Licensee until SI has given written approval at each appropriate stage. There shall be a minimum of _____ production stages for the SI to approve prior to the approval of the final sample of each product, including, but not limited to, the following:

A mutually agreed upon timetable for concept and design approvals is set forth in Schedule B attached hereto. This schedule incorporates the time necessary to meet Licensee's production schedule and to ensure proper review and comment by SI's curatorial staff. SI agrees not to unreasonably withhold approval or unreasonably delay notice of approval or disapproval, as the case may be, to Licensee at any stage in conformance with the agreed upon schedules. Approval of the final sample by SI will be the last stage of approval. All final finished samples approved by SI will be retained unchanged by Licensee and they may be inspected by SI at any time during the Term of this Agreement and within two (2) years thereafter. Any deviation in quality from the approved sample shall be grounds for SI to terminate this Agreement. This procedure will be followed for each SI Product before its manufacture or sale, whichever comes first.

b. Packaging. Licensee shall submit for SI's prior written approval: galleys, drafts, and samples of all packaging associated with each SI Product. Licensee also shall provide, based on material supplied by SI, appropriate educational or informational textual material with each SI Product sold. Final text shall be approved in writing by SI before final production may begin.

c. Advertising and Promotion.

i. Advertising and Promotion. Advertising for purposes of this Agreement shall be defined as any advertising designed by Licensee which is targeted to promote SI Products ("Advertising"). Licensee is authorized to market the SI Products to SI's members and customers whose names appear on lists supplied by SI and to prospects on supplemental mailing lists obtained at Licensee's expense. For purposes of marketing the Seasonal Card Program, SI will provide Licensee with its lists of members and customers (including member or customer identification number, name, mailing address, affinity indicators, and any other relevant, non-proprietary data as available and reasonably requested by Licensee). The member and customer lists (hereinafter collectively referred to as the "Customer Lists") are the sole property of SI and are to be utilized only in the marketing of the Seasonal Card Program in accordance with this Agreement. Licensee agrees (1) to maintain the Customer Lists in strict confidence and to safeguard the Customer Lists; and (2) not to reproduce, sell, rent, assign, pledge, or transfer the Customer Lists. A violation of this provision shall be deemed a material breach of this License Agreement. Upon expiration or termination of the License Agreement, Licensee will not use SI's Names or Logo in any way and shall not use the names from the Customer Lists in any way. Licensee may advertise the sale of the SI Products in catalogs, brochures, magazines, sales literature and on the Internet provided such Internet advertisement is low resolution and includes a watermark making the image difficult to reproduce. SI reserves the right to approve the appearance of SI Products in advertising and promotion on Licensee's website and elsewhere.

ii. Promotion. Licensee may illustrate and promote the sale of the SI Products in catalogs, brochures, magazines, and sales literature and the Internet subject to Paragraph 3.c.i. above.

d. Use of Names. Licensee agrees that the Names possess a special, unique and extraordinary character. If at any time SI deems that the continued development, manufacture or sale of any SI Product will harm, bring into disrepute, or affect the integrity of the Names, or is not in keeping with the dignity, history and traditions of the Smithsonian Institution, SI shall have the right to withdraw its approval previously given.

e. References to SI. Except as specifically provided in this Agreement, Licensee shall not refer to SI or 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 on any letterhead or website by any company.

4. **PRODUCT SPECIFICATION**

a. Country of Manufacture. SI voluntarily requires Licensee and its Sublicensees to manufacture SI Products in the United States of America or its territories in keeping with the spirit and intent of the Buy American Act (41 U.S.C. §§ 10.a. et seq.). If manufacture of SI Products will not take place in the United States or its territories, manufacture of the SI Products shall be limited to countries that fall within the provisions of a trade agreement with the United States that waives applicability of the Buy American Act and otherwise complies with Part 25 of the Federal Acquisition Regulation. Licensee shall ensure that production is in conformance with all applicable labor laws in the U.S. or the countries in which SI Products are being manufactured or produced.

i. If Licensee is not manufacturing SI Products in its own factories, plants, or workshops in the United States of America or its Territories then the manufacture of SI Products shall be limited to the following countries: _____. Any agency or sublicense, or any change in country of manufacture must be approved based on a prior written request by Licensee and prior written approval by SI. Licensee agrees that the identification of the country of origin on all SI Products shall be in conformance with all laws governing manufacturing and said designated countries of origin shall be limited to those countries as specified above or as approved by SI.

ii. Licensee shall ensure that production is in conformance with all applicable labor laws in the U.S. or the countries in which SI Products are being manufactured or produced.

b. Subcontracting. In the event that Licensee intends to subcontract elements of SI Products, Licensee agrees to obtain SI's prior approval for such subcontracting. If permission is granted, Licensee shall ensure that the subcontractor complies with all applicable provisions of this Agreement including but not limited to all restrictions governing use of the SI name, logo, and trademarks. Licensee shall further ensure that its subcontractors shall not exploit in any manner its association with the SI, its collections, products, or components or derivatives thereof.

5. TERRITORY

Licensee shall be entitled to use the License granted herein in the following country(ies): USA

6. LICENSE PERIOD AND TERM OF AGREEMENT

The License granted herein shall commence as of the Effective Date and terminate as of _____, unless sooner terminated in accordance with the terms and conditions of this Agreement ("License Period"). This Agreement shall commence upon the date of this Agreement and shall expire on _____ (the "Term").

7. DISTRIBUTION

a. Channels of Distribution. Licensee shall sell SI Products through the same direct response marketing channels of distribution through which the Licensee lines are distributed, which are limited to the following: _____. Any additional channels will require prior written approval by SI.

b. Distribution to SI. At SI's request, Licensee shall sell SI Products to SI at prices charged to Licensee's most favored unaffiliated customers, but only for retail sale by SI directly to consumers. Licensee understands that the SI's Office of Product Development & Licensing is a separate division of the SI and cannot obligate the SI Museum Stores, SI Mail Order Division, or SIstore.com e-commerce site to purchase the SI Products. The SI's Contracting Officer's Representative, as set forth in Paragraph 20 below, shall use all best efforts to include those SI divisions in product development discussions, but all sales activity is solely the responsibility of the Licensee.

c. Promotional Activities. Licensee will seek the prior written consent of SI before using SI Products for promotional activities, combination sales, as premiums, or giveaways, or for any similar method of merchandising and will notify customers that they must seek permission directly with SI or from Licensee prior to using SI Products for promotional activities.

d. Samples to SI. Licensee shall promptly provide SI, at no charge, reasonable quantities of all SI Products for purposes such as quality control, museum collections, trademark registration and other related needs.

e. Data Security. Safeguarding personally identifiable information ("PII"), including credit card information, collected or possessed by Licensee in the course of this Agreement and preventing its disclosure are essential. Licensee acknowledges that it is responsible for the security of SI data and PII that it processes, stores, or transmits in the course of this Agreement.

(i) Licensee shall meet the most stringent Payment Card Industry ("PCI") Data Security Standards applicable to a merchant or service provider of its size. Upon request, Licensee will provide SI with updated certificates of compliance. Licensee will inform SI of any changes to its PCI compliance status.

