

**AUTHORIZED FEDERAL ACQUISITION SERVICE**



**INFORMATION TECHNOLOGY SCHEDULE PRICELIST  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY  
EQUIPMENT, SOFTWARE AND SERVICES**

**NOTE:** Contractor has been awarded all Special Item Numbers under the Cooperative Purchasing and Disaster Recovery Programs. All awarded SINs are available to state and local government entities.

Special Item No. 132-33 Perpetual Software Licenses  
Special Item No. 132-34 Maintenance of Software  
Special Item No. 132-50 Training Courses  
Special Item No. 132-51 Information Technology Professional Services

**Ai Metrix, Inc.**  
**5971 Kingstowne Village Parkway, Suite 200**  
**Alexandria, VA 22315**  
**Phone (703) 668-1000**  
**Website: [www.aimetrix.com](http://www.aimetrix.com)**

**Contract Number: GS-35F-0309N**

**Period Covered by Contract: February 11, 2013 through February 10, 2018**

Pricelist current through modification PO-0023, dated February 6, 2013.

General Services Administration Federal Acquisition Service

Products and ordering information in this Authorized FAS Information Technology Schedule Pricelist are also available on the GSA Advantage! System. Ordering activities can browse GSA Advantage! by accessing the Federal Acquisition Service's Home Page via the Internet at <http://www.gsa.gov/fas>

**SIN 132-33 - PERPETUAL SOFTWARE LICENSES**

**FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE**

Large Scale Computers

Application Software

Communications Software

Microcomputers

Application Software

Communications Software

**SIN 132-34 - MAINTENANCE OF SOFTWARE**

**SIN 132-50 - TRAINING COURSES FOR INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (FPDS Code U012)**

**SIN 132-51 - INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES**

FPDS Code D301 - IT Facility Operation and Maintenance

FPDS Code D302 – IT Systems Development Services

FPDS Code D307 - Automated Information Systems Design and Integration Services

FPDS Code D316 - IT Network Management Services

**Note 1:** All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

**Note 2:** Offerors and Ordering Activities are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

**Note 3:** This solicitation is not intended to solicit for the reselling of it professional services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performance by the publisher or manufacturer or one of their authorized agents.

**TABLE OF CONTENTS**

INFORMATION FOR ORDERING ACTIVITIES..... 4

TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE ..... 9

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 13250) ..... 13

TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 132-51)..... 15

USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS..... 18

BLANKET PURCHASE AGREEMENT (BPA)..... 19

BPA FORMAT GUIDELINES.....20

BASIC GUIDELINES FOR USING CONTRACTOR TEAMING AGREEMENTS..... 21

AI METRIX, INC. LABOR CATEGORY DESCRIPTIONS ..... 22

AI METRIX, INC. SOFTWARE LICENSE AGREEMENT ..... 27

AI METRIX, INC. SOFTWARE MAINTENANCE AND SUPPORT ..... 39

## INFORMATION FOR ORDERING ACTIVITIES APPLICABLE TO ALL SPECIAL ITEM NUMBERS

### **SPECIAL NOTICE TO AGENCIES: SMALL BUSINESS PARTICIPATION**

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service ([www.gsa.gov/fas](http://www.gsa.gov/fas)). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page ([www.gsa.gov/fas](http://www.gsa.gov/fas)) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

#### **1. GEOGRAPHIC SCOPE OF CONTRACT:**

*Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

*Overseas delivery* is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories

Offerors are requested to check one of the following boxes:

- The Geographic Scope of Contract will be domestic and overseas delivery.  The Geographic Scope of Contract will be overseas delivery only.  
 The Geographic Scope of Contract will be domestic delivery only.

