The information contained herein is strictly confidential and is for use by only those parties directly associated with this evaluation.

**Applicant Information**

| Organization Name: |  |
| --- | --- |
| Address |  |
| Primary Contact Name |  |
| Contact Phone |  |
| Secondary Contact Name |  |
| Contact Phone |  |

**Evaluating Lab:**

| Team Lead: |  |
| --- | --- |
| Phone: |  |
| Address: |  |
| Signature |  |

**Product Information:**

| Name of Product: |  |
| --- | --- |
| Product Number: |  |
| Category (PIV/ Token): |  |
| Hardware Version: |  |
| Software Version: |  |
| Firmware Version: |  |
| Product Included: |  |

##

**To Be Filled By GSA:**

| GSA Case Number: |  |
| --- | --- |
| Date: |  |
| Product Included: |  |

This FIPS 201 Evaluation Program Services Agreement (“Agreement”) is by and between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Applicant”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter “FIPS 201 EP”).

WHEREAS, Homeland Security Presidential Directive-12 (HSPD-12), "Policy for a Common Identification Standard for Federal Employees and Contractors,” establishes the requirement for a mandatory Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors.

WHEREAS HSPD-12 requires agencies to use only information technology products and services that meet this standard.

WHEREAS, the Office of Management and Budget (OMB) has designated the General Services Administration (GSA) as the Executive Agent for government-wide acquisitions to implement HSPD-12.

WHEREAS, the FIPS 201 EP is responsible for the overall operations, overseeing the analysis and evaluation of products and services, and validating conformance to established FIPS 201 Specifications.

WHEREAS, the Applicant wishes to participate in the FIPS 201 Initiative; and wishes to submit its product (“Product”) or service (“Service”) to the FIPS 201 EP for evaluation to be considered for approval upon the terms and conditions outlined in this agreement.

WHEREAS, the U.S. General Services Administration FIPS 201 Program Management Office (“PMO”) wishes to accept Applicant’s Product or Service, upon the terms and conditions outlined in this agreement.

WHEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties hereto agree as follows:

EVALUATION TO BE CONSIDERED FOR APPROVAL

The Applicant wishes to submit its Product or Service to the FIPS 201 EP for evaluation to be considered for approval. It shall comply with such rules, regulations, procedures, and requests as the PMO may prescribe from time to time, including making available, on and by other communications mechanisms such as telephone, Product or Service experts.

APPROVAL

Suppose the Evaluating Lab’s analysis and evaluation demonstrate that the Applicant’s Product or Service conforms to FIPS 201 Specifications, as revised occasionally. In that case, the GSA Approval Authority shall issue an approved product letter, and the name and version of the Applicant’s Product or Service will be added to the Approved FIPS 201 Products and Services List (“Approved Product List”).

Submitting a Product or Service for evaluation does not guarantee that the Product or Service will successfully complete the evaluation process or be found conformant to FIPS 201 requirements. Furthermore, suppose the Product or Service is added to the Approved Product List. In that case, this shall not be considered an endorsement by the Government, nor shall any guarantees be made that the Product or Service will be purchased for use by the Government. At any time, if the product is found to no longer meet the FIPS 201 requirements, it will be moved to the Removed Production List (RPL).

NONCOMPLIANCE WITH PROCEDURES

Applicant agrees that if Applicant or its representatives, or Applicant’s Product or Service, in the FIPS 201 EP Lab Managers’s sole judgment, is not complying with any rules or procedures set forth in this Agreement or established by the FIPS 201 EP from time to time, the FIPS 201 EP’s Lab Manager may bring this to the attention to the FIPS 201 Evaluation Program (EP) Program Manager (PM) and may decline to accept the Applicant’s Product or Service for evaluation to be considered for approval or may suspend/put on hold and application for the Applicant’s Product or Service, until the Applicant complies or until assurances of compliance satisfactory to the FIPS 201 EP PM or FIPS 201 EP’s Lab Manager are received, as the FIPS 201 EP PM or FIPS 201 EP’s Lab Manager may determine in its reasonable discretion.

“Commercially available off-the-shelf item (COTS)” shall mean a product or service of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, that has been sold, leased, or licensed in substantial quantities and that is offered to the Government without modification, in the same form as to non-governmental customers.

