

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 16 T.E.
2. AMENDMENT/MODIFICATION NO. 06-06	3. EFFECTIVE DATE See Block 14	4. REQUISITION /PURCHASE RBQ. NO.	5. PROJECT NO. (IF APPLICABLE)
4. ISSUED BY: CODE	7. ADMINISTERED BY (IF OTHER THAN ITEM 6) CODE		
Dept. of Veterans Affairs National Acquisition Center (90N-M) FSS Division - Pharmaceuticals P.O. Box 76, 1 st Avenue north of Cermak Road, Bldg 37 Hines, IL 60141		Dept. of Veterans Affairs National Acquisition Center (90N-M) FSS Division - Pharmaceuticals P.O. Box 76, 1 st Avenue just north of Cermak Road, Bldg37 Hines, IL 60141	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) Aethon Incorporated 100 Business Center Drive Pittsburgh, PA 15212		9A. AMENDMENT OF SOLICITATION NO.	
		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO.	
		X V797P-4652a	
		10B. DATED (SEE ITEM 13)	
		5/1/2004	
CODE	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

+ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers + is extended + is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

- (a) By completing Items 8 and 15, and returning _____ copies of the amendment;
- (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or
- (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (IF REQUIRED)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

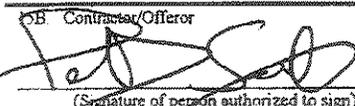
<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in the paying office, appropriation Date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) 552.243-72 Administrative

E. IMPORTANT: Contractor is required to sign this document and return 1 copy to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

This administrative modification is issued to incorporate the attached "Product Rental Agreement," and "Installation And Maintenance Agreement," effective, January 4, 2007. All other terms and conditions remain unchanged.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. Name and Title of Signer (Type or print) PETER SEIFF		16 Name and Title of Contracting Officer (Type or print) PAUL SKALMAN, CONTRACTING OFFICER	
15B. Contractor/Officer  (Signature of person authorized to sign)	15C. Date Signed 1-3-07	16B. United States of America BY  (Signature of Contracting Officer)	16C. Date Signed 1/4/07

EXCEPTION TO SF30
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA

PAGE 2 OF 6
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 REFERENCE, CONTRACT MOD #4,
 EFFECTIVE, 1/1/07

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 PRODUCTS ACCEPT
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 AWARD.