#### **2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:**

Ai Metrix, Inc.  
5971 Kingstowne Village Parkway, Suite 200  
Alexandria, VA 22315

Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards **will** be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number can be used by ordering activities to obtain technical and/or ordering assistance:

**Technical Assistance: (916) 941-2111**

#### **3. LIABILITY FOR INJURY OR DAMAGE**

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

#### **4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:**

Block 9: G. Order/Modification Under Federal Schedule  
Block 16: Data Universal Numbering System (DUNS) Number: 96-481-0634  
Block 30: Type of Contractor - C. Large Business  
Block 31: Woman-Owned Small Business - No  
Block 36: Contractor's Taxpayer Identification Number (TIN): 68-0391565

4a. CAGE Code: 1LRD9

4b. Contractor **has** registered with the Central Contractor Registration Database.

**5. FOB DESTINATION**

**6. DELIVERY SCHEDULE**

a. **Time of Delivery:** The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

<b>Special Item Number</b>	<b>Delivery Time (Days ARO)</b>
<u>132-33</u>	<u>30 Days</u>
<u>132-50</u>	<u>As agreed between the ordering activity and the Contractor.</u>
<u>132-51</u>	<u>As agreed between the ordering activity and the Contractor.</u>

b. **Urgent Requirements:** When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**7. DISCOUNTS:** Prices shown are NET Prices; Basic Discounts have been deducted.

- a. Prompt Payment: None; NET 30 days
- b. Quantity : None
- c. Dollar Volume: None
- d. Educational Institutions: Educational Institutions are offered the same discounts as all other ordering activities.

**8. TRADE AGREEMENTS ACT OF 1979, AS AMENDED:**

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

**9. STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:**

Outside the scope of this contract.

**10. SMALL REQUIREMENTS:** The minimum dollar value of orders to be issued is \$100.00.

**11. MAXIMUM ORDER** (All dollar amounts are exclusive of any discount for prompt payment.)

a. The Maximum Order value for Special Item Numbers (SINs) is \$500,000: Special Item Number 132-33 - Perpetual Software Licenses Special Item Number 132-34 – Maintenance of Software Special Item Number 132-51 - Information Technology (IT) Professional Services

b. The Maximum Order value for the following Special Item Numbers (SINs) is \$25,000: Special Item Number 132-50 - Training Courses

**12. ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS**

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

- 13. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS:** Federal departments and ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering offices, shall be responded to promptly by the Contractor.
- 13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):** Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.
- 13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):** Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FEDSTD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.
- 14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2001)**
- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- NOTE: Refer to FAR Part 31.205-46 Travel Costs, for allowable costs that pertain to official company business travel in regards to this contract.
- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

- (e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- (g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
- (k) Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

**15. CONTRACT ADMINISTRATION FOR ORDERING OFFICES:** Any ordering office, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See C.1.)

**16. GSA *ADVANTAGE!*** GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

- a. Manufacturer;
- b. Manufacturer's Part Number; and
- c. Product categories.

Ordering activities can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is <http://www.gsa.gov/fas>.

**17. PURCHASE OF OPEN MARKET ITEMS NOTE:** Open market items are also known as incidental items, non-contract items, non-schedule items, and items not on a federal supply schedule contract. ODCS (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering activities procuring open market items must follow (FAR 8.401(D)). For administrative convenience, an ordering office contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- a. All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

- b. The ordering office contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- c. The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- d. All clauses applicable to items not on the Federal Supply Schedule are included in the order.

**18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS:**

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

(1) Time of delivery/installation quotations for individual orders;

(2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.

(3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule Contract.

**19. OVERSEAS ACTIVITIES:** The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

NA

Upon request of the contractor, the ordering activity may provide the contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

**20. BLANKET PURCHASE AGREEMENTS (BPAs)** The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

**21. CONTRACTOR TEAM ARRANGEMENTS** Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clause 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

**22. INSTALLATION, DEINSTALLATION, REINSTALLATION** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply. The requisitioning activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

**23. SECTION 508 COMPLIANCE** If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following: [www.aimetrix.com](http://www.aimetrix.com). The EIT standard can be found at: [www.Section508.gov/](http://www.Section508.gov/).