(ii) Licensee shall immediately report to SI any incident that results in unauthorized access, loss or modification of SI data or PII collected or stored in the course of this Agreement or denial of service affecting the availability of such data. If new or unanticipated threats or hazards are discovered by either party, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of other party. To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of SI data or PII, Licensee shall afford SI access to Licensee's facilities, installations, technical capabilities, operations, documentation, records, and databases.

8. PAYMENTS

a. Non-Refundable Advance Against Royalties/ Minimum Annual Guaranteed Royalty Payment. Licensee agrees to pay SI the amount(s) specified in Schedule C as a minimum annual guaranteed royalty payment ("Guarantee") and/ or a non-refundable advance against royalties, any or both of which shall be paid in accordance with the payment plan attached hereto in Schedule C and hereby incorporated into this Agreement. If Licensee terminates this Agreement for reasons other than breach by SI, Licensee shall pay upon termination all minimum annual guaranteed royalty payments due for the otherwise remaining Term of the Agreement.

b. Royalty Compensation:

i. The term "Sales Proceeds" shall mean gross or invoiced sales of SI Products by Licensee less discounts and returns actually made or allowed. No costs incurred in the Development, promotion, or sale of SI Products shall be deducted from any Royalty Compensation payable by Licensee.

ii. Licensee agrees to pay SI a sum equal to the percentage(s), specified in Schedule C, of all Sales Proceeds received by Licensee or any affiliated, associated or subsidiary company for SI Products covered by this Agreement, including but not limited to sales made by Licensee to SI, although only one royalty shall be paid for each item ("Royalty Compensation"). Licensee understands that the SI's Office of Product Development & Licensing is a separate division of the SI and cannot obligate SI Museum Stores, SI Mail Order Division, or SIstore.com e-commerce site to purchase the SI Products. In addition, the Product Development & Licensing Office does not benefit from discounted sales to SI Museum Stores, SI Mail Order Division, or SIstore.com e-commerce site. Licensee shall pay royalties on all Sales Proceeds accrued by Licensee on sales to SI and as set forth in Schedule C. All payments shall be remitted by Licensee concurrently with each of the periodic statements required below.

c. Procedure. Payments shall be mailed to the following address:

Product Development & Licensing
SI Institution
P.O. Box 631965
Baltimore, MD 21263-1965

All payments and statements shall refer to the SI Contract Number # RCO-_____-0000.

9. PERIODIC STATEMENTS

a. Reported Information. Licensee shall furnish royalty statements to SI within thirty (30) days after the end of each calendar quarter, as defined in Schedule C. Licensee will furnish to SI complete and accurate statements, certified to be accurate by an officer of Licensee showing the number, description, gross sales price, and itemized allowable deductions from the gross sales price of each SI Product distributed and sold by Licensee during the preceding calendar quarter. Such statements shall be furnished to SI whether or not any of the SI Products have been sold during the preceding calendar quarter identified by the month in which such statements are due.

b. Verification. Receipt or acceptance by SI of any of the statements furnished pursuant to this Agreement or of any sums paid hereunder shall not preclude SI from questioning the correctness thereof at any time, and in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event that SI has a reasonable basis for needing an independently certified statement, which need cannot otherwise be met, and upon demand of SI, Licensee shall at its own expense, but not more than one (1) time in any twelve (12) month period, furnish to SI a detailed statement by an independent certified public accountant, showing the number, description, gross sales price, itemized deductions from gross sales price and net sales price of each SI Product distributed or sold by Licensee up to the date of SI's demand.

c. Procedure. Statements shall be mailed to the following address:

Product Development & Licensing
SI Institution
P.O. Box 631965
Baltimore, MD 21263-1965

10. BOOKS AND RECORDS. Licensee shall keep accurate books of account and records covering all transactions relating to the license hereby granted; SI and its duly authorized representatives shall have the right at all reasonable hours of the day, after reasonable notice, to an examination of, including the right to make extracts from and copies of, said books of account and records and of all other documents and material in the possession or under the control of Licensee with respect to the subject matter and the terms of this Agreement. To facilitate inspection by SI of Licensee's books and records with respect to the amounts due SI, Licensee will designate an individual identification number which will be used exclusively in connection with SI Products. Licensee shall retain duplicates of all invoices to its customers for SI Products. SI agrees that it will conduct no more than one (1) examination pursuant to the terms of this Agreement during any twelve (12) month period that this Agreement is in effect. All books of account and records shall be kept available for at least two (2) years after the termination of this License, or any renewal thereof, and Licensee agrees to permit inspection by SI during such two (2) year period under the conditions stated above and Licensee shall pay for such inspection if the margin of error is in excess of five percent (5%).

11. WARRANTIES AND INDEMNIFICATIONS

a. Warranties.

i. SI Warranties. SI warrants and represents:

(1) that it has the full right and authority to grant all of the rights granted herein,

- (2) that no permission is required of any other party to fully enforce the rights granted herein;
- (3) that the use of SI-provided materials that have been cleared by SI (to the extent such materials are provided) is not a violation of the copyright or any proprietary or personal right of any person or entity or otherwise contrary to law;
- (4) that it has not previously assigned, pledged or otherwise encumbered the rights herein granted to Licensee;

ii. Licensee Warranties. Licensee warrants and represents:

- (1) that it has the full right and authority to enter into this Agreement;
- (2) that use of materials provided but not cleared by SI, and the use of materials not provided by SI, that have been incorporated into completed SI Products are not a violation of the copyright or any proprietary or personal right of any person or entity or otherwise contrary to law;
- (3) that Licensee has fully complied with all applicable laws and regulations both within and outside the U.S. pertaining to the development, manufacture, distribution, and sale of SI Products including, without limitation, consumer products safety laws and labeling requirements;
- (4) that Licensee has conducted full and complete trademark searches with due diligence when requested to do so by SI under this Agreement;
- (5) that Licensee has not nor will not in any manner grant, assign, encumber, or dispose of any of the rights granted herein except as provided herein; and,
- (6) that SI Products have not been and shall not be produced or manufactured, in whole or in part by convict, forced or child labor or in any other manner prohibited by applicable law. Licensee shall provide SI with any guarantee of compliance with any law, rule or regulation of the United States and any other countries where SI Product is produced or delivered, in such form as SI may from time to time designate, with respect to SI Products.

b. Indemnification by SI. To the extent permissible by Federal law, SI hereby indemnifies Licensee and shall hold it harmless:

- i. against any claims or suits asserting any proprietary rights in an artifact or image from SI's collections which Licensee has reproduced pursuant to this Agreement and to which SI has cleared the rights, but only to the extent of Licensee's out-of-pocket costs including reasonable outside attorneys' fees, and provided further that Licensee shall give prompt written notice to SI of any such claim or suit, and provided further that SI shall have the option to undertake and conduct the defense of any suit so brought;
- ii. against any judgments or settlements arising out of use by Licensee of the Names as authorized in this Agreement, but only to the extent of such authorized use and only to the extent of Licensee's actual out-of-pocket costs including reasonable outside attorneys' fees; and
- iii. against any judgments or settlements arising out of a breach of any of the warranties made above in Paragraph 11.a.i, but only to the extent of Licensee's actual out-of-pocket costs including reasonable outside attorneys' fees;