ATTACHMENT 1
 Price Analysis

SIN #	Product Description	Monthly Rental at List	One-Time Costs at List	Min Qty	Typical Qty	One-Time Costs at List	Monthly Cost at List	U. Of I	Government			Tracking Customer			GTC Ratios		
									Gov't Basis Discount	Monthly Gov't Net Price	One-Time Gov't Net Price	IG. Discount/100	Monthly J.C. Net Price	One-Time J.C. Net Price	Monthly	One Time	Assuming 1 Year Term
A-83	Tug HW & SW Cost:																
A-83	Tug-12	\$2,730.00	\$0.00	1	2	\$0.00	\$5,460.00	ea	10%	\$4,901.66	\$0.00	\$0.00	7%	\$5,460.00	\$0.00	0.90	1.00
A-83	SW license	Included	\$0.00	0	0	\$0.00	\$0.00	ea	0%	\$0.00	\$0.00	\$0.00	7%	\$0.00	\$0.00	1.00	1.00
A-83	Carts-Secured	Included	\$0.00	1	2	\$0.00	\$0.00	ea	0%	\$0.00	\$0.00	\$0.00	7%	\$0.00	\$0.00	1.00	1.00
A-83	Carts-Unsecured	Included	\$0.00	1	0	\$0.00	\$0.00	ea	0%	\$0.00	\$0.00	\$0.00	7%	\$0.00	\$0.00	1.00	1.00
A-83	Subtotal HW & SW	\$2,730.00	\$0.00			\$0.00	\$5,460.00			\$4,901.66	\$0.00	\$0.00		\$5,460.00	\$0.00	0.90	1.00
	Installation Cost																
A-83	Elevator Interface	\$0.00	\$7,000.00	0	1	\$7,000.00	\$0.00	ea	0%	\$0.00	\$6,993.61	\$0.00	7%	\$0.00	\$7,000.00	1.00	0.94
A-83	Door Interface	\$0.00	\$800.00	0	1	\$800.00	\$0.00	ea	0%	\$0.00	\$790.12	\$0.00	7%	\$0.00	\$800.00	1.00	0.94
A-83	Ethernet Nodes	\$0.00	\$750.00	0	12	\$9,000.00	\$0.00	ea	0%	\$0.00	\$8,438.76	\$0.00	7%	\$0.00	\$9,000.00	1.00	0.94
A-83	Facility Mapping	\$0.00	\$10,000.00	1	1	\$10,000.00	\$0.00	ea	15%	\$0.00	\$8,478.70	\$0.00	15%	\$0.00	\$8,500.00	1.00	1.00
A-83	Retro Price Per Cart-12	Included	\$0.00	1	2	\$0.00	\$0.00	ea	15%	\$0.00	\$0.00	\$0.00	15%	\$0.00	\$0.00	1.00	1.00
A-83	Tug Installation	\$0.00	\$4,500.00	1	2	\$9,000.00	\$0.00	ea	15%	\$0.00	\$7,650.82	\$0.00	15%	\$0.00	\$7,650.00	1.00	1.00
A-83	Subtotal Installation	\$0.00	\$23,050.00			\$36,000.00	\$0.00			\$0.00	\$31,061.91	\$0.00		\$32,560.00	\$0.00	0.97	1.00
	Other Hardware:																
A-83	Annunciators	\$0.00	\$450.00	0	2	\$900.00	\$0.00	ea	15%	\$0.00	\$783.08	\$0.00	15%	\$0.00	\$785.00	1.00	1.00
A-83	Monitors & Base	Included	\$0.00	1	2	\$0.00	\$0.00	ea	15%	\$0.00	\$0.00	\$0.00	15%	\$0.00	\$0.00	1.00	1.00
A-83	Subtotal add-on sales	\$0.00	\$450.00			\$900.00	\$0.00	ea	15%	\$0.00	\$783.08	\$0.00	15%	\$0.00	\$785.00	1.00	1.00
A-83	Total					\$36,700.00	\$5,460.00			\$4,901.66	\$32,224.99	\$33,715.00		\$5,460.00	\$33,715.00	0.90	0.92
A-83	Total Per Tug					\$18,350.00	\$2,730.00			\$2,450.84	\$16,312.80	\$16,657.50		\$2,730.00	\$16,657.50	0.90	0.92
	Monthly Hardware																
	Service Contract																
	Monthly Software																
	Maint. & Support						Included	lb	0%	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00	1.00	1.00
							\$270.00	lb	0%	\$270.00	\$270.00	\$270.00	0%	\$270.00	\$270.00	1.00	1.00

A



PRODUCT RENTAL AGREEMENT

Parties	
Vendor: <u>Aethon Inc.</u>	Renter: _____
Address: <u>100 Business Center Dr.</u>	Address: _____
<u>Pittsburgh, PA 15205</u>	_____
Phone: <u>412-322-2975</u>	Phone: _____

Rental Terms	
Aethon Product:	_____
Rental Term:	_____
Monthly Rent:	<u>\$X,XXX</u> per month
Monthly Maintenance:	<u>\$ XXX</u> per month
Monthly Total:	<u>\$X,XXX</u> per month
Monthly Rent begins:	<u>At Acceptance</u>
:	_____

Signatures	
By signing this Product Rental Agreement, Renter acknowledges that it understands and accepts the attached Terms and Conditions. This lease is non-cancelable.	
Vendor: <u>Aethon Inc.</u>	Renter: _____
By: <u>X</u>	By: <u>X</u>
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

Incumbency Certificate		
I, _____ of _____ do hereby certify that:		
(name)	(title)	(full corporate legal name)
(1) I am a duly elected and qualified officer of said Corporation; (2) Each of the persons set forth below is or were empowered to enter into any contract with Aethon Inc., and execute and deliver any instrument including corporate guarantees in the name and on behalf of said Corporation which in their opinion are in the best interests of said Corporation; (3) And the following are the true names and specimen signatures of the persons authorized to so execute, acknowledge and deliver agreements, documentation and commitments:		
<u>Name</u>	<u>Title</u>	<u>Signature</u>
_____	_____	X _____
_____	_____	X _____
In witness whereof, I have hereunto set my hand and affixed the seal of the Corporation on the _____ day of _____.		
Signature: <u>X</u> _____	(Seal)	

TERMS AND CONDITIONS

This AGREEMENT is by and between Aethon® Inc. and the Renter named above.

Section 1. Definitions

- This Product Rental Agreement uses the following terms. Their meanings are:
- "We", "us", "our" Aethon Inc.
- "You", "your" The Hospital entering this Product Rental Agreement with us.
- "Aethon Product" Any combination of Aethon owned or licensed products, including but not necessarily limited to the Tug®, software, interfaces and accessories.
- "Individual Aethon Product" Any single Aethon product, e.g. a Tug.
- "Goods" Any items such as supplies, equipment, medical records, charts, medications, linen and all other items delivered by or picked up by any individual Aethon Product.
- "Rental Commencement Date" The date that rental payments start, as defined in the Maintenance Agreement.
- "Acceptance Certificate" The Product Acceptance Certificate you give us after installation to certify that the Individual Aethon Product has been installed and is operating in conformance with the Specifications.
- "Specifications" The Functional Specifications for the Individual Aethon Product (Exhibit A).
- "Monthly Rent" The monthly rent shown on this Product Rental Agreement.
- "Rental Term" The number of months shown as the "Rental Term" on this Product Rental Agreement.
- "Total Rental Obligation" The installments of the Monthly Rent required to be paid under this Product Rental Agreement for its entire term that are unpaid or accrued.
- "Maintenance Agreement" The Installation and Maintenance Agreement between you and us.
- "Related Document" The Maintenance Agreement and every other document or instrument we execute in connection with this agreement and your use of the Aethon Product.

Section 2. Ownership of Aethon Product

- 2.1 You are acquiring the right to possess and to use the Aethon Product during the Rental Term, or until this Agreement has been terminated or expired. You have no other ownership right, title or interest in any Aethon Product. We will own any Aethon Product during the Rental Term and after it expires.
- 2.2 You agree to execute and consent to the filing of any precautionary financing statements or other documents we may decide are necessary or advisable, provided such documents or actions do not conflict with federal law or federal regulations.
- 2.3 You agree to keep the Aethon Product at the place shown on this Product Rental Agreement, unless we agree in writing that you may move it. After reasonable notice, you agree to allow us or our designated representative to enter your premises during normal operating hours to inspect any Aethon Product and to see it in use. You have no right to sell, transfer, assign or subrent the Aethon Product or this Product Rental Agreement.
- 2.4 We warrant that we have good and marketable title to the Aethon Product, including any software, and have the right to enter into this Product Rental Agreement.

Section 3. Agreement to Rent

We agree to rent the Aethon Product described on Product Schedule to you, and you agree to rent the Aethon Product from us, for the Rental Term shown, under the terms and conditions of this Product Rental Agreement and related delivery or task order and underlying Federal Supply Schedule Contract V797P-4652a.

Section 4. Rental Term and Automatic Renewal

- 4.1 This Agreement shall be in effect for a maximum of five (5) years and shall consist of a base year (or less) plus four (4) one-year option periods. The base year shall begin on the Rental Commencement Date and continue through September 30. Each option year shall expire on September 30 of each year. You shall notify us in writing thirty (30) days prior to the expiration of each annual period as to your intent to renew this Agreement. Such notice to renew shall not bind the government. You shall have the option to renew each year at the original Monthly Rent in effect at the beginning of the Rental term until the expiration or termination of the Agreement. If you exercise the option to renew, the Agreement, as renewed, shall include an option to renew until the expiration of the Agreement. You shall provide us with written notice of exercise of each renewal option as soon as practicable, but in no event later than ten (10) business days after you receive notice of availability of fiscal appropriations.

- 4.2 You contemplate the use of the Aethon Product for the term specified in this Agreement. Notwithstanding the foregoing, you may terminate this Agreement as follows:

- (a) No-cost termination. You may cancel or not renew this Agreement at the end of the base period or any option period if (1) you no longer have a bona fide need for the Product or functionally similar product, or (2) there is a continuing need but adequate funds have not been made available in an amount sufficient to continue to make the monthly payments. If either event occurs you will promptly notify us and this Agreement will be canceled at no-cost to you at the end of the fiscal year for which funds were appropriated.
- (b) You may terminate this Agreement for convenience or cause in accordance with FAR Clause 52.212-4 (l) or (m).

Section 5. Rental Payments

We shall invoice and you shall make payments in accordance with FAR Clause 52-212-4 (g) and (i) and the statutes and regulations cited therein. Resulting disputes, if any, shall be resolved in accordance with FAR Clause 52-212-4 (d) Disputes.