**24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.** Prime contractors (on cost reimbursement contracts) placing orders under federal supply schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

(a) a copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the federal supply schedule contractor); and

(b) The following statement: “This order is placed under written authorization from \_\_\_\_\_ dated \_\_\_\_\_. In the event of any inconsistency between the terms and conditions of this order and those of your federal supply schedule contract, the latter will govern.”

**25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)**

(a) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the contractor shall notify the contracting officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the government's interest shall not be effective—

(1) For such period as the laws of the state in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the contractor gives written notice to the contracting officer, whichever period is longer.

(c) The contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a government installation and shall require subcontractors to provide and maintain the insurance required in the schedule or elsewhere in the contract. The contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the contracting officer upon request.

**26. SOFTWARE INTEROPERABILITY** Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

**27. ADVANCE PAYMENTS** A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)

**TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

**1. INSPECTION/ACCEPTANCE** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

**2. GUARANTEE/WARRANTY**

a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contractor's commercial pricelist will apply to this contract.

**The following is the Contractor's commercial warranty:**

Limited Warranty LICENSOR warrants that the LICENSED PRODUCTS are free of any and all errors, so long as said LICENSED PRODUCT is not

(1) combined with programs or products, equipment, devices, software, systems or data, not provided or approved for use by LICENSOR in combination with the LICENSED PRODUCT (including without limitation, any software produced by LICENSEE for use with the LICENSED PRODUCT) or

(2) altered, modified or customized by any person or party, other than LICENSOR.

Furthermore, LICENSOR warrants that the LICENSED PRODUCT will conform in all material respects to LICENSOR'S published specifications, when operated on and with the equipment specified in the applicable AI METRIX DOCUMENTATION, and will be performed in a professionally diligent manner by qualified personnel. Ai Metrix will respond with qualified personnel to any deliverable, which is in breach of this warranty provided LICENSEE has reported it within five (5) days of discovery of such a breach. LICENSOR reserves the right to correct manuals due to typographical or clerical error. In the event of any breach of this warranty, LICENSOR will, at its option, repair or replace the AI METRIX SOFTWARE. This warranty is provided by LICENSOR.

LICENSOR does not warrant or guarantee the results from use of the AI METRIX SOFTWARE.

**NO OTHER WARRANTIES: EXCEPT AS OTHERWISE REQUIRED BY LAW, THE EXPRESS WARRANTY IN THE WARRANTY ARTICLE OF THIS CONTRACT IS LICENSOR'S EXCLUSIVE WARRANTY AND IS IN LIEU OF ALL IMPLIED WARRANTIES, AND THE REMEDIES STATED THEREIN ARE THE EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. The Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

**3. TECHNICAL SERVICES** The Contractor **requires purchase of a maintenance agreement for the first year. While under the maintenance agreement, a hot line will be provided with support between the hours of 8 AM to 8 PM U.S. Eastern Time.** The technical support hot line number is (703)-668-1050 and provides user assistance and guidance in the implementation of the software. **Following Year 1, technical support agreements are available at varying levels and durations as reflected in the price list.**

#### **4. SOFTWARE MAINTENANCE**

a. Software maintenance service shall include the following:

**Please see the Schedule C: SOFTWARE MAINTENANCE AND SUPPORT**

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

#### **5. PERIODS OF MAINTENANCE (132-34)**

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering office's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering office may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering offices should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if the maintenance is to be continued during the subsequent period.

#### **6. UTILIZATION LIMITATIONS -(132-33, AND 132-34)**

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are by site and by activity. An activity is defined as a cabinet level or independent activity. The software may be used by any subdivision of the activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple activities have joint projects that can be satisfied by the use of the software placed at one activity's site. This would allow other activities access to one activity's database. For ordering activity public domain databases, user activities and third parties may use the computer program to enter, retrieve, analyze and present data. The user activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user activity.

