# FIPS 201 Evaluation AgreementA blue sign with white text Description automatically generated with low confidence

VERSION 2.1.0

| **FIPS 201 EVALUATION PROGRAM** |
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# November 30, 2023

Office of Government-wide Policy

Office of Technology Strategy

Identity Management Division

Washington, DC 20405

This FIPS 201 Evaluation 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 the Vendor’s product (“Product”) or service (“Service”) for analysis and testing for conformance to established FICAM Specifications upon the terms and conditions outlined 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 outlined 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 the Vendor’s Product or Service subject to the rules, and regulations and procedures supplied in the FIPS 201 Evaluation Program Concept of Operations and its supporting documentation (“Program Requirements”), and the terms and conditions outlined in this agreement;

WHEREAS, products or services certified compliant are added to the FIPS 201 Approved Products List (APL) available on the FIPS 201 Evaluation Program’s public website;

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

# INITIAL ANALYSIS, TESTING AND CERTIFICATION

* 1. **APL Application Process.**
     1. 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 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.
     2. 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 the Vendor as the Lab may reasonably require or request. In its sole judgment, the PMO may approve or decline to approve the Vendor’s Application for analysis and testing. Submission of the Application does not guarantee that the Product or Service will successfully complete the testing process or be deemed conforming to FICAM requirements.
     3. If the Vendor revises its Application during the evaluation process, the final Application approved by the PMO will supersede its initial submission under Exhibit A herein.
  2. **APL Analysis and Testing Process.**
     1. 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 the Vendor as the Lab may reasonably require or request.
     2. The GSA PACS Lab uses VMWare to connect the virtual PACS and Validation Infrastructure via the network to the PACS solution hardware. For enrollment/registration, smart cards and biometric readers are installed locally on a physical laptop. The tester connects to the PACS and Validation Infrastructure via VMware Console, passing the USB devices through. Each PACS and Validation Infrastructure should support a virtual environment as described.
  3. **Certification and Listing on the APL.**
     1. If Lab analysis and testing demonstrate that the Vendor’s Product or Service conforms to the Program Requirements, then PMO shall certify, and the name and version of the Vendor’s Product or Service will be added to the APL. Adding the Product or Service to the APL does not constitute an endorsement by the Government or a promise that any Product or Service will be purchased for use by the Government.
     2. Upon receipt of certification, the 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 unlawful way or that reasonably could be expected to harm the FIPS 201 Evaluation Program or any other party. The PMO reserves the right to rescind the Vendor’s usage of the Logo if the Vendor fails to comply with its usage guidance.

# ONGOING ANALYSIS, TESTING AND MAINTAINING CERTIFICATION

* 1. **Ongoing Compliance Testing.** 
     1. After certification, the Vendor will make all updates and patches to its Product or Service available to the Lab in an expeditious manner for analysis and testing. The Lab shall retain the most current versions of the Vendor’s certified Product or Service running in the lab. At its sole discretion, it will regularly run transactions through such Products or Services to assess ongoing compliance.
     2. The vendor is responsible for operating and maintaining their solution(s) in the GSA PACS lab. The vendor can schedule a quarterly, one-hour, in-person, or remote session with the Lab personnel to perform system maintenance to ensure that their lab-hosted solution(s) are current with the necessary updates and patches.
     3. The PMO will promptly notify the vendor of any deficiencies identified during testing. It will provide the Vendor an opportunity to cure such deficiencies in accordance with Program Requirements.
     4. In its sole judgment, the PMO may remove the Vendor’s Product or Service from the APL for failure to cure identified deficiencies. At the time of removal, the Vendor shall immediately cease using the Logo as directed by the PMO.

# GRANT OF LICENSE

* 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 the 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. It shall only be used inside the 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 Vendor’s request, the Lab shall return to the Vendor or destroy all copies of the submitted Product or Service and documentation.
  2. The applicant is responsible for providing all licenses for the solution under test and evaluation. This includes operating system, PACS, Validation, remote connection software, etc. The GSA PACS Lab provides the infrastructure for the solution, the applicant is responsible for everything else.

# CONFIDENTIALITY

* 1. “Confidential Information” shall mean (a) the fact of the 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 listed 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 according to this Agreement.
  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 need to know consistent with the authorized use of such Confidential Information;

(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.

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

(a) Was in the public domain before 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 before its receipt; or

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

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

* 1. 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.
  2. 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.
  3. The prohibition in the preceding paragraph shall not apply to any information learned by Vendor if it was in the public domain before its receipt by the Vendor or has subsequently become part of the public domain without Vendor’s breach of this Agreement or wrongful act.

# ACKNOWLEDGEMENT

* 1. Vendor acknowledges that submitting 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.
  2. The vendor acknowledges that the inclusion of the Vendor’s Product or Service on the APL shall not be considered an endorsement by the Government, nor shall any guarantees said Product or Service shall be purchased for use by the Government.
  3. The 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 notify the PMO immediately. The 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.

# LIMITATION OF LIABILITY

* 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.

# INDEMNITY

* 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.

# GOVERNING LAW AND DISPUTE RESOLUTION

* 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.
  2. The parties will make their best efforts to resolve any disputes arising from or relating to this Agreement and shall not proceed to dispute resolution pursuant to paragraph 8.3 below unless the party initiating an action has first submitted a written demand for relief to the other party and thirty (30) calendar days have passed, during which time the party seeking relief has consulted in good faith with the other party.
  3. Any controversy or claim between the parties arising from or relating to this Agreement that has not been resolved in accordance with paragraph 8.2 above shall be settled by the federal courts of Washington, District of Columbia, to the subject matter and personal jurisdiction of which the parties irrevocably submit.

# MISCELLANEOUS

* 1. Assignment. Vendor may assign its rights and obligations under this Agreement only pursuant to the merger or acquisition of substantially all of the assets of Vendor upon submission of information satisfactory in form and substance to Lab.
  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.
  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.
  4. 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 be affected or impaired.
  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 |  | | |
| address 2 |  | | |
| City |  | State/Province |  |
| Zip/Postal |  | Country |  |
| Fax Number |  | | |

**By**

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

**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**