Nothing contained in this subparagraph, or elsewhere in this Agreement, shall create any liability on the part of SI for any other claims or suits against Licensee.

c. Assistance to SI by Licensee. Licensee shall assist SI, to the extent necessary, in the protection of any of SI's right to the Names, and SI, if it so desires, may commence or prosecute at its own expense any claims or suits in its own name or in the name of Licensee or join Licensee as a party thereto. Licensee shall notify SI in writing of any infringements or imitations by others of the Names on articles the same as or similar to the SI Products. In the event that SI does not take action against an infringer, Licensee may do so at its own expense and SI will cooperate with Licensee in prosecuting any such action, provided, however, that Licensee shall have given SI thirty (30) days written notice of its intention to do so and SI shall not have objected thereto in writing in that period, it being understood that SI shall have the final determination whether or not any action shall be taken on account of such infringements or imitations.

d. Indemnification by Licensee. Licensee hereby agrees to indemnify, defend, and hold SI harmless from any claim or suit arising or alleging to arise out of or from the Development of SI Products or arising out of a breach of Licensee's warranties under the Licensee name, excepting claims for which SI is indemnifying Licensee.

e. Fitness. Licensee makes no warranties, either express or implied, as to any matter, including without limitation, the effectiveness of licensee's products, their merchantability, or their fitness for any particular purpose, except to the extent expressly provided in this agreement.

f. FTCA Applicability. Licensee is hereby on notice that the SI Institution falls within the purview of the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671-80). As such, the exclusive remedy for claims against SI for bodily injury, death, and property damage due to negligence of SI or its employees is the Federal Tort Claims Act; the General Counsel of SI is authorized to settle all claims against the United States (Smithsonian Institution) for damage to property, personal injury, or death caused by the negligent act or failure to act of a Smithsonian Institution employee in the course of his/her employment cognizable under the Federal Tort Claims Act, as amended; and in some instances, this may be the exclusive remedy.

12. INSURANCE

a. Amount and Type of Coverage. During the Term, Licensee shall secure and maintain at a minimum the insurance policies set forth below covering all work performed and associated with this Agreement. Licensee may use a combination of policies to achieve the minimum limits and coverage specified. Any policies that are on a "claims made" basis shall be maintained for a period of not less than three years with the retroactive date to be held constant with the date of this Agreement. Insurance is to specifically include coverage for liability assumed by Contractor under this Agreement.

- i. Commercial General Liability coverage, including products liability. **Minimum Amount: \$1,000,000 per occurrence;**
- ii. Broad Form Professional Liability coverage, including errors and omissions coverage providing for the defense, settlement and judgment of claims including but not limited to claims alleging defamation or other harm to character, reputation or personal rights, infringement of copyright, plagiarism, piracy or misappropriation of idea, unfair competition or other causes arising out of Licensee's or its employees', subcontractors' or agents' activities pertaining to this Agreement. **Minimum Limit: \$1,000,000;**

- iii. Crime/Employee Dishonesty coverage, providing protection of money, securities, or property against loss of theft or forgery committed by an employee acting alone or in collusion with others. **Limit: \$100,000; Retention – Maximum Limit: \$10,000;**
 - iv. Privacy and Security Liability coverage to provide protection to SI for failure of security of Licensee's computer systems to mitigate or prevent a loss that results from a computer attack allowing for information to be stolen as regards credit card numbers and other identification information belonging to SI's customers/subscribers. **Limit: \$1,000,000; Retention – Maximum Limit: \$25,000.**
- b. The insurance requirements provided herein are Licensee's minimum requirements and shall not be considered indicative of the ultimate amounts and types of insurance needed by Licensee. Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve Licensee from its obligations under this Agreement.
 - c. The Smithsonian Institution shall be named as an Additional Insured by specific broad form endorsement to the liability policies. Such endorsement shall state that the policy also provides coverage for cross-liability between insureds. Licensee shall provide a Certificate(s) of Insurance evidencing all required minimum coverage and Additional Insured status immediately upon execution of this Agreement. All such insurance policies shall contain a minimum thirty (30) day notice requirement to SI prior to cancellation. SI may also request copies of the policies for further review and evaluation. Before the expiration or cancellation of any insurance policy required herein, Licensee shall mail to SI certificates of insurance evidencing renewal or replacement coverage sufficient to satisfy its obligations under this Paragraph. Failure of Licensee to provide or maintain the required insurance coverage shall be considered a material breach of this Agreement.
 - d. Subcontractors. If any work provided or to be performed under this Agreement is provided or performed by subcontractors, Licensee shall require the subcontractors to maintain and furnish to Licensee insurance equivalent to that which is required of Licensee hereunder.

13. COPYRIGHT AND TRADEMARK

a. SI Trademark. Licensee agrees to cause an appropriate statutory notice of trademark registration to be affixed to or imprinted on each SI Product wherever the federally registered trademarks, "Smithsonian," "Smithsonian Institution" and the SI Logo are first used. Such notice shall be in one of the following forms:

- i. © or ® placed on the right hand "shoulder" of the trademark; or
- ii. "This trademark is owned by the Smithsonian Institution and is registered in the U.S. Patent and Trademark Office."

b. Trademark Notice Location. The trademark notice as provided herein shall appear close to the trademark and shall be affixed to or imprinted on each SI Product or associated materials (i.e. including but not limited to hang tags and informational tags) the first time the registered trademarks, "Smithsonian," "Smithsonian Institution" or the Logo appear on the SI Product and associated materials.

c. SI Logo. The Logo shall not be changed, altered, moved, manipulated or incorporated into another design and it shall stand separate and on its own. Licensee agrees to submit an attachment sample containing the Logo, the Licensee logo and all trademark notices before completion of the product design stage.

d. Licensee's Trademarks. SI agrees that Licensee may affix its own trademark to SI Product(s), subject to SI's prior written approval before completion of the product design stage.

e. Third Party Trademarks. There shall be no use of any third party trademark on any SI Product unless Licensee first obtains SI's prior written approval.

f. SI Product Trademarks. If Licensee develops a name or trademark for a specific SI Product or line of SI Products and desires to market SI Product(s) under that name, it shall be required to obtain SI's prior written approval for the use of such name/trademark and Licensee acknowledges and agrees that all rights, including trademark, in such name or trademark shall be owned solely by SI. If the SI agrees, Licensee shall be required to conduct a full and complete trademark search to determine whether the name/trademark may be used. Licensee shall be responsible for payment of all fees associated with the search, and shall provide a copy of the results to SI, upon request.

g. Copyright. Licensee acknowledges that all materials produced pursuant to this Agreement which are based on artifacts and images from the SI's collections including, but not limited to, all Reproductions, Adaptations, and Creations, as those terms are defined in Schedule A attached hereto, shall be deemed derivative works within the meaning of the Copyright Act of 1976 (17 U.S.C. " 101 et seq., as amended), and all right, title and interest, including copyright, shall be owned by SI. These materials include but are not limited to designs, sketches, tracings, draft and finished artwork, packaging, advertisements, instructions and descriptive or textual materials. In the event such materials are adjudged not to be derivative works, Licensee hereby transfers and assigns to SI, for fair consideration, all rights, including copyright, in all materials produced pursuant to this Agreement.

h. Copyright Notice. Licensee agrees to cause an appropriate copyright notice to appear on all copyrightable materials produced as a result of this Agreement including but not limited to, the SI Product itself and any and all advertising, packaging and/or promotional materials relating to the SI Product. Such copyright notice shall be in a form similar to the following: © 2006 SI Institution.

i. Registration. If requested by SI, Licensee shall secure and maintain United States copyright registration in the name of SI. Licensee shall submit proper samples and forms of the copyrighted material for copyright deposit purposes with the United States Library of Congress. Licensee shall be responsible for any and all costs associated with such registration and deposit.

j. Goodwill. Licensee recognizes the great value of the prestige, publicity and goodwill associated with the Names, and in such connection, acknowledges that such good will exclusively belongs to SI and that the Names have acquired a secondary meaning in the mind of the purchasing public as a source of museum services and museum products.