Applicant represents and warrants that (a) it has sufficient right, title, and interest in and to the Product or Service to submit it to the Lab; and (b) the Product or Service meets the definition of “commercially available off-the-shelf item,” or it is an unreleased version of a Product or Service that the Applicant has a reasonable faith expectation will qualify as such when released upon the conclusion of development.

GRANT OF LICENSE

Applicant grants the FIPS 201 EP an irrevocable, perpetual license to use the Product or Service, solely for this Agreement's purposes, without the right to grant sublicenses. This license permits the FIPS 201 EP’s Lab Manager and any authorized contractors to make any number of copies and use the Product or Service on any number of machines for permitted purposes. This license allows the FIPS 201 EP to retain any Product or Service submitted to the FIPS 201 EP in accordance with this Agreement in perpetuity. This perpetual license shall be used solely for the analysis, and evaluation of the Product or Service that desires to participate in the FIPS 201 Initiative and shall only be used inside the FIPS 201 EP’s lab or on systems necessary to test the said Product or Service. If the Product or Service fails to meet the conformance testing process, and at the supplier’s request, the FIPS 201 EP’s Lab Manager shall return to the supplier or destroy all copies of the submitted Product or Service and documentation.

CONFIDENTIALITY

“Confidential Information” shall mean (a) the fact of Applicant’s application to the Lab, the identity of the Product or Service submitted, and the results of the analysis, testing and certification (other than listing on the Approved List), and (b) any source code, algorithms or other technical information relating to the Product or Service, whether or not protected by a patent or copyright, that Applicant provides orally or in writing to the Lab pursuant to this Agreement.

The Lab shall:

1. Not provide or make available the Confidential Information in any form to anyone other than those employees or contractors who need to know, consistent with the authorized use of such Confidential Information. Not reproduce the Confidential Information except for use reasonably necessary to the performance of this Agreement; and (c) not exploit or use the Confidential Information for any purpose other than as required to perform its obligations pursuant to this Agreement.
2. Information disclosed by Applicant to the FIPS 201 EP shall not be “Confidential Information” if it:
* Was in the public domain before its receipt by the FIPS 201 EP, or has subsequently become part of the public domain without the FIPS 201 EP’s breach of this Agreement or wrongful act; or
* Was in the FIPS 201 EP’s possession or known to the FIPS 201 EP before its receipt; or
* Was received by the FIPS 201 EP from a third party without obligation of secrecy, and was not acquired directly or indirectly from Applicant; or
* The FIPS 201 EP independently developed it without using, accessing, referencing, or benefiting from Applicant’s Confidential Information.

In the event that a subpoena or other legal process concerning Confidential Information is served upon the FIPS 201 EP, the FIPS 201 EP shall notify the Applicant as soon as possible. It shall cooperate with the Applicant in any lawful effort by the Applicant to contest or limit the disclosures.

In the event Applicant, by virtue of the presence of its representatives in the FIPS 201 EP Lab, or otherwise from the FIPS 201 EP Lab, or any employee, officer, director, or agent of PMO or the FIPS 201 EP , learns whether any other applicant has applied for certification for any of its product or services, or knows any information whatsoever relating to any such other applicant, including but not limited to whether any product or service of any other applicant have or have not been analyzed, tested, or certified, or the results of any such analysis, testing, or certification, or learns nonpublic information about the FIPS 201 EP’s analysis, testing or procedures, then Applicant shall not disclose any such information to any other person, nor shall Applicant use such information for any purpose whatsoever, including but not limited to being prohibited from using it for the commercial advantage of Applicant or the commercial detriment of any other person. The prohibition imposed upon Applicant by this paragraph shall inure to the benefit of any such other applicant, which shall have the right to enforce its terms against Applicant and/or to seek remedies for any violations thereof.

The prohibition in the preceding paragraph shall not apply to any information learned by Applicant if it was in the public domain before its receipt by Applicant or has subsequently become part of the public domain without Applicant’s breach of this Agreement or wrongful act.