(3) Except as is provided in paragraph 8.b(2) above, the activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the activity who have the activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the activity to use software, documentation, or information therein, which the activity may already have or obtains without restrictions.

(4) The activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the activity has the right to transfer the software to another site if the activity site for which it is acquired is deemed to be unsafe for activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial

legend.

**7. SOFTWARE CONVERSIONS - (132-33)** Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. **Please refer to the Software License Agreement in the pricing section for complete information on conversions.**

**8. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY** The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

**9. RIGHT-TO-COPY PRICING**

Contractor does not offer Right-To-Copy licenses.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR GENERAL PURPOSE  
COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132-  
50)**

**1. SCOPE**

a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.

b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

**2. ORDER** Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

**3. TIME OF DELIVERY** The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

**4. CANCELLATION AND RESCHEDULING**

a. The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.

b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c. The ordering activity reserves the right to substitute one student for another up to the first day of class.

d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

**5. FOLLOW-UP SUPPORT** The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training courses. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

**6. PRICE FOR TRAINING** The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

**7. INVOICES AND PAYMENT** Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). **PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.**

## 8. FORMAT AND CONTENT OF TRAINING

- a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.
- b. For hands-on training courses at the Contractor's location, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training **at the successful completion of each certification test. A Certificate of Completion is used at the end of each User Training class. The Developer certification issued upon successful completion of the certification practical examination.**
- d. The Contractor shall provide the following information for each training course offered:
- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
  - (2) The length of the course;
  - (3) Mandatory and desirable prerequisites for student enrollment;
  - (4) The minimum and maximum number of students per class;
  - (5) The locations where the course is offered;
  - (6) Class schedules; and
  - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

**Will be billed at actual expense pursuant to the FTR/JTR.**

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES  
(SPECIAL ITEM NUMBER 132-51)**

**1. SCOPE**

- a. The prices, terms and conditions stated under Special Item Number 132-51 Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

**2. PERFORMANCE INCENTIVES**

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

**3. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

**4. PERFORMANCE OF SERVICES**

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering office.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering office.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT/EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

**5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**6. INSPECTION OF SERVICES** The Inspection of Services–Fixed Price (AUG 1996) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

**7. RESPONSIBILITIES OF THE CONTRACTOR** The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 Rights in Data – General, may apply.

**8. RESPONSIBILITIES OF THE ORDERING ACTIVITY** Subject to security regulations, the ordering office shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

**9. INDEPENDENT CONTRACTOR** All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

**10. ORGANIZATIONAL CONFLICTS OF INTEREST**

a. Definitions. “Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract. “Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor. An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed Government contract, without some restriction on activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering offices may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

**11. INVOICES** The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering office on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

**12. PAYMENTS** For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-andMaterials/Labor-

Hour Proposal Requirements—Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:

- (a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- (b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
  - (1) The offeror;
  - (2) Subcontractors; and/or
  - (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

**13. RESUMES**

Resumes shall be provided to the GSA Contracting Officer or the ordering activity upon request.

**14. INCIDENTAL SUPPORT COSTS** Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

**15. APPROVAL OF SUBCONTRACTS** The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

**16. TRAVEL EXPENSES** All travel expenses associated with the provision of Profession Information Technology Services (including, but not limited to, transportation fare, per diem, local travel expenses, etc.) will be billed at actual expense pursuant to the FTR/JTR.

**17. DESCRIPTION OF IT SERVICES AND PRICING**

Please see the price list section for descriptions of Professional IT Services and associated pricing.