14. DISPOSAL OF SECONDS

In the event a SI Product under a license granted herein fails to pass Licensee's normal quality control inspection, or otherwise deviates from the standards of the industry, Licensee shall promptly destroy the material.

15. SPECIFIC UNDERTAKINGS OF LICENSEE

During the Term and thereafter Licensee agrees that:

a. It will not attack SI's rights in and to the Names and any copyright or trademark pertaining thereto, nor will it attack the validity of the License granted hereunder. It will not harm, misuse or bring into disrepute the Names and, in the development of SI Product, will assist SI in preserving the integrity of the Names. This obligation shall survive the termination or expiration of this Agreement;

b. It will ensure that the Development of SI Products proceeds in an ethical manner in keeping with the dignity and traditions of the SI and in accordance with the terms and intent of this Agreement;

c. It agrees not to discriminate in its business practices including but not limited to hiring, marketing, sub-contracting and wholesaling on the basis of race, creed, color, religion, sex, age, national origin, handicap or for any other reason prohibited by Federal or applicable state law.

d. Buyer Information. Licensee shall provide SI with a complete list of buyer names and addresses and any additional information as set forth below (the "Buyer List"). An initial Buyer List shall be provided on [date]. Updated Buyer Lists shall be provided on a quarterly basis, by March 31, June 30, September 30, and December 31 of each calendar year. These Buyer Lists shall be provided electronically to the Contracting Officer's Representative identified below, in a format as mutually agreed between the parties.

i. The following information shall be provided on each Buyer List:

- Name
- Address
- City
- State
- Zip
- Email address (if available)
- Source code: Smithsonian list source for acquisition
- Number of boxes orders
- Amount of transaction
- Payment type ("bill me", credit card, never paid)
- Buyer history (including year, number of boxes purchased, and amount of transaction)
- Mail preference information (do-not-promote)
- Smithsonian member number

e. Licensee acknowledges that the Buyer List is the sole and exclusive property of SI. SI hereby grants to Licensee a limited license to use the Buyer List solely for purposes of the Program. The Buyer List shall not be used by Licensee for resale, lease, rental, distribution, loan, or for any purpose other than to perform the Seasonal Card Program as set forth in this Agreement. Licensee shall maintain the names and addresses in strict confidence at all times and safeguard them against unauthorized use and disclosure. The obligations set forth in this Paragraph shall survive termination or expiration of this Agreement.

f. Upon signing of the Agreement, Licensee shall inform SI of its overall marketing strategy or plan as soon as it is finalized and as often thereafter as indicated by timeline of Development of SI Products.

16. TERMINATION

a. Material Breach by Harm to SI Names or Reputation. SI may terminate this Agreement at any time by written notice if the continued manufacture or sale of any SI Products will harm or bring into disrepute the Names or the reputation and integrity of the SI.

b. Material Breach. SI may terminate this Agreement in the event of a material breach by Licensee provided that Licensee has been given thirty (30) days written notice of such breach, the nature of the breach has been identified, and Licensee has failed to cure, or to attempt to cure, the asserted breach to the satisfaction of SI within the notice period. Failure to meet deadlines in Schedules shall constitute a material breach.

c. Default. It is understood that Licensee will commence in good faith with the development of SI Products and will actively continue with the Development, manufacture and sale of the SI Products in accordance with Schedule B. If Licensee fails to have manufactured, distributed or sold any SI Products in any two (2) consecutive calendar quarters during the License Period, SI shall have the right, in addition to all other remedies available to it, to terminate this Agreement upon thirty (30) days' prior written notice. If the SI Products consist of more than one (1) product and some but not all of such products are not actively distributed and sold during any two (2) consecutive quarters, SI may terminate the Agreement entirely or only as to those certain products not being distributed and sold by Licensee. The effective date of such termination shall be thirty (30) days following receipt of the notice by Licensee.

d. Bankruptcy/Cessation of Business. In the event Licensee enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Licensee agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the name and location of the court where the petition was filed and the SI Institution Contract Number as it appears on the first page of this Agreement. This obligation remains in effect until final payment is made under this Agreement. Upon receipt of such notice, and subject to such approvals as may be required by the bankruptcy court or trustee in bankruptcy, SI shall have the first and exclusive right to purchase part or all of Licensee's remaining SI Products. If SI chooses not to purchase the remaining SI Products, Licensee may dispose of the remainder consistent with the terms and conditions of this Agreement or the terms and conditions of any arrangement ordered by the court or trustee.

e. Transfer. SI may terminate this Agreement effective immediately, at its sole option, if Licensee sells or otherwise disposes of substantially all of its business or assets to a third party, or control of Licensee is transferred, or present management of Licensee is changed, or no longer is involved directly in the day-to-day supervision of Licensee's performance under this Agreement unless Licensee shall have first obtained SI's prior written permission to such transfer or changes.

f. Excusable Delay. If by reason of the laws, regulations, acts, demands, orders, or interpositions of any government or any subdivision or agent thereof; or by acts of God, strike, fire, flood, weather, explosion, accidents, war, rebellion, insurrection, terrorism or any other cause beyond the control of either party whether similar or dissimilar to the foregoing Licensee shall be delayed or prevented from performing this Agreement, such delay or failure to perform shall be excused during the continuance of and to the extent of such cause, and the term for performance shall be extended for a period equal to the duration of such cause. If such delay exceeds ninety (90) days, either party hereto may terminate this Agreement, and all rights and obligations hereunder shall cease, except that Licensee shall be responsible for all sums due and owing as of the date of delay.

