

Attachment A
BAILMENT AGREEMENT
BETWEEN
FEDERAL BUREAU OF INVESTIGATION (BAILEE)
AND
[Name of Vendor] (BAILOR)

This **BAILMENT AGREEMENT** is entered into by and between **[Name of Vendor]**, Inc., with offices located at **[address of Vendor]**, hereinafter referred to as the "Bailor," and the Federal Bureau of Investigation (FBI), through the named Contracting Officer, hereinafter referred to as the "Bailee." Bailor and Bailee are also referred to individually as a "Party" and collectively as the "Parties."

The Parties Agree as follows:

1. PURPOSE.

1.1. The Purpose of this Agreement is for Bailor to loan to Bailee at no cost to Bailee, and Bailee to take possession of and use certain property, more fully described within **the inventory sheet provided in Phase 2 of the Network testing Request for Information (RFI)**, hereinafter referred to as the "Bailed Property," in accordance with its design for the benefit of the Bailee; while the Bailee may test or evaluate the Bailed Property while it is in the Bailee's possession, the Parties agree that the Bailee is under no obligation to make its test or evaluation results known to the Bailor.

1.2. The Parties agree that entering into this Agreement for the stated Purpose is to their mutual benefit, and that such benefit constitutes full and adequate consideration for entering into this Agreement. By entering into this Agreement, neither party assumes any obligations of any kind to the other party not expressly stated herein. This Agreement does not constitute or create a joint venture, partnership, or formal business entity of any kind.

1.3. This Agreement in no manner obligates the Bailee to any subsequent procurement of the Bailed Property or other property or services from the Bailor. Nor does acceptance by the Bailee imply any endorsement, sponsorship, approval or promotion by the Bailee or the United States Government of the Bailed Property or the Bailor, or the existence of any present or future Government requirement for such products or services, and nothing either in or arising from this agreement shall be used as a basis for any future claim against the Government, except as expressly stated herein. Bailor shall not take any action that represents or gives the appearance of an endorsement, sponsorship, approval, or promotion of the bailed property by the FBI or the United States Government

1.4. This transaction does not constitute a sale of the Bailed Property, but is rather a bailment of such Bailed Property for the mutual benefit of Bailee and the Bailor. Title to the Bailed Property is and shall remain in the Bailor. Bailee shall not incur any liens or encumbrances against the Bailed Property or remove any markings from the Bailed Property or represent to any person that the Bailed Property is Bailee's property or that of a third party. Operation expenses, maintenance, and repair of the Bailed Property shall be the responsibility of Bailee during the course of this Agreement.

2. EFFECTIVE DATE AND TERM OF THE AGREEMENT.

This Agreement shall become effective upon the date of the last signature by the authorized representatives of the parties. The Term of this Agreement shall continue for a period commencing on _____ [Start Date], and running to and including _____ [End Date] (Bailment Period), before which the Bailed Property shall be returned by the Bailee to the Bailor.

3. AGREED REPLACEMENT VALUE.

The replacement value of the Bailed Property is \$_____ [Replacement Value].

4. CONDITIONS OF BAILMENT.

4.1 THE EQUIPMENT IS BEING DELIVERED TO BAILEE FOR DEMONSTRATION, TEST AND/OR EVALUATION PURPOSES ONLY WITH NO REPRESENTATION BY BAILOR THAT IT IS REASONABLY FIT FOR ANY USE INTENDED BY BAILEE. BAILEE SHALL TAKE POSSESSION AND PHYSICAL CONTROL OF THE EQUIPMENT ON AN "AS IS" BASIS. BAILOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL BAILEE BE LIABLE FOR LOSS OF PROFIT OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER BASED UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY OR ANY OTHER LEGAL THEORY. IN THE EVENT ANY LIABILITY IS IMPOSED UPON BAILEE NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT BAILEE'S LIABILITY SHALL NOT EXCEED THE LESSER OF THE AGREED REPLACEMENT VALUE OR THE COST OF REPAIR.

4.2 All technical and commercial information which Bailor has supplied or shall supply Bailee, including, without limitation, tangible information regarding inventions, processes, technical data, methods, drawings, source code, algorithms, circuits, structures, architectures, processes, and techniques disclosed, contained or embodied in the Bailed Property, but excluding public domain information or information which can be proven by documentary evidence to have been in Bailee's possession in tangible form before receiving such information from Bailor (hereafter

referred to as “Proprietary Information”), is proprietary to Bailor and disclosed to Bailee in confidence for the purpose of facilitating Bailee’s demonstration, test and evaluation of the Bailed Property. All such Proprietary Information shall be marked by Bailor as “Proprietary Information” to be considered as such or shall otherwise be specifically identified in writing. Bailee shall not, without Bailor’s prior written consent, disclose or make available such Proprietary Information to any other person or use such Proprietary Information except in furtherance of the Purpose. All Proprietary Information shall be returned to Bailor on demand, and, in any event, when no longer needed by Bailee in connection with the Bailed Property. In addition to Bailor’s other remedies, Bailee agrees that any benefit or property derived by Bailee from any unauthorized use of Proprietary Information shall be the sole and exclusive property of Bailor. Except as otherwise expressly provided herein, this Agreement does not convey a license, implied or otherwise, under any patent, copyright, trademark or trade secret in which Bailor has an interest, nor does it convey rights to any descriptive data, including but not limited to Bailor’s drawings, schematics, software, secrets, processes, or tooling.