**USA COMMITMENT TO PROMOTE  
SMALL BUSINESS PARTICIPATION  
PROCUREMENT PROGRAMS**

**PREAMBLE**

Ai Metrix, Inc. provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

**COMMITMENT**

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in Federal Government contracts. To accelerate potential opportunities please contact:

**Michael Fink**  
**Phone: 858-812-7300**  
**[Michael.Fink@kratosdefense.com](mailto:Michael.Fink@kratosdefense.com)**

**SUGGESTED blanket purchase agreement (BPA) format in the proposed fss it schedule pricelist.**

**BEST VALUE  
BLANKET PURCHASE AGREEMENT  
FEDERAL SUPPLY SCHEDULE  
(Insert Customer Name)**

In the spirit of The Federal Acquisition Streamlining Act

(Ordering Activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s)

\_\_\_\_\_.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming arrangements are permitted with Federal Supply Schedule contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

ORDERING ACTIVITY

DATE

CONTRACTOR

DATE

**(CUSTOMER NAME)  
BLANKET PURCHASE AGREEMENT**

Pursuant to GSA Federal Supply Schedule Contract Number(s)\_\_\_\_\_, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (Ordering Activity):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

**MODEL NUMBER/PART NUMBER      \*SPECIAL BPA DISCOUNT/PRICE**

(2) Delivery:

**DESTINATION**

**DELIVERY SCHEDULES / DATES**

(3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be \_\_\_\_\_.

(4) This BPA does not obligate any funds.

(5) This BPA expires on \_\_\_\_\_ or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

**OFFICE**

**POINT OF CONTACT**

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

## **BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS”**

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions of the Federal Supply Schedule Contract. Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors. Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customer’s needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
- Customers make a best value selection.

**Ai METRIX, INC.**  
**PROFESSIONAL INFORMATION TECHNOLOGY LABOR CATEGORY DESCRIPTIONS**

**Job Title: PS SE System Engineer**

**Position Summary:**

- Responsible for the development and execution of NeuralStar deployment plans to include software installation and configuration.
- Responsible for the development of specialized production demonstrations.
- Supports the Ai Metrix sales team to including technical product presentations, requirements definition and product demonstrations.

**Education and Training Experience:**

- 4-8 years of network engineering experience in various capacities.
- B.A. or B.S. in computer science, information technology, software engineering, electrical engineering, network engineering, or programming experience in a commercial environment.

**Knowledge, Skills and Abilities:**

- Experience with programming languages such as Visual Basic, C, C#, C++.
- Familiar with database design and object oriented methodologies.
- Must be able to learn new applications and software tools quickly and independently.
- Prior experiencing with multiple network technologies including ATM, IP, SONET, TDM, etc.
- Experience with other network management tools such as HP OpenView, Concord E-Health
- Good written and verbal communication skills.
- Good analytical skills and understanding of the software development life cycle.
- Must be familiar with Windows 2000/2003 operating system environment, and MS Office tools, including Outlook and Access.
- Experience with MS Visual Studio is highly desirable.

**Operational**

- Solid written and verbal communication skills.
- Demonstrated ability to:
  - ○ Learn new applications and software tools quickly and independently.
  - ○ Function as a responsible, self-motivated team member
  - ○ Successfully function in a changeable, fast-paced environment
  - ○ Use practical, common sense, and functionally sound methodology/approach to problem solving

## **Job Title: PS PM Project Manager**

### **Position Summary**

*Primary professional services deployment project manager.*

- Function effectively in a commercial/government multi-project environment
- Project Management using SMART Goals: Specific, Measurable, Agreed-upon, Realistic and Time-bound

### **Education and Training**

- 4-8 years of project or program management in various capacities
- Certification, Training, or Project Management Institute coursework
- B.A. or B.S. in Business Administration, Computer Science, Information Technology, or equivalent experience
- Or an appropriate combination of the above

### **Knowledge, Skills and Abilities Technical**

- Proven ability to plan projects, define scope, estimate and control time, estimate and control cost, quality assurance, human resource management; creation, collection and distribution of information, risk management, and procurement.
- Knowledge of I.T. and/or network implementations in commercial and/or government environments
- Familiarity with system management applications, project management applications, business processes and cost containment techniques
- Ability to prioritize use of resources and maximize achievement through monitoring, evaluation, decision and action.

