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| **FICAM Program** |  |

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| **FICAM Product Criteria Vendor Agreement** |

**June 6, 2023  
Version 1.0**

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

This FICAM Product Criteria Vendor Agreement (“Agreement”) is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Vendor”) and the U.S. General Services Administration Information Assurance and Trusted Access Division (“IATAD”).

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 IATAD’s FICAM Program wishes to accept Vendor’s product (“Product”) for analysis for conformance to established FICAM Specifications, upon the terms and conditions set forth in this agreement;

WHEREAS, Vendor wishes to participate in the FICAM Product Criteria; and wishes to submit its Product for analysis, upon the terms and conditions set forth in this agreement;

WHEREAS, U.S. General Services Administration IATAD FICAM Program Management Office (“PMO”) prescribes guidance on FICAM Specifications and reviews analysis to validate conformance of Vendor’s Product subject to the rules, regulations and procedures supplied in the FICAM Product Criteria (“Program Requirements”), and the terms and conditions set forth in this agreement;

WHEREAS, products certified as conformance are added to the FICAM Product Criteria List available on idmanagement.gov 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. **Product Criteria Application Process.**
     1. The Vendor wishes to submit its Product to the PMO as disclosed in its Product Criteria Questionnaire (“Application”) incorporated herein as 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, that the Product 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 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 PMO with timely and accurate information and access to personnel of Vendor as the PMO may reasonably require or request. The PMO, in its sole judgment, may approve or decline to approve Vendor’s Application for analysis. Submission of the Application does not guarantee that the Product will successfully complete the analysis 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 Vendor’s initial submission under Exhibit A herein.
  2. **APL Analysis Process.**
     1. The Lab will perform analysis as directed by the PMO and in accordance with the Program Requirements. The Vendor agrees to cooperate fully by providing the PMO with timely and accurate information and access to personnel of Vendor as the PMO may reasonably require or request.
  3. **Approval and Listing on the Product Criteria Page.**
     1. If PMO analysis demonstrates that Vendor’s Product conforms to the Program Requirements, then PMO shall so approve, and the name and version of Vendor’s Product will be added to the Product Criteria page. The addition of the Product to the Product Criteria page does not constitute an endorsement by the Government or a promise that any Product will be purchased for use by the Government.
     2. Upon receipt of approval, Vendor may link the approval on their website. The Vendor is not approved to use any GSA Logo.

# ONGOING ANALYSIS AND MAINTAINING APPROVAL

* 1. **Ongoing Compliance Testing.** 
     1. Subsequent to approval, Vendor will make available to the PMO all updates to 3rd Party Recognition to its Product in an expeditious manner for analysis.
     2. The PMO will notify the Vendor on a timely basis of any deficiencies identified during analysis and will provide the Vendor an opportunity to cure such deficiencies in accordance with Program Requirements.
     3. The PMO, in its sole judgment, may remove Vendor’s Product from the Product Criteria for failure to cure identified deficiencies. At time of removal, Vendor shall immediately cease and remove all references to the Product Criteria approval.

# GRANT OF LICENSE

* 1. Vendor grants to Lab an irrevocable, perpetual license to use the Product, solely for the purposes of this Agreement, without right to grant sublicenses. This license permits PMO and any authorized contractors to make any number of copies, and to use the Product on any number of machines, for the permitted purposes. This license permits PMO to retain any Product submitted to the Lab in accordance with this Agreement in perpetuity. This perpetual license shall be used solely for the analysis and approval of the Product as part of the FICAM Program and shall only be used inside the PMO or on systems necessary to analyze the said Product. If Product fails to meet the conformance approval process, and at Vendor’s request, then the Lab shall return to the Vendor or destroy all copies of the submitted Product and documentation.

# CONFIDENTIALITY

* 1. “Confidential Information” shall mean (a) the fact of Vendor’s Application to the PMO, the identity of the Product submitted, and the results of the analysis and approval (other than listing on the Product Criteria), and (b) any source code, algorithms or other technical information relating to the Product, whether or not protected by a patent or copyright, that Vendor provides orally or in writing to PMO pursuant to this Agreement.
  2. The PMO 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;

(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 PMO shall not be “Confidential Information” if it:

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

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

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

(d) Was independently developed by PMO without 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 PMO, PMO 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 PMO, or otherwise from PMO, or from any employee, officer, director, or agent of PMO, learns whether any other Vendor has applied for certification for any of its product, or learns any information whatsoever relating to any such other Vendor, including but not limited to whether any product of any other Vendor have or have not been analyzed or approved, or the results of any such analysis or learns nonpublic information about the PMO’s analysis, 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 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.

# ACKNOWLEDGEMENT

* 1. Vendor acknowledges that submission of its Product for analysis does not guarantee that Vendor’s Product will successfully complete the approval process or be found conformant to FICAM Specifications.
  2. Vendor acknowledges that inclusion of Vendor’s Product on the Product Criteria 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.
  3. Vendor acknowledges and agrees that during the time its Products are listed on the Product Criteria, 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.

# LIMITATION OF LIABILITY

* 1. 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 PMO, or any employee, officer, director, authorized contractor, agent, or affiliate of PMO (a) arising from or alleging infringement, misappropriation or other violation of any intellectual property right of any third party by PMO relating to Products furnished under this Agreement, or (b) arising from or relating to any approval made, or any failure to certify, any Product furnished under this Agreement. Vendor shall indemnify and hold PMO, or any employee, officer, director, authorized contractor, agent or affiliate of 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 merger or acquisition of substantially all of the assets of Vendor, upon submission of information satisfactory in form and substance to PMO.
  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. 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.
  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**

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

**By**

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

**U.S. General Services Administration Information Assurance and 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**