4.3. It is an express condition of this Agreement that Bailee shall neither reverse engineer, decompile, deconstruct, disassemble, synthesize, or extract any element of and/or otherwise discover any Proprietary Information, nor request nor accept any disclosure of Proprietary Information from a third party who reverse engineers, decompiles, deconstructs, disassembles, synthesizes, or extracts any element of and/or otherwise discovers any Proprietary Information, nor otherwise attempt to derive Confidential Information contained or embodied in the Bailed Property. Subject to Federal laws and Regulations, in the event that Bailee breaches any obligations set forth in the preceding sentence, or otherwise misappropriates or makes unauthorized use of Bailor’s Proprietary Information, any intellectual property resulting or deriving from the breach shall be for Bailor’s benefit, and Bailor shall be the sole and exclusive owner of that intellectual property. Bailee will execute an assignment of invention(s), in a form approved by Bailor, for any intellectual property arising from a breach of this paragraph 7. Bailor may seek redress for such breaches to the fullest extent allowable by Federal law.

5. DELIVERY, INSPECTION, AND RETURN OF THE BAILED PROPERTY.

5.1. Bailor shall deliver the Bailed Property to the Bailee at _____,
_____,
(hereinafter referred to as the Delivery Point).

5.2. Handling, packaging, transportation, and shipping costs for delivery of the Bailed Property to and from the Delivery Point shall be the responsibility of Bailor. The deployment and installation of the Bailed Property shall be the responsibility of the Bailor.

5.3. Upon receipt at the Delivery Point, the Bailee shall inspect the condition of the Bailed Property and promptly report any damage to the Bailor.

5.4. The Bailee may retain the Bailed Property for the purpose and under the conditions specified herein until the termination of this Bailment. The Parties may extend the termination date of the Bailment by mutual agreement in writing.

5.5. Upon termination of the Bailment, the Bailee shall coordinate with the Bailor to inspect and retrieve the Bailed Property from the same location as the Delivery Point.

5.6. Handling, packaging, transportation, and shipping costs for pickup and retrieval of the Bailed Property shall be the responsibility of the Bailor.

5.7. Upon retrieval of the Bailed Property, the Bailor shall inspect the condition of the Bailed Property and promptly report any damage to the Bailee.

5.8. Any breach by Bailee of the terms and conditions of this Agreement shall constitute an “Event of Default.” Whenever any Event of Default exists, Bailor shall have the right, at its sole option without further demand or notice, to take one or any combination of the following remedial steps:

5.8.1. With or without terminating this Agreement, Bailor may require Bailee at Bailee’s expense promptly to return any or all of the Equipment to the possession of the Bailor at such place within the United States as Bailor shall specify.

5.8.2. Bailor may take whatever action under Federal law that may appear necessary or desirable to protect and enforce its rights as the owner of the Bailed Property.

5.8.3. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. Bailee may not assign this Agreement, whether by merger, acquisition, operation of law, or otherwise, without Bailor’s prior written consent.

5.8.4. If Bailor provides software with the Bailed Property, that software is proprietary to Bailor or Bailor’s suppliers. Bailor grants Bailee a nonexclusive license, during the Bailment Period, to use the software only on and in conjunction with the Bailed Property. Bailee agrees that title remains with Bailor (and its suppliers, if any) and Bailee shall not disassemble, decode, or translate the software, or copy or modify the software. Bailee will maintain all proprietary marks on software provided by Bailor.

6. COST OF BAILMENT.

It is agreed by the Parties that the Bailed Property shall be provided under this Agreement at no cost to the Bailee or to any employees, officers, or instrumentalities of the United States of America.

7. DISPUTES AND DAMAGE TO OR LOSS OF BAILED PROPERTY.

7.1. The parties agree that this bailment agreement is not subject to the Contract Disputes Act of 1978 as amended (41 U.S.C. §§ 60 1-613). In the event of a dispute, the parties to this Bailment agree to participate in mediation as described herein. By mutual agreement the Parties will select a neutral third party from within the United States Government with a civil service or military rank equal to or higher than GS-14 or Lieutenant Colonel as mediator to mediate the dispute. The parties also agree that the decision of the mediator will be final and not subject to appeal. All disputes must be submitted in writing to the authorized representative of the parties immediately or no later than 30 days after the expiration of this agreement.

7.2. Bailee shall be liable for the loss of or damage to the Bailed Property while in the possession of the Bailee solely to the extent provided in accordance with the Federal Tort Claims Act (FTCA). Bailee shall not be responsible for wear and tear to the Bailed Property that is occasioned by normal and ordinary usage. In the event of loss or irreparable damage to the bailed property, Bailee's maximum liability shall not exceed the agreed replacement value of the bailed property.

8. MODIFICATION OF AGREEMENT.

No modifications to the terms of this Agreement shall be valid and binding unless reduced to writing and executed by authorized representatives of both parties.

9. TERMINATION.

Either party may terminate this Agreement and the period for the retention of the Bailed Property by the Bailee by giving the other Party five (5) calendar days notice thereof in writing. Upon such termination, Bailee shall promptly return the Bailed Property to the Bailor as provided herein.

10. GOVERNING LAW.

This Agreement shall be governed by the Federal laws and regulations of the United States of America.

11. EXPRESSION OF THE PARTIES.

This Agreement signed by both parties constitutes the complete and final written expression of all the terms of Agreement and it supersedes any prior or collateral communications or agreements.

IN WITNESS WHEREOF, the authorized representatives of the Bailor and Bailee have hereunto subscribed their names on the dates indicated.

FOR THE COMPANY:

FOR THE GOVERNMENT:

FEDERAL BUREAU OF INVESTIGATION

Signature:

Signature:

Printed Name: _____

Typed Name:_____

Title:

Contracting Officer

Date

Date: