

FIPS 201 Evaluation Program

Lab Services Agreement

VERSION 1.4.0



FIPS 201 EVALUATION PROGRAM

February 20, 2015

Office of Government-Wide Policy
Information Assurance and Trusted Access Division
Washington, DC 20405

FIPS 201 Evaluation Program Lab Services Agreement

This FIPS 201 Evaluation Program Lab Services Agreement (“Agreement”) is by and between _____ (hereinafter “Vendor”) and the U.S. General Services Administration Information Assurance Trusted Access (“IATA”) Division.

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 for the implementation of HSPD-12;

WHEREAS, the U.S. General Services Administration IATA Division’s FIPS 201 Evaluation Program wishes to accept Vendor’s product (“Product”) or service (“Service”) for analysis and testing for conformance to established FICAM Specifications, upon the terms and conditions set forth in this agreement;

WHEREAS, Vendor wishes to participate in the FIPS 201 Evaluation Program; and wishes to submit its Product or Service to FIPS 201 Evaluation Program’s Lab (“Lab”) for analysis and testing, upon the terms and conditions set forth in this agreement;

WHEREAS, U.S. General Services Administration IATA Division’s FIPS 201 Evaluation Program Management Office (“PMO”) prescribes guidance on FICAM Specifications and reviews analysis and testing performed by the Lab to validate conformance of Vendor’s Product or Service subject to the rules, regulations and procedures supplied in the FIPS 201 Evaluation Program Concept of Operations and its supporting documentation (“Program Requirements”), and the terms and conditions set forth 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:

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1. INITIAL ANALYSIS, TESTING AND CERTIFICATION

1.1. Approved Products List (APL) Application Process.

- A. The Vendor wishes to submit its Product or Service to the FIPS 201 Evaluation Program as disclosed in its FIPS 201 Evaluation Program Application (“Application”) incorporated herein at Exhibit A. As part of its submission, Vendor represents and warrants 1) that it has sufficient right, title and interest in and to the Product or Service, that the Product or Service meets the definition provided in Federal Acquisition Regulation (FAR) 2.101 of “commercially available off-the-shelf item”, or that it is an unreleased for general availability version of a Product or Service that Vendor has a good faith expectation that when released upon the conclusion of development will qualify as such, and 2) it has complied with all Program Requirements.
- B. The Lab will evaluate the Application for completeness as directed by the PMO. The Vendor agrees to cooperate fully by providing the Lab with timely and accurate information and access to personnel of Vendor as the Lab may reasonably require or request. The PMO, in its sole judgment, may approve or decline to approve Vendor’s Application for analysis and testing.
- C. If the Vendor revises its Application during the evaluation process, the final Application approved by the PMO will supersede Vendor’s initial submission under Exhibit A herein.

1.2. APL Analysis and Testing Process.

- A. The Lab will perform analysis and testing as directed by the PMO and in accordance with the Program Requirements. The Vendor agrees to cooperate fully by providing the Lab with timely and accurate information and access to personnel of Vendor as the Lab may reasonably require or request.

1.3. Certification and Listing on the APL.

- A. If Lab analysis and testing demonstrates that Vendor’s Product or Service conforms to the Program Requirements, then PMO shall so certify, and the name and version of Vendor’s Product or Service will be added to the FIPS 201 Approved Products List available on the FIPS 201 Evaluation Program’s public website.
- B. Upon receipt of certification, Vendor may utilize the GSA FIPS 201 Approved Logo (“Logo”) provided by the FIPS 201 Evaluation Program in accordance with the usage guidance prescribed by the PMO. Vendor agrees 1) not to release anything publicly or otherwise distribute any of its Products or Services labeled with the Logo unless such Products or Services have been certified by the PMO and are currently listed on the APL and 2) not to use the Logo in any way that is unlawful or that reasonably could be expected to harm the FIPS 201 Evaluation Program or any other party. The PMO reserves the right to rescind Vendor’s usage of the Logo if Vendor fails to comply with its usage guidance.

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2. ONGOING ANALYSIS, TESTING AND MAINTAINING CERTIFICATION

2.1. Ongoing Compliance Testing.

- A. Subsequent to certification, Vendor will make available to the Lab all updates and patches to its Product or Service in an expeditious manner for analysis and testing. The Lab shall retain the most current versions of Vendor's certified Product or Service running in the lab and will, in its sole discretion, regularly run transactions through such Product or Service to assess ongoing compliance.
- B. The PMO will notify the Vendor on a timely basis of any deficiencies identified during testing and will provide the Vendor an opportunity to cure such deficiencies in accordance with Program Requirements.
- C. The PMO, in its sole judgment, may remove Vendor's Product or Service from the APL for failure to cure identified deficiencies. At time of removal, Vendor shall immediately cease its use of the Logo as directed by the PMO.