Section 6. Offsets to Rent

This section intentionally deleted.

Section 7. Your Right to Quiet Possession

We agree that neither we nor any person claiming through us, will disturb your use or possession of the Aethon Product during the Rental Term.

Section 8. Insurance

This Section intentionally deleted

Section 9. Taxes

Notwithstanding the terms in the Federal, State and Local Taxes provision in FAR Clause 52.212-4 (k), the rental payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the product furnished hereunder. We will invoice you for any such taxes as we receive such tax notices or assessments from the applicable local taxing authority. You agree to pay this tax or provide evidence necessary to support an exemption from the tax.

Section 10. Responsibility

You acknowledge and agree that you are the final responsible party with respect to delivering and picking up all Goods through use of any Individual Aethon Product.

Section 11. Our Assignment

The ordering activity's contracting officer will acknowledge an assignment of claim for a lease in accordance with FAR 32.804 and 32.805. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

Section 12. Other Covenants and Warranties

This Section intentionally deleted.

Section 13. Events of Default

This Section intentionally deleted.

Section 14. Remedies

This Section intentionally deleted.

Section 15. Miscellaneous

- 15.1 This Product Rental Agreement shall be governed by, construed and enforced in accordance with federal law.
- 15.2 You may not transfer or assign any of your rights or delegate any of your obligations under this Product Rental Agreement without our prior written consent. Any attempted assignment or delegation without our prior written consent will be void and of no force or effect. This Product Rental Agreement will be binding upon and be for the benefit of each of us and your and our respective successors permitted transferees and permitted assigns.
- 15.3 This Product Rental Agreement may be modified only by a written amendment mutually executed by you and our duly authorized representatives. If any one or more provisions of this Product Rental Agreement are found invalid or unenforceable, that finding will not affect the validity or enforceability of any other provision of this Product Rental Agreement as long as the essence of our agreement is retained, and the invalid or unenforceable provision will be limited or curtailed only to the extent necessary to make such provision valid and enforceable. Any failure by either you or us to enforce any of the provisions of this Product Rental Agreement will not be construed as a waiver of that or any other provision or of your or our rights to later enforce each and every provision of this Product Rental Agreement.
- 15.4 This Product Rental Agreement and the Related Documents (including but not limited to FSS Contract V797P-4652a and resulting task or delivery order) contains the entire rental agreement between you and us and supersedes all prior discussions or oral communications relating to that subject.

Renter Initials: X _____



INSTALLATION AND MAINTENANCE AGREEMENT

Parties	
Vendor: <u>Aethon, Inc.</u>	Customer: _____
Address: <u>Campbells Run Business Center</u> <u>100 Business Center Drive</u> <u>Pittsburgh, PA 15205</u>	Address: _____ _____
Phone: <u>412-322-2975</u>	Phone: _____

Installation and Maintenance Agreement Terms	
Aethon Product:	<u>The equipment listed in the Rental Agreement</u>
Installation Fee:	<u>\$XX,XXX</u>
Installation Fee Terms:	<u>Due when this Agreement is signed</u>
Monthly Maintenance:	<u>\$ XXX per month per Tug</u>
Monthly Maintenance Begins:	<u>At Acceptance</u>

Signatures	
By signing this Installation and Maintenance Agreement, Customer acknowledges that it understands and accepts the attached Terms and Conditions.	
Vendor: <u>Aethon Inc.</u>	Customer: _____
By: <u>X</u>	By: <u>X</u>
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

TERMS AND CONDITIONS

This AGREEMENT is by and between Aethon[®] Inc. and the Customer named above.

Section 1. Definitions

This Installation and Maintenance Agreement uses the following terms. Their meanings are:

- | | |
|-----------------------------|--|
| "We", "us", "our" | Aethon Inc. |
| "You", "your" | The Customer entering this Installation and Maintenance Agreement with us. |
| "Maintenance Agreement" | This Installation and Maintenance Agreement between you and us. |
| "Rental Agreement" | The Rental Agreement between you and us. |
| "Aethon Product" | Any combination of Aethon owned or licensed products, including but not limited to the Tug [®] , software, interfaces and accessories further described in Exhibit C. |
| "Individual Aethon Product" | Any single Aethon product, e.g. a Tug. |
| "Specifications" | The Functional Specifications for the Individual Aethon Product (Exhibit A). |
| "Third Party" | The independent third party financing source to which we may assign the Rental Agreement. |
| "Monthly Rent" | The monthly rent shown on the Rental Agreement. |
| "Initial Rental Term" | The number of months shown as the "Rental Term" on the Rental Agreement. |
| "Commencement Date" | The date you sign the Delivery and Acceptance Certificate for the Aethon Product listed in the Rental Agreement. |

Section 2. Site Preparation

You agree to prepare the areas receiving the Aethon Product in your facility as described in the "Site Requirements" (Exhibit B). You agree to appoint Project Coordinators in the IT and Facilities Departments to oversee your preparations.

