

## **SAMPLE BAILMENT AGREEMENT**

This Bailment Agreement dated XXXX (Effective Date of order) between Project Manager (PM) Tactical Radios (TR), 6007 Combat Drive, Aberdeen Proving Ground, MD 21005-5001 (herein referred to as "Bailee" or "PM TR") and Contractor XXXX (herein referred to as "Bailor" or "Contractor XXXX").

1. **Bailed Property.** Bailor will deliver for use under this contract of bailment ("Agreement") to the Bailee all items identified under CLIN 5001/7001 (Qualification Testing) or CLIN 5002/7002 (Performance Verification Testing) ("Bailed Property"), please see the specific order Request for Proposal (RFP).

Location of the Bailed Property will be in accordance with CLIN 5001/7001 or CLIN 5002/7002, please see the specific order RFP.

Bailment Period: From Effective Date of the order through 15 calendar days after either Qualification Test or Performance Verification Test is completed, or later if agreed to by the parties.

All costs associated with delivery and return of the Bailor's property, to include packaging and shipping, shall be at the Bailor's expense.

2. **Purpose of Bailment.** Bailee shall use the Bailed Property solely for Government Qualification Testing or Performance Verification Testing, please see specific order RFP. Both parties agree the Bailed Property shall not be used for any other purpose, or modified/alterd, without written consent of the Bailor. The receipt of such property shall not be construed as indicating any Government preference for any company's equipment or capabilities, nor as any limitation on the Government's discretion and freedom of choice in the future selection of contractors for any possible future procurement action.

### **3. Acceptance of Bailed Property.**

Bailee acknowledges and agrees that the Bailed Property is provided to and accepted by Bailee "as is" and Bailor does not warrant the Bailed Property in any way. However, Bailor shall inform Bailee if the Bailed Property poses any hazards to Bailee or its employees.

There are no understandings, representations, or warranties of any kind or nature other than those set out in the Agreement, whether express or implied, arising by statute or otherwise, made or assumed by Bailor in connection with this Agreement or the use of the Bailed Property by the Bailee. Bailor specifically disclaims and Bailee expressly

waives any all warranties in respect to the Bailed Property, including the implied warranties of merchantability and suitability for intended purpose.

Upon Bailor's delivery of Bailed Property to the location identified in Paragraph 1 above, it shall be deemed that such property has become Bailed Property subject to the terms and conditions of this Agreement, without the need for any additional agreements, instruments, or other documents.

**4. Term and Termination.** The Bailment Agreement and all Government liability associated with it under this agreement shall terminate when the Bailed Property has been retrieved by Bailor from a CONUS location mutually agreed upon by both the Bailor and the Bailee.

The Bailee shall make the property available for return within 15 calendar days after either Qualification Test or Performance Verification Test is completed (or any later agreed upon date).

Notwithstanding the above, each party shall have the right to terminate this Agreement at any time during the term of this Agreement. Termination shall be effective by the giving of thirty (30) days written notice to the other party. Should a termination notice be given by the Bailor to the Bailee, reasonable time, not to exceed fifteen (15) days from the effective date of notice, shall be allowed the Bailee to make the property available for return to Bailor. This agreement shall also be considered terminated upon the return by the Bailee of bailed property to the Bailor, regardless of whether written notice is given.

The bailment period may be extended by mutual agreement between the Bailor and the Bailee. Any requests for extension shall be made before the end of the bailment period. Any agreed upon extension of this agreement shall be in writing and signed by authorized parties on both sides (both Bailor and Bailee) of the agreement and attached as an amendment.

**5. Fee.** Bailor shall not be obligated or liable to Bailee for the payment of any fees or other expenses of any nature pursuant to this Agreement.

**6. Retention of Title.** Title to, and ownership of, the Bailed Property shall at all times be in, and remain with the Bailor. The bailed property shall not be transferred or delivered to any third party, without the prior written consent of the Bailor.

**7. Liens or Other Encumbrances.** Bailee warrants to Bailor that it will use its best efforts to prevent any third party or parties to assert any liens of whatsoever nature the Bailed Property, nor will Bailee by any agreement, use the Bailed Property as collateral in any secured transaction.

**8. Protection & Liability of Bailor's Property.** The Bailee shall at his expense protect the Bailed Property from damage; shall maintain the Bailed Property in good condition at all times, to the extent it preserves and maintains similar property under similar circumstances.

The Bailee shall not be financially liable to the Bailor for any damage or loss of the Bailed Property while in the custody and care of the Bailee.

**9. Limitation of Liability.** To the extent provided under applicable law, Bailor shall not be liable for any direct, indirect, incidental or consequential damages sustained or incurred by Bailee as a result of the use of the Bailed Property or any alleged faulty performance of the Bailed Property, or resulting from any method or process for which the Bailed Property may be employed by Bailee, except in circumstances where Bailor's negligence or misconduct, where Bailor failed to inform Bailee of a known hazard, or where Bailor provides Bailed Property not in conformance with this Agreement. Bailee shall not be responsible for any direct, indirect, incidental or consequential damages which may arise as the result of personal injuries to Contractor XXXX, its representatives or invitees incident to the bailment or use of the bailed property. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL BAILEE BE REQUIRED TO INDEMNIFY THE BAILOR FOR LIABILITY RESULTING FROM ANY LEGAL ACTION BROUGHT BY A THIRD PARTY.

**10. Demonstration and Test Results Data.** Any reports, data, or other information generated by the Government as a result of the testing of the bailed property shall be the property of the Government. The Government does not agree to safeguard, above or beyond the requirements of statutory law governing disclosures of trade secrets and similar information, the property, reports, data, or information gathered during the testing under this Agreement. It is agreed that any reports, data, or other information generated by the Government which in fact contain Bailor proprietary, trade secrets, or similar information shall be marked accordingly.

**11. Notices.** Any notices required by this agreement shall be forwarded to the below identified representatives on behalf of their party to this Agreement:

Bailor

Bailee

Contracting Officer

Either party may re-designate its respective representative by written or electronic notice to the party.

12. **Assignment.** This Agreement and any rights granted by it may not be assigned or otherwise transferred by either party without the prior written consent of the other party and any such attempted assignment or transfer of rights is hereby made void.

13. **Disputes.** If a dispute arises relating to this agreement, the parties may file suit in the United States Court of Federal Claims under the Tucker Act, 28 U.S.C. §1491(a)(1).

14. **Governing Law and Venue.** This agreement shall be governed by the Federal laws and regulations of the United States of America.

15. **Modifications.** No modifications to the terms of this agreement shall be valid and binding unless executed by both parties in writing and signed by the signatories of this agreement.

16. **Entire Agreement.** This Agreement contains the entire understanding between the Parties. It supersedes all prior or contemporaneous communications, agreements, or understandings between the Parties about the Bailed Property.

In witness whereof, the parties hereto have executed this Agreement as of the effective date defined herein.

Bailor:

Bailee: United States of America

By:\_\_\_\_\_

By:\_\_\_\_\_

Title:

Title: Contracting Officer

Date:\_\_\_\_\_

Date:\_\_\_\_\_