17. CONDUCT UPON EXPIRATION OR TERMINATION

a. Notice. Upon receipt of a notice of termination from SI pursuant to Paragraph 16, above, or the expiration of the License Period, Licensee shall cease the manufacture, sale, promotion and distribution of SI Products immediately. Licensee shall deliver to SI within thirty (30) days of the date of termination or expiration a complete and updated Buyer List and a statement indicating the number and description of SI Products on hand or in process of being manufactured at the time of termination or expiration. Licensee agrees that it will not claim any right, title or interest in the unsold inventory of SI Products, the Customer Lists, or the Buyer List.

b. Use of Names. Upon termination or expiration of this Agreement, Licensee shall cease to use the Names and Logo and shall not exploit in any manner its association with SI. These provisions shall survive termination or expiration of this Agreement.

c. Production Materials. After providing a thirty (30) day advance written notification to SI, Licensee shall destroy or obtain certification of destruction for third party suppliers, or upon SI request, return to SI all production materials including molds, casts, dyes, plates, film or other photographic material, or similar production necessities containing the Names and first created as a result of this License.

d. SI Materials. Upon termination or expiration of this Agreement, Licensee shall return all materials, including but not limited to color transparencies, slides, photographs or reference books provided by SI for the development of SI Products under this Agreement and all unsold inventory.

e. Payment. In the event this Agreement is terminated for any reason, Licensee shall pay immediately to SI any royalties accrued and unpaid as of the effective date of such termination. In addition, in the event Licensee terminates this Agreement for any reason or SI terminates this Agreement because of default or violation of the material terms of this Agreement by Licensee, Licensee shall be obligated to pay SI the entire amount of the minimum annual guaranteed royalty payment for the life of the Agreement as specified in Schedule C.

f. Rights. Upon termination or expiration of this Agreement, all rights granted hereunder shall automatically revert to SI.

18. CONDUCT UPON EXPIRATION OR RENEWAL OF THE LICENSE PERIOD

SI shall use its best efforts to send a notice of expiration or renewal to Licensee approximately one hundred eighty (180) days prior to expiration of the license period. SI will use its best efforts to notify Licensee at that time whether the License Agreement will be renewed or whether SI intends to engage in a competitive process to select a licensee for a new license agreement. If the license is being renewed, and upon receipt of either notice, Licensee shall have fourteen (14) days from receipt of the notice to respond in writing. SI may grant a renewal in its sole discretion and may propose modifications of this Agreement as it deems appropriate. Except as modified by the parties, the terms and conditions applicable during the renewal term shall be the same as those contained herein. In the event Licensee fails to respond within the specified period of time or SI declines to grant renewal, the Agreement shall be deemed terminated on the expiration date of the Term and the rights and obligations of Licensee shall be governed by Paragraph 17 above.

19. RESERVATION OF RIGHTS

Notwithstanding any provision contained herein to the contrary, SI may license others, including but not limited to firms, individuals, co-partnerships or corporations to use the Names and Logo in connection with other products and, except as specifically granted herein, the SI reserves all rights pertaining to the Names and Logo.

20. AUTHORIZED REPRESENTATIVES

a. Contracting Officer. For the purposes of liaison and direction in contractual interpretation matters, dispute resolution, or for modification of this Agreement, SI shall be represented by the SI Contracting Officer or his special designee.

b. Contracting Officer's Representative. For purposes of liaison, providing guidance and direction in daily operational matters, granting approvals or withholding same, and for general contract coordination as detailed herein, the SI Institution Contracting Officer shall be represented by _____, _____.

c. Licensee's Representative. For purposes of liaison and direction in daily operational matters, Licensee shall be represented by _____, or his representative. The Licensee's representative shall be responsible for informing the staff of Licensee working on SI Products about the substance of the provisions of this Agreement, including, but not limited to, Paragraph 3, **Approvals**.

d. Substitution of Representative. SI and Licensee shall advise one another in writing of any substitution for said representatives.

21. NOTICES

Except for royalty payments and statements as set forth in Paragraphs 8 and 9, all notices, samples and other hard-copy communications shall be delivered via a trackable delivery service requiring signature and receipt.

All notices which shall be required to be sent by SI to Licensee shall be sent to the following address:

All notices which shall be required to be sent by Licensee to SI shall be sent to:

For Contract Matters:

Office of Contracting
Smithsonian Institution
2011 Crystal Drive, Suite 350
Arlington VA
22202-3709 (via overnight delivery service)
Attn: [Contract Negotiator-Attorney]

For Contract Coordination and Daily Operation:

Director
Product Development & Licensing
Smithsonian Institution
600 Maryland Ave. SW Suite 6001
Washington, DC
20024 (via overnight delivery service)
Attn: Peter Reid

With copy to:

Office of the General Counsel
SI Institution
1000 Jefferson Drive
Washington, DC 20560

By providing notice pursuant to this paragraph, either party to this Agreement may change the individuals or the address(es) for correspondence, notices, or royalties that are to be sent.

22. NO PARTNERSHIP. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between SI and Licensee. Neither party shall have the right to obligate or bind the other in any manner whatsoever and nothing herein contained shall give or is intended to give any rights of any kind to any third persons.

23. NO ASSIGNMENT. This Agreement and all rights and obligations herein are personal to Licensee and shall not be assigned without SI's prior written consent.

24. AMENDMENTS. No amendments, modifications, or waivers to this Agreement shall be valid unless in writing and signed by all parties to the Agreement.

25. DISCLAIMER OF IMPLIED WAIVERS. The failure of SI to insist upon the strict performance by Licensee of any of the terms of this Agreement, or the acceptance by SI of any payments, even partial payments, from Licensee with knowledge of any default or breach thereof, shall not be construed as a waiver by SI of its right to insist at any subsequent time upon the full performance of any of the terms of this Agreement.

26. APPLICABLE LAW. This Agreement shall be construed in accordance with the applicable federal laws and laws of the District of Columbia, which shall also be the forum for any lawsuit under this Agreement, regardless of its place of execution or performance.

27. SEVERABILITY. The terms of this Agreement are severable. If any term or provision is declared invalid, it shall not affect the remaining terms which shall continue to be binding.

28. RECITALS & HEADINGS. The recitals herein constitute an integral part of the Agreement reached and are to be considered as such. The Paragraph headings hereof are for the convenience of the parties only and shall not be used in the interpretation of this Agreement.

29. ENTIRE AGREEMENT. This Agreement, and Schedules A through C which are attached hereto and incorporated in full by reference herein, constitutes the entire agreement between the parties and supersedes all previous agreements in this matter. There are no other written or oral agreements, representations or understandings with respect to the subject matter of this Agreement. This Agreement and its terms may be amended, modified, or waived only by written agreement, signed by the authorized representative of Licensee and the SI.

- END -

**EXHIBIT B –
KEY CONTRACT TERMS AND CONDITIONS FOR PREMIUM FUNDRAISING
PROGRAM**

1. **Purpose.** SI engages Contractor to develop, produce, promote and fully execute a year-round premium fundraising program for distribution to *Smithsonian Magazine* subscribers and customers of Smithsonian Enterprises (“Customers”) as more fully described below (the “Program”). The purpose of the Program is to leverage the SI brand, SI imagery and collection assets, and *SI Magazine* subscriber lists, in order to raise funds to carry out SI’s mission for the increase and diffusion of knowledge. Contractor agrees that it will not use the Program, or any of the mailings or the trademarks or materials provided by SI for the Program, for any purpose other than as set forth in this Agreement.
2. **Description of the Program.**
 - a. SI Products. Each of the products to be developed for the Program are set forth in Schedule A, attached hereto and incorporated by reference herein. These products are hereinafter referred to as “SI Products”. Each of the SI Products will be offered to individuals on an annual basis for the Term of this Agreement. The parties may mutually agree to incorporate additional SI Products into this Agreement by written amendment.
 - b. Timetable for Development and Distribution. The schedule for development, review, approval and distribution of the SI Products is set forth in Schedule B, attached hereto and incorporated by reference herein.
3. **Responsibilities of the Parties**
 - a. Review and Approval. Contractor shall furnish SI with samples of each SI Product in its consecutive planned stages of development (including but not limited to images, text, and correspondence) for inspection and judgment of accuracy, quality, style and appropriateness, as set forth in Schedule B. No SI Product will be manufactured or distributed by Contractor unless and until SI has given written approval at each appropriate stage. This schedule incorporates the time necessary to meet Contractor's production schedule and to ensure proper review and comment by SI. In addition, Contractor shall submit for SI's prior written approval galleys, drafts, and samples of all packaging associated with each SI Product. Contractor also shall provide, based on material supplied by SI, appropriate educational or informational textual material with each SI Product sold. Final text shall be approved in writing by SI before final production may begin.
 - i. SI agrees not to unreasonably withhold approval or unreasonably delay notice of approval or disapproval, as the case may be, to Contractor at any stage in conformance with the agreed upon schedule.
 - ii. All final finished samples (including packaging) approved by SI will be retained unchanged by Contractor and may be inspected by SI at any time during the Term and within two (2) years thereafter. Any deviation in quality from the approved sample shall be grounds for SI to terminate this

Agreement. At a minimum, any products that fail to satisfy the approved standards of quality shall not be mailed and shall be destroyed by Contractor at Contractor's expense.

- b. **Manufacturing.** All manufacturing shall be of fine quality and comply with the highest product specifications, standards, and quality control procedures. Contractor shall manufacture SI Products in the United States of America or its territories in keeping with the spirit and intent of the Buy American Act (41 U.S.C. §§ 10.a. et seq.). Contractor shall ensure that production is in conformance with all applicable labor laws in the U.S. Any agency or sublicense, or any change in country of manufacture must be approved by SI in writing in advance.
- c. **Subcontracting.** In the event that Contractor intends to subcontract elements of the Program, including but not limited to production or distribution of SI Products and receipt/disbursal of receipts, Contractor must obtain SI's prior written approval of each proposed subcontractor. Contractor shall ensure that any approved subcontractor complies with all applicable provisions of this Agreement including but not limited to all restrictions governing use of the SI name, logo, and trademarks. Licensee shall further ensure that its subcontractors will not exploit in any manner its association with the SI, its collections, products, or components or derivatives thereof.
- d. **Use of SI Content.** The foundation of the products developed under the Program will benefit from incorporating images or other resources from the SI collections that reflect the values of the SI's "increase and diffusion of knowledge" mission ("SI Content"). Contractor shall use SI Content in the SI Products. SI Content is obtained from many sources and may be protected by copyright, trademark, or related interests not owned by SI. SI will work with the Contractor to provide SI Content cleared for use in the Program. In the event that Contractor desires to use SI Content that has not been cleared for use in the Program, Contractor is responsible for ascertaining whether any such rights exist, and for obtaining any permissions necessary to reproduce and publish SI Content in the SI Products. SI will provide whatever information regarding third party rights it has in its possession to facilitate such clearances. SI hereby grants to Contractor for the Term of this Agreement a non-transferable and non-exclusive license to use the names "SI Institution" and "SI", the SI logo, and SI Content as specified herein solely in connection with the design, development, manufacture and distribution of SI Products for the Program.
- e. **Subscriber List Information.** SI shall provide the names and addresses of all *SI Magazine* subscribers who are to be considered for receiving SI Products (the "Subscriber List"). Contractor acknowledges that the Subscriber List is the sole and exclusive property of SI. SI hereby grants to Contractor a limited license to use the Subscriber List solely for purposes of the Program. The Subscriber List shall not be used by Contractor for resale, lease, rental, distribution, loan, or for any purpose other than to perform the Program as set forth in this Agreement. Contractor shall maintain the names and addresses in strict confidence at all times and safeguard them against unauthorized use and disclosure. SI reserves the right to incorporate fictitious names and addresses on the List in an effort to detect unauthorized uses. The obligations set forth in this Paragraph shall survive expiration or termination of this Agreement.

- f. **Mailings.** All mailings of SI Products will be sent using SI's non-profit authorization. In addition to its obligation to produce and manufacture SI Products as set forth above, Contractor also will prepare SI Products for mailing for SI, including postage, which shall be deducted from gross revenues as set forth below.
- g. **Donor Information.** Contractor shall provide SI with a complete list of donor names and addresses and additional information as set forth below (the "Donor List"). An initial Donor List shall be provided on [date]. Updated Donor Lists shall be provided on a quarterly basis, by March 31, June 30, September 30, and December 31 of each calendar year. These Donor Lists shall be provided electronically to the Contracting Officer's Representative identified below, in a format as mutually agreed between the parties.
- i. The following information shall be provided on each Donor List:
- Name
 - Address
 - City
 - State
 - Zip
 - Email address (if available)
 - Source code: Smithsonian list source for acquisition
 - Program # (e.g., SMZ XX)
 - Date of donation
 - Amount of donation
 - Donation history (including year, amount donated, and program #)
 - Mail preference information (do-not-promote)
 - Smithsonian member number
- ii. Contractor acknowledges that the Donor List is the sole and exclusive property of SI. SI hereby grants to Contractor a limited license to use the Donor List solely for purposes of the Program. The Donor List shall not be used by Contractor for resale, lease, rental, distribution, loan, or for any purpose other than to perform the Program as set forth in this Agreement. Contractor shall maintain the names and addresses in strict confidence at all times and safeguard them against unauthorized use and disclosure. The obligations set forth in this Paragraph shall survive expiration or termination of this Agreement.
4. **Annual Guarantee.** Contractor guarantees an annual minimum of \$_____ Net Income to SI for the Term (the "Annual Guarantee"). For purposes of this Agreement, "Net Income" is defined as gross revenues, less Contractor's actual production costs for each mailing, less postage paid by Contractor for each mailing, and less caging fees to the lock box operator, if one is utilized. In the event that Net Income earned in any year of the Term is greater than the Annual Guarantee for that year, the Annual Guarantee for the following contract year shall be increased by an amount to be mutually agreed by the parties. If Contractor terminates this Agreement for reasons other than breach by SI, Contractor shall pay upon termination all minimum annual guarantee payments due for the otherwise remaining Term of the Agreement.
5. **Payment.** Contractor will remit all Net Income to SI in accordance with the following:

- a. Contractor will submit a statement to SI at the time of each mailing documenting all actual production costs and postal charges for that mailing.
- b. Weekly receipts from each mailing will be distributed as follows: First, to Contractor for actual production costs and postage paid, in accordance with the statements provided to SI at the time of each mailing. Second, if applicable, any caging fees payable to the lock box operator. Third, any remaining receipts will be paid to SI. Payments shall be mailed to SI at following address:

Product Development & Licensing
SI Institution
P.O. Box 631965
Baltimore, MD 21263-1965