Section 3. Delivery

We bear the risk of loss to the Aethon Product during transit and installation. During the time the Aethon Product is in your possession, you shall be

responsible for loss or damage due to your fault or negligence. If the Aethon Product or any component or accessory is lost while in your possession, you will be liable for replacement costs measured by the fair market value of the lost item or items at the time of loss. You shall assume risk of loss or damage to the Aethon Product during relocation (i.e. moving the Aethon Product from one Government location to another Government location) unless we shall undertake such relocation. You agree to see that the liability and physical damage insurance required by the Rental Agreement is effective at that time.

Section 4. Acceptance

We will demonstrate to you that the individual Aethon Product is working by performing the tasks described in the Functional Specifications (Exhibit A). After the successful demonstration of an Individual Aethon Product, you will sign the Delivery and Acceptance Certificate. If you begin live operation of the individual Aethon Product, or if the only deficiency is a result of your non-compliance with Section 2, we will deem it accepted.

Section 5. Support Services

- 5.1 Our Maintenance and Support Services for the Aethon Product include:
- (a) scheduled preventative maintenance according to our recommended schedule;
 - (b) telephone support 24 hours per day, seven days per week, with a live phone response within 4 hours;
 - (c) remote assistance, direct internet link to the Aethon Product or on-site service within 16 hours.
 - (d) emergency on-site service within 16 hours. An "emergency" is defined as an Individual Aethon Product being unable to complete vital delivery functions, with no immediate backup or manual transport available to complete such functions. You and we will jointly agree on which delivery functions are vital.
 - (e) reasonable efforts to correct defects in the Aethon Product so it operates in accordance with the Specifications;
 - (f) installing enhancements and new versions of software that do not constitute the addition of major new functionality, as we release them;

- (g) all labor, shipping and parts, either new or refurbished, reasonably needed to repair or replace any tangible component of the Aethon Product that malfunctions or wears out from use.
- 5.2 Our Maintenance and Support Services for the Aethon Product do not include:
 - (a) repair of Aethon hardware damaged by non-Aethon personnel through intentional acts, negligence, misuse, accident, disaster, abuse, moving, or lifting;
 - (b) repair or maintenance of accessories, alterations, attachments or other devices not furnished by us and installed without our prior written approval; operating supplies; or
 - (c) travel and living expenses we incur during the installation period prior to the date of signing of the Delivery and Acceptance Certificate for the Individual Aethon Product.
- 5.3 Our Maintenance and Support Services begin on the Commencement Date and will continue through the term of this Maintenance Agreement, as long as you pay us the monthly maintenance fee shown in this Maintenance Agreement (the "Monthly Maintenance Fee") and all other amounts in this Maintenance Agreement. Notwithstanding the terms in the Federal, State and Local Taxes provision in FAR Clause 52.212-4 (k), the rental payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the product furnished hereunder. We will invoice you for any such taxes as we receive such tax notices or assessments from the applicable local taxing authority. You agree to pay this tax or provide evidence necessary to support an exemption from the tax.

Section 6. Use of the Aethon Product

- 6.1 You agree to see that all Aethon Product will be operated as required by our manuals and instructions by competent and duly qualified personnel, in accordance with all legal requirements and only for your regular business purposes.
- 6.2 You agree to, at your expense, keep all Aethon Product in good condition and working order. As part of that commitment, you agree to keep this Maintenance Agreement in force for the entire Initial Rental Term and any renewal periods or until termination or expiration of the Rental Agreement.
- 6.3 You agree not to make any changes, alterations, additions or improvements to any Aethon Product, without our prior written consent.