3. GRANT OF LICENSE

- 3.1. Vendor grants to Lab an irrevocable, perpetual license to use the Product or Service, solely for the purposes of this Agreement, without right to grant sublicenses. This license permits Lab and any authorized contractors to make any number of copies, and to use the Product or Service on any number of machines, for the permitted purposes. This license permits Lab to retain any Product or Service submitted to the Lab in accordance with this Agreement in perpetuity. This perpetual license shall be used solely for the analysis, testing and certification of the Product or Service as part of the FIPS 201 Evaluation Program and shall only be used inside the Lab or on systems necessary to test the said Product or Service. If Product or Service fails to meet the conformance testing process, and at Vendor's request, then the Lab shall return to the Vendor or destroy all copies of the submitted Product or Service, and documentation.

4. CONFIDENTIALITY

- 4.1. "Confidential Information" shall mean (a) the fact of Vendor'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 APL), 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 Vendor provides orally or in writing to Lab pursuant to this Agreement.

- 4.2. The Lab shall:

- (a) Not provide or make available the Confidential Information in any form to any person other than those employees or contractors who have a need to know consistent with the authorized use of such Confidential Information;

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(b) 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 for the performance of its obligations pursuant to this Agreement.

4.3. Information disclosed by Vendor to Lab shall not be “Confidential Information” if it:

(a) Was in the public domain prior to its receipt by Lab, or has subsequently become part of the public domain without Lab’s breach of this Agreement or wrongful act; or

(b) Was in Lab’s possession or known to Lab prior to its receipt; or

(c) Was received by Lab from a third party without obligation of secrecy, and was not acquired directly or indirectly from Vendor; or

(d) Was independently developed by Lab without use of, access or reference to, nor any benefit of Vendor’s Confidential Information.

4.4. In the event that a subpoena or other legal process in any way concerning Confidential Information is served upon Lab, Lab shall notify Vendor as soon as possible and shall cooperate with Vendor in any lawful effort by Vendor to contest or limit the disclosures.

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

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

5. ACKNOWLEDGEMENT

5.1. Vendor acknowledges that submission of its Product or Service for testing does not guarantee that Vendor’s Product or Service will successfully complete the testing process or be found conformant to FICAM Specifications.

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- 5.2. Vendor acknowledges that inclusion of Vendor's Product or Service on the APL shall not be considered an endorsement by the Government, nor shall there be any guarantees that said Product or Service shall be purchased for use by the Government.
- 5.3. Vendor acknowledges and agrees that during the time its Products and Services are listed on the APL, they shall remain in a state that meets all Program Requirements. If the Vendor identifies an actual or expected failure to meet all Program Requirements, it agrees to immediately notify the PMO. Vendor understands that the PMO will assess the failures in accordance with the Program Requirements and may require the Vendor to follow the external notification processes stipulated therein.

6. LIMITATION OF LIABILITY

- 6.1. LAB, PMO, AND ANY OF ITS EMPLOYEES, AUTHORIZED CONTRACTORS, AGENTS OR AFFILIATES SHALL NOT BE LIABLE TO VENDOR 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.

7. INDEMNITY

- 7.1. Vendor shall defend or settle at its expense any claim, suit or proceeding brought against Lab, PMO, or any employee, officer, director, authorized contractor, agent, or affiliate of Lab or PMO (a) arising from or alleging infringement, misappropriation or other violation of any intellectual property right of any third party by Lab or PMO relating to Products or Services 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. Vendor shall indemnify and hold Lab, PMO, or any employee, officer, director, authorized contractor, agent or affiliate of Lab 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.

8. GOVERNING LAW AND DISPUTE RESOLUTION

- 8.1. 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.
- 8.2. The parties will make their best efforts to resolve any disputes arising from or relating to this Agreement.

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9. MISCELLANEOUS

- 9.1. Assignment. Vendor may assign its rights and obligations under this Agreement only pursuant to merger or acquisition of substantially all of the assets of Vendor, upon submission of information satisfactory in form and substance to Lab.
- 9.2. 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.
- 9.3. 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.
- 9.4. Severability. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be modified to the extent possible to preserve the original intentions of the parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 9.5. 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 (e.g., FedEx, UPS), 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 to 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 _____.

Vendor

Vendor Name			
Address 1			
Address 2			
City		State/Province	
Zip/Postal		Country	
Fax Number			

By

Signature		Date	
Title			

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U.S. General Services Administration Information Assurance Trusted Access Division

Address	1800 F St.		
City	Washington	State/Province	DC
Zip/Postal	20405	Country	USA

By

Signature		Date	
Title	Program Manager		

EXHIBIT A: VENDOR'S APPLICATION PACKAGE