**All payments and statements shall refer to the SI Contract Number # RCO-
_____-0000.**

- c. Not later than February 15 of each year of the Term (commencing in 2011), Contractor agrees to reconcile and pay SI the full Annual Guarantee, to the extent the full Annual Guarantee has not yet been paid, and in addition to reconcile and pay SI for any receipts due in excess of the Annual Guarantee. Such payments shall be made not later than March 15 of that year and will be accompanied by a complete and accurate statement, certified to be accurate by an officer of Contractor, showing gross receipts, all charges and deductions, Net Income, and total amount due.
 - d. Receipt or acceptance by SI of any of the invoices or statements furnished by Contractor pursuant to this Agreement or of any sums paid hereunder shall not preclude SI from questioning the correctness thereof at any time, and in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Contractor.
- 6. Books and Records.** Contractor shall keep accurate books of account and records covering all transactions related to this Agreement; SI and its duly authorized representatives shall have the right during Contractor's regular business hours, with five (5) days' advance written notice, to an examination of, including the right to make extracts from and copies of, said books of account and records and of all other documents and material in the possession of or under the control of Contractor with respect to the subject matter of this Agreement. SI agrees that it shall conduct no more than one (1) such examination per calendar year during the Term. All books of account and records shall be kept available for at least two (2) years following the expiration or termination of this Agreement. Contractor agrees to permit inspection by SI during such two-year period under the conditions stated above, and Contractor shall pay for such inspection if the margin of error is in excess of five percent (5%).
- 7. Data Security.** Safeguarding personally identifiable information ("PII"), including credit card information, collected or possessed by Contractor in the course of this Agreement and preventing its disclosure are essential. Contractor acknowledges that it is responsible for the security of SI data and PII that it processes, stores, or transmits in the course of this Agreement.

- a. Contractor shall meet the most stringent Payment Card Industry (“PCI”) Data Security Standards applicable to a merchant or service provider of its size. Upon request, Contractor will provide SI with updated certificates of compliance. Contractor will inform SI of any changes to its PCI compliance status.
 - b. Contractor shall immediately report to SI any incident that results in unauthorized access, loss or modification of SI data or PII collected or stored in the course of this Agreement or denial of service affecting the availability of such data. If new or unanticipated threats or hazards are discovered by either party, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of other party. To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of SI data or PII, Contractor shall afford SI access to Contractor’s facilities, installations, technical capabilities, operations, documentation, records, and databases.
8. **Term.** The Term of this Agreement shall begin upon the Effective Date and shall last until _____.
9. **Termination.**
 - a. Material Breach by Harm to SI Names or Reputation. SI may terminate this Agreement at any time if the continued manufacture or sale of any SI Products will harm or bring into disrepute the Names or the reputation and integrity of the SI.
 - b. Material Breach. Either party may terminate this Agreement in the event of a material breach by the other party provided that the party in breach has been given thirty (30) days’ written notice of such breach, the nature of the breach has been identified, and said party has failed to cure, or make good faith efforts to attempt to cure, the asserted breach to the satisfaction of the other party within the notice period. Failure to meet deadlines in Schedule B shall constitute a material breach.
 - c. Bankruptcy/Cessation of Business. In the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the name and location of the court where the petition was filed and the SI Contract Number as it appears on the first page of this Agreement. This obligation remains in effect until final payment is made under this Agreement. Upon receipt of such notice, and subject to such approvals as may be required by the bankruptcy court or trustee in bankruptcy, SI shall have the first and exclusive right to purchase part or all of Contractor’s remaining SI Products. If SI chooses not to purchase the remaining SI Products, Contractor may dispose of the remainder consistent with the terms and conditions of this Agreement or the terms and conditions of any arrangement ordered by the court or trustee.
 - d. Transfer. SI may terminate this Agreement effective immediately, at its sole option, if Contractor sells or otherwise disposes of substantially all of its business or assets to a third party, or control of Contractor is transferred, or present management of Contractor

is changed, or no longer is involved directly in the day-to-day supervision of Contractor's performance under this Agreement unless Contractor shall have first obtained SI's prior written permission to such transfer or changes.

- e. Excusable Delay. If by reason of the laws, regulations, acts, demands, orders, or interpositions of any government or any subdivision or agent thereof; or by acts of God, strike, fire, flood, weather, explosion, accidents, war, rebellion, insurrection, terrorism or any other cause beyond the control of either party whether similar or dissimilar to the foregoing Contractor shall be delayed or prevented from performing this Agreement, such delay or failure to perform shall be excused during the continuance of and to the extent of such cause, and the term for performance shall be extended for a period equal to the duration of such cause. If such delay exceeds ninety (90) days, either party hereto may terminate this Agreement, and all rights and obligations hereunder shall cease, except that Contractor shall be responsible for all sums due and owing as of the date of delay.

10. **Conduct Upon Termination or Expiration.** Upon termination or expiration of this Agreement, Contractor shall immediately cease to produce and distribute the SI Products, shall destroy all remaining inventory of SI Products and shall return or destroy, as requested by SI, all production materials and all SI Subscriber and Donor Lists. Contractor will provide certification of destruction if requested by SI. In addition, Contractor will provide a current Donor List to SI. Contractor agrees that it will not claim any right, title or interest in the inventory of SI Products or the Subscriber and Donor Lists.

If the termination is due to a material breach by Contractor, SI may retain all payments made by Contractor up to the date of termination. If the termination is due to a material breach by SI, SI may retain all payments made by Contractor up to the date of notice of the breach.

Upon expiration (in accordance with the dates set forth above) or termination, Contractor shall pay SI revenues accrued and unpaid as of the effective date of such termination or expiration. Upon expiration or termination, all rights granted hereunder shall automatically revert to SI.

11. **Warranties.**

- a. SI warrants and represents:
 - i. that it has the full right and authority to grant all of the rights granted herein;
 - ii. that use of SI Content cleared by SI as set forth in this Agreement is not a violation of the copyright or any proprietary or personal right of any person or entity or otherwise contrary to law;
 - iii. that no permission is required of any other party to fully enforce the rights granted herein; and
 - iv. that it has not previously assigned, pledged or otherwise encumbered the rights herein granted to Contractor.

- b. Contractor warrants and represents:
 - i. that it has the full right and authority to enter into this Agreement;
 - ii. that it will not use or incorporate any materials into SI Products that have not been authorized by SI;
 - iii. that use of SI Content cleared by Contractor as set forth in this Agreement is not a violation of the copyright or any proprietary or personal right of any person or entity or otherwise contrary to law (permissions for use of said content to be secured by Contractor at its expense);
 - iv. that it has fully complied with all applicable laws and regulations pertaining to the development, manufacture, distribution, and sale of SI Products including, without limitation, consumer products safety laws and labeling requirements; and
 - v. that Contractor has not nor will not in any manner grant, assign, encumber, or dispose of any of the rights granted herein.