Section 7. Software License

We retain all right, title and interest in all Aethon Product software (the "Aethon Product Software") as installed and as subsequently modified. We grant you a single-site, non-exclusive, non-transferable license to use the Aethon Product Software in object code form solely in conjunction with the Aethon Product until termination or expiration of the Rental Agreement. Rights to use shall be in accordance with FAR Clause 52.212-4 (o) in Contract V797P-4652a. You agree not to copy, reproduce or reverse engineer the Aethon Product Software. If you learn of any misuse of the Aethon Product Software, you agree to notify us immediately.

Section 8. Warranty

- 8.1 We warrant to you throughout the term of this Maintenance Agreement that Aethon Product will work substantially in conformance with the Specifications and will be free from defects in materials and workmanship, and when used in accordance with its documentation, will comply with all applicable laws and regulations. This warranty will not be applicable if: (a) you or anyone else has modified the Aethon Product except with our prior written consent; or (b) you or anyone else using the Aethon Product has not followed the maintenance and operating instructions we have provided and that failure directly or indirectly caused the problem; or (c) you do not allow us access to your facility to service the Aethon Product.
- 8.2 Warranty shall be accordance with FAR Clause 52.212-4 (o) in Contract V797P-4652a.

Section 9. Warranty Remedies

- 9.1 Limitation of Liability shall be in accordance with FAR Clause 52.212-4 (p) in Contract V797P-4652a.

- 9.2 You assume the risk of liability for your negligence. We assume the risk of liability for our negligence. Each of us agrees to notify the other as soon as possible upon becoming aware of a claim that seems to arise out of any activity carried out under this Maintenance Agreement. This indemnity will survive the termination of this Maintenance Agreement.

Section 10. Third Party Liability

- 10.1 Disputes will be resolved in accordance with FAR Clause 52.212-4 (d) in Contract V797P-4652a.

Section 11. Termination

- 11.1 Termination provisions are in accordance with FAR Clause 52.212-4 (l) and (m) and with FAR Clause 52.212-4 (d).

Section 12. Miscellaneous

- 12.1 This Maintenance Agreement is governed by, construed and enforced in accordance with federal law.
- 12.2 You may not transfer or assign your rights or delegate your obligations under this Maintenance Agreement without prior written consent from Aethon. Any attempted assignment or delegation without our prior consent will be void and of no force or effect. This Maintenance Agreement will be binding upon and be for the benefit of each of us and your and our respective successors permitted transferees and permitted assigns.
- 12.3 Any notices required under this Maintenance Agreement given by regular mail or electronic means generating a hard copy printout will be effective upon receipt. All notices will be given in writing to the address stated on the signature page of this Maintenance Agreement.
- 12.4 This Maintenance Agreement may be modified only by a written amendment executed by each of our duly authorized officers. If any one or more provisions of this Maintenance Agreement are found invalid or unenforceable, that finding will not affect the validity or enforceability of any other provision of this Maintenance Agreement as long as the essence of our agreement is retained, and the invalid or unenforceable provision will be limited or curtailed only to the extent necessary to make such provisions valid and enforceable. Any failure by either party to enforce any of the provisions of this Maintenance Agreement will not be construed as a waiver of that or any other provision or of your or our rights to later enforce each and every provision of this Maintenance Agreement.
- 12.5 This Maintenance Agreement and the Related Documents (including but not limited to FSS Contract V797P-4652a and resulting task or delivery order) contains the entire rental agreement between you and us and supersedes all prior discussions or oral communications relating to that subject.
- 12.6 Neither you nor we may use the name of the other in any marketing, public relations, or other similar activities without express written consent of the other.
- 12.7 Both parties acknowledge that they may from time to time receive proprietary and confidential information from the other, including but not limited to the Aethon Product Software and any and all non-public information that one party may acquire about the other, its operations, finances, customers/patients, contracts or personnel. In addition, both parties agree that the terms of the Rental Agreement and this Maintenance Agreement, including all Appendices, shall be treated as our confidential information. Both parties agree not to disclose any confidential and proprietary information to any third party for so long as such information is held in confidence by us and to use that information only in using the Aethon Product. Both parties agree to prevent any unauthorized person from having access to both parties' confidential information, and will return or destroy all copies of such confidential information (other than this Maintenance Agreement) when the Rental Agreement is terminated. The foregoing statements do not apply to disclosures necessary to comply with the freedom of Information Act or other laws or regulations.
- 12.8 During the Term of this Maintenance Agreement, we shall maintain at our own expense, commercial liability insurance covering us for damages arising out of our performance under this Maintenance Agreement and any negligent or otherwise wrongful acts or omission by us or any of our employees or agents.