FIPS 201 Evaluation Program
Lab Services Agreement

This FIPS 201 Evaluation Program Lab Services Agreement ("Agreement") is by and between (hereinafter "Applicant"), and **FIPS 201 Evaluation Lab** (hereinafter "Lab").

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, Lab Director is responsible for overall operation of the Lab, and oversees analysis and testing of products and services, and validation of conformance to established FIPS 201 Specifications;

WHEREAS, Applicant wishes to participate in FIPS 201 Initiative; and wishes to submit its product ("Product") or service ("Service") to the Lab for analysis, testing, and certification, upon the terms and conditions set forth in this agreement;

WHEREAS, U.S. General Services Administration FIPS 201 Program Management Office ("PMO") wishes to accept Applicant's Product or Service, upon 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:

1. ANALYSIS, TESTING AND CERTIFICATION

1.1. Applicant wishes to submit its Product or Service to the Lab for analysis, testing and conformance certification, and shall pay such application fees, if any, and comply with such rules, regulations, procedures, and requests as PMO may prescribe, from time to time, including making available, on and by other communications mechanisms such as telephone, Product or Service experts.

1.2. Certification. If Lab analysis and testing demonstrates that Applicant's Product or Service conforms to FIPS 201 Specifications, as revised from time to time, then GSA Approval Authority shall so certify, and the name and version of Applicant's Product or Service will be added to Approved FIPS 201 Products and Services List ("Approved List").

Submission of Product or Service for testing does not guarantee that the Product or Service will successfully complete the testing process or be found conformant to FIPS 201 requirements. Furthermore, if said Product or Service is added to the Approved List, this 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.

1.3. Noncompliance with procedures. Applicant agrees that if Applicant or its representatives, or Applicant's Product or Service, in Lab Director's sole judgment, is or are not complying with any rules or procedures set forth in this Agreement or established by Lab Director from time to time, then Lab Director may decline to accept Applicant's Product or Service for analysis and testing, or may suspend analysis and testing of Applicant's Product or Service, without refund of any fees paid by Applicant, until Applicant complies, or until assurances of compliance satisfactory to Lab Director are received, as Lab Director may determine in its reasonable discretion.

1.4.

(a) "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.

(b) 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) that the Product or Service meets the definition of "commercially available off-the-shelf item," or that it is an unreleased for general availability version of a Product or Service that Applicant has a good faith expectation that when released upon the conclusion of development will qualify as such.

1.5. Applicant certifies and warrants that the name of the Product or Service being submitted is:

Product Name	
Part Number	
H/W Version	
S/W Version	
F/W Version	

2. GRANT OF LICENSE

2.1. Applicant 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 Director 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 that desires to participate in the FIPS 201 Initiative 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 supplier's request, then the Lab Director shall return to the supplier or destroy all copies of the submitted Product or Service, and documentation.

3. CONFIDENTIALITY

3.1. "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 Lab pursuant to this Agreement.

3.2. 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;

(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.

3.3. Information disclosed by Applicant 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 Applicant; or

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

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

3.5. In the event Applicant, 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 applicant has applied for certification for any of its product or services, or learns 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 Lab'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 for the commercial detriment of any other person. The prohibition upon Applicant imposed 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.

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

4. LIMITATION OF LIABILITY

4.1. LAB, PMO, AND ANY OF ITS EMPLOYEES, 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.

5. INDEMNITY

5.1. Applicant shall defend or settle at its expense any claim, suit or proceeding brought against Lab, PMO, or any employee, officer, director, or agent 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 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 Lab, PMO, or any employee, 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.

6. GOVERNING LAW AND DISPUTE RESOLUTION

6.1. 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.

6.2. 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:

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

   (b) Reasonable efforts to arrange such consultation, if declined by the opposite party.

6.3.   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.

7. MISCELLANEOUS

7.1.   Assignment. Applicant may assign its rights and obligations under this Agreement only pursuant to merger or acquisition of substantially all of the assets of Applicant, upon submission of information satisfactory in form and substance to Lab. Lab may assign its rights and obligations under this Agreement pursuant to merger or acquisition of substantially all of its assets, or to GSA, NIST or to any successor manager of the Lab.

7.2.   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.

7.3.   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.

7.4.   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.

7.5.   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 (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 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 _____.

APPLICANT

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

By:

Signature		Date	
Title			

LAB

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

By:

Signature		Date	
Title	Lab Director		