12. Indemnity.

- a. By Contractor. Contractor hereby agrees to indemnify, defend, and hold SI harmless from and against any and all third party claims, costs, charges, expenses, disbursements, demands, judgments or liabilities of any nature, including outside attorneys' fees (collectively, "Claims"), which in any way arise from or are alleged to arise out of (i) the development, manufacture or distribution of SI Products; or (ii) a breach of Contractor's warranties and representations as set forth in this Agreement, including Claims for infringement that relate to Contractor's failure to secure permission from third parties for SI Content used in SI Products as authorized herein, and regardless of whether such Claims arise from Contractor's activity or from the activity of Contractor's subcontractors, agents, or affiliated companies.
- b. By SI. To the extent permitted by law, SI agrees to indemnify, defend and hold Contractor harmless from and against any and all third party claims, costs, charges, expenses, disbursements, demands, judgments or liabilities of any nature, including outside attorneys' fees, that result from any claims of infringement related to Contractor's authorized use of the trademarks or SI Content cleared by SI as set forth in this Agreement.
- c. FTCA Applicability. Contractor is hereby on notice that SI falls within the purview of the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671-80). As such, the exclusive remedy for claims against SI for bodily injury, death, and property damage due to negligence of SI or its employees is the Federal Tort Claims Act; the General Counsel of SI is authorized to settle all claims against the United States (SI Institution) for damage to property, personal injury, or death caused by the negligent act or failure to act of a SI employee in the course of his/her employment cognizable under the Federal Tort Claims Act, as amended; and in some instances, this may be the exclusive remedy.

13. Insurance.

- a. Amount and Type of Coverage. During the Term, Licensee shall secure and maintain at a minimum the insurance policies set forth below covering all work performed and associated with this Agreement. Licensee may use a combination of policies to achieve the minimum limits and coverage specified. Any policies that are on a "claims made" basis shall be maintained for a period of not less than three years with the retroactive date to be held constant with the date of this Agreement. Insurance is to specifically include coverage for liability assumed by Contractor under this Agreement.
- i. Commercial General Liability coverage, including products liability. **Minimum Amount: \$1,000,000 per occurrence;**
 - ii. Broad Form Professional Liability coverage, including errors and omissions coverage providing for the defense, settlement and judgment of claims including but not limited to claims alleging defamation or other harm to character, reputation or personal rights, infringement of copyright, plagiarism, piracy or misappropriation of idea, unfair competition or other causes arising out of Licensee's or its employees', subcontractors' or agents' activities pertaining to this Agreement. **Minimum Limit: \$1,000,000;**
 - iii. Crime/Employee Dishonesty coverage, providing protection of money, securities, or property against loss of theft or forgery committed by an employee acting alone or in collusion with others. **Limit: \$100,000; Retention – Maximum Limit: \$10,000;**
 - iv. Privacy and Security Liability coverage to provide protection to SI for failure of security of Licensee's computer systems to mitigate or prevent a loss that results from a computer attack allowing for information to be stolen as regards credit card numbers and other identification information belonging to SI's customers/subscribers. **Limit: \$1,000,000; Retention – Maximum Limit: \$25,000.**
- b. The insurance requirements provided herein are Licensee's minimum requirements and shall not be considered indicative of the ultimate amounts and types of insurance needed by Licensee. Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve Licensee from its obligations under this Agreement.
- c. The Smithsonian Institution shall be named as an Additional Insured by specific broad form endorsement to the liability policies. Such endorsement shall state that the policy also provides coverage for cross-liability between insureds. Licensee shall provide a Certificate(s) of Insurance evidencing all required minimum coverage and Additional Insured status immediately upon execution of this Agreement. All such insurance policies shall contain a minimum thirty (30) day notice requirement to SI prior to cancellation. SI may also request copies of the policies for further review and evaluation. Before the expiration or cancellation of any insurance policy required herein, Licensee shall mail to SI certificates of insurance evidencing renewal or replacement coverage sufficient to satisfy its obligations under this Paragraph. Failure of Licensee to provide or maintain the required insurance coverage shall be considered a material breach of this Agreement.

- d. **Subcontractors.** If any work provided or to be performed under this Agreement is provided or performed by subcontractors, Licensee shall require the subcontractors to maintain and furnish to Licensee insurance equivalent to that which is required of Licensee hereunder.
14. **Use of Names.** Contractor is hereby put on notice that SI owns, controls, and/or has registered the trademarks/service marks "SI," "SI Institution," and the SI sunburst logo (the "Names"). Contractor may make use of the Names only as set forth in this Agreement, and only as approved in advance by SI in accordance with Paragraph 3.b. above. Except as specifically provided in this Agreement, Contractor will not use the Names in any manner or through any medium, for any purpose whatsoever.
15. **Authorized Representatives.**
- a. **SI.**
- i. For the purposes of liaison and direction in contractual interpretation matters, dispute resolution, or for modification of this Agreement, SI shall be represented by the SI Contracting Officer or his special designee.
- ii. For purposes of liaison, providing guidance and direction in daily operational matters, granting approvals or withholding same, and for general contract coordination as detailed herein, the SI Institution Contracting Officer shall be represented by _____.
- b. **Contractor.** For purposes of liaison and direction in daily operational matters, Contractor shall be represented by _____, or his/her representative.
- c. **Substitution of Representatives.** SI and Contractor shall advise one another in writing of any substitution for said representatives.
16. **Notices.** Except for payments and statements, all notices, samples and other hard-copy communications shall be delivered via a trackable delivery service requiring signature and receipt. All notices shall be sent to the following addresses via courier delivery service:

For SI:

For Contract Matters:
Operation:
Office of Contracting
Smithsonian Institution
2011 Crystal Drive, Suite 350
Arlington, VA 22202-3709

Attn: Contracting Officer

For Contract Coordination and Daily
Director
Product Development & Licensing
Smithsonian Institution
600 Maryland Ave. SW Suite 6001

Washington, DC 20024
Attn: Peter Reid

With copy to:
Office of the General Counsel

SI Institution
1000 Jefferson Drive
Washington, DC 20560

For Contractor:

[insert]

17. **NO PARTNERSHIP.** This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between SI and Contractor. Neither party shall have the right to obligate or bind the other in any manner whatsoever and nothing herein contained shall give or is intended to give any rights of any kind to any third persons.
18. **NO ASSIGNMENT.** This Agreement and all rights and obligations herein are personal to Contractor and shall not be assigned without SI's prior written consent.
19. **AMENDMENTS.** No amendments, modifications, or waivers to this Agreement shall be valid unless in writing and signed by all parties to the Agreement.
20. **DISCLAIMER OF IMPLIED WAIVERS.** The failure of SI to insist upon the strict performance by Contractor of any of the terms of this Agreement, or the acceptance by SI of any payments, even partial payments, from Contractor with knowledge of any default or breach thereof, shall not be construed as a waiver by SI of its right to insist at any subsequent time upon the full performance of any of the terms of this Agreement.
21. **APPLICABLE LAW.** This Agreement shall be construed in accordance with the applicable federal laws and laws of the District of Columbia, which shall also be the forum for any lawsuit under this Agreement, regardless of its place of execution or performance.
22. **SEVERABILITY.** The terms of this Agreement are severable. If any term or provision is declared invalid, it shall not affect the remaining terms which shall continue to be binding.
23. **RECITALS & HEADINGS.** The recitals herein constitute an integral part of the Agreement reached and are to be considered as such. The Paragraph headings hereof are for the convenience of the parties only and shall not be used in the interpretation of this Agreement.
24. **ENTIRE AGREEMENT.** This Agreement, together with Schedules A through D which are attached hereto and incorporated in full by reference herein, constitutes the entire agreement between the parties and supersedes all previous agreements on this matter. There are no other written or oral agreements, representations or understandings with respect to the subject matter of this Agreement. This Agreement and its terms may be amended, modified, or waived only by written agreement, signed by the authorized representative of Contractor and SI.

- END-