### **Operational**

- Solid written and verbal communication skills.
- Demonstrated ability to:
  - ○ Learn new applications and software tools quickly and independently.
  - ○ Function as a responsible, self-motivated team member
  - ○ Successfully function in a changeable, fast-paced environment
  - ○ Use practical, common sense, and functionally sound methodology/approach to problem solving

## JOB TITLE: PS DE DEPLOYMENT ENGINEER

### **Position Summary**

*I.T. Engineer certified on all NeuralStar framework components.*

- Responsible for the deployment of NeuralStar solutions to include software installation and configuration.

### **Education and Training**

- 4-8 years of network operations or engineering experience in various capacities.
- B.A. or B.S. in Computer Science, Information Technology, Software Engineering, Electrical Engineering, Network Engineering, or programming experience in a commercial or government environment.
- Certification, Training, or applicable coursework
- An appropriate combination of the above

### **Knowledge, Skills and Abilities Technical**

- Solid analytical skills and understanding of network operations processes
- Windows 2000/2003 Server Installation and Configuration Experience
- Windows XP Installation and Configuration Experience
- Client/Server, COM, Telecommunications Network Management software experience
- Experience with other network management tools such as HP OpenView, Concord E-Health
- Ability to perform basic configuration of network technologies such as IP and ATM

### **Operational**

- Solid written and verbal communication skills.
- Demonstrated ability to:
  - Learn new applications and software tools quickly and independently.
  - Function as a responsible, self-motivated team member
  - Successfully function in a changeable, fast-paced environment
  - Use practical, common sense, and functionally sound methodology/approach to problem solving

## JOB TITLE: PS SDE SENIOR DEPLOYMENT ENGINEER/TECHNICAL LEAD

### **Position Summary**

*I.T. Engineer certified on all NeuralStar framework components.*

- Responsible for the deployment of NeuralStar solutions to include software installation and configuration.
- Responsible of the leadership of on site deployment teams including customer interface.

### **Education and Training**

- 4-8 years of network operations or engineering experience in various capacities.
- B.A. or B.S. in Computer Science, Information Technology, Software Engineering, Electrical Engineering, Network Engineering, or programming experience in a commercial or government environment.
- Certification, Training, or applicable coursework
- An appropriate combination of the above

### **Knowledge, Skills and Abilities Technical**

- Demonstrated leadership of technical teams implementing Enterprise Software Solutions
- Solid analytical skills and understanding of network operations processes
- Windows 2000/2003 Server Installation and Configuration Experience
- Windows XP Installation and Configuration Experience
- Client/Server, COM, Telecommunications Network Management software experience
- Experience with other network management tools such as HP OpenView, Concord E-Health
- Ability to perform basic configuration of network technologies such as IP and ATM

### **Operational**

- Solid written and verbal communication skills.
- Demonstrated ability to:
  - Learn new applications and software tools quickly and independently.
  - Function as a responsible, self-motivated team member
  - Successfully function in a changeable, fast-paced environment
  - Use practical, common sense, and functionally sound methodology/approach to problem solving

## **Job Title: PS SAA Senior Application Architect**

### **Position Summary**

*I.T. Engineer certified on all NeuralStar framework components and all applications.*

- Support multiple concurrent implementation projects
- Deploy and support customer Operations Support Systems (OSS) solutions based on the NeuralStar product family
- Design, develop, integrate, implement, test, and support Visual Basic applications, network management software, browser-based Internet and Intranet applications.

### **Education and Training**

- 4-8 years of software development experience in various capacities
- B.A. or B.S. in Computer Science, Information Technology, Software Engineering, Electrical Engineering, Network Engineering, or programming experience in a commercial or government environment.
- Certification, Training, and/or coursework
- An appropriate combination of the above

### **Knowledge, Skills and Abilities Technical**

- Demonstrated leadership of technical teams implementing Enterprise Software Solutions
- Solid analytical skills and understanding of the software development life cycle
- Experience with programming languages such as Visual