LIMITATION OF LIABILITY

THE FIPS 201 EP, PMO, AND ANY OF ITS EMPLOYEES, CONTRACTORS, AGENTS OR AFFILIATES SHALL NOT BE LIABLE TO APPLICANT FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO COMPENSATORY, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, LOSS OF ANTICIPATED PROFITS, LOSS OF USE OF FACILITIES, OR LOSS OF DATA RESULTING FROM ITS PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF ANY OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

INDEMNITY

Applicant shall defend or settle at its expense any claim, suit or proceeding brought against the FIPS 201 EP, PMO, or any employee, officer, director, contractor, or agent of the FIPS 201 EP or PMO (a) arising from or alleging infringement, misappropriation, or other violation of any intellectual property right of any third party by the FIPS 201 EP or PMO relating to Product furnished under this Agreement, or (b) arising from or relating to any certification made, or any failure to certify, any Product or Service furnished under this Agreement. Applicant shall indemnify and hold the FIPS 201 EP, PMO, or any employee, agent or affiliate of the FIPS 201 EP or PMO, or the successors and permitted assigns of any of them (individually each an “Indemnitee” and collectively the “Indemnitees”) harmless from and against and pay any and all losses, costs, and damages, including royalties and license fees, and reasonable counsel fees, attributable to any such claim, suit, or proceeding. Any Indemnitee shall have the right to approve the terms of any settlement or compromise that may impose any unindemnified or nonmonetary liability upon such Indemnitee.

GOVERNING LAW AND DISPUTE RESOLUTION

The law of federal Government contracts, as expressed in statutes, regulations, and decisions of courts and administrative tribunals, and to the extent necessary, the laws of the District of Columbia, shall govern the interpretation and construction of this Agreement.

Any controversy or claim between the parties arising from or relating to this Agreement shall be settled by the federal or Superior courts of Washington, District of Columbia, to the subject matter and personal jurisdiction of which the parties irrevocably submit; provided however, that no party shall initiate any action (other than an action for emergency relief for an actual or threatened violation of § 6 of this Agreement, unless the party initiating an action shall first have submitted a written demand for relief to the other party, and that thirty (30) calendar days shall have passed, during which time the party seeking relief shall consult in good faith with the other party, which consultation shall include at least either:

One face-to-face meeting or telephone consultation between principals of each party having the authority to resolve the dispute, or

Reasonable efforts should be made to arrange such consultation if it is declined by the opposite party.

In any judicial proceedings relating to or arising from this Agreement, the substantially prevailing party shall recover its expenses of the proceeding, including its reasonable attorneys’ fees, from the substantially non-prevailing party.

MISCELLANEOUS

**Assignment.** Applicant may assign its rights and obligations under this Agreement only pursuant to a merger or acquisition of substantially all of Applicant's assets, upon submission of information satisfactory in form and substance to the FIPS 201 EP. The FIPS 201 EP may assign its rights and obligations under this Agreement pursuant to a merger or acquisition of substantially all its assets, or GSA, NIST, or any successor manager of the FIPS 201 EP.

ENTIRE AGREEMENT

This Agreement constitutes the entire and complete understanding between the parties and supersedes all prior and contemporaneous verbal and written agreements, communications, and representations relating to the subject matter hereof. Its terms can be modified only by an instrument in writing signed by both parties.

NO WAIVER

Any waiver of any breach of any provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof.

SEVERABILITY

Suppose any provision of this Agreement is held to be invalid or unenforceable. In that case, such provision shall be modified to the extent possible to preserve the parties’ original intentions, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

NOTICES

Notices and other communications hereunder shall be in writing and shall be deemed delivered on the date of hand delivery; or on the date of receipt during normal business hours by facsimile transmission or by commercial courier service (FedEx, UPS, etc.), all fees prepaid. Notices shall be sent to the addresses and/or facsimile numbers set forth at the end of this Agreement or to such other addresses and/or facsimile numbers as either party shall have notified the opposite party in accordance with this section.

IN WITNESS WHEREOF, the parties have executed or caused to be executed by their duly authorized representatives, this Agreement as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Applicant**

| Applicant Name |  |
| --- | --- |
| Address |  |
| Address 2 |  |
| City |  | State/Province |  |
| Zip/Postal |  | Country |  |
| Fax Number |  |

By:

| Signature |  | Date |  |
| --- | --- | --- | --- |
| Title |  |

**FIPS 201 EP**

|  Name |  |
| --- | --- |
| Address |  |
| Address 2 |  |
| City |  | State/Province |  |
| Zip/Postal |  | Country |  |
| Fax Number |  |

By:

| Signature |  | Date |  |
| --- | --- | --- | --- |
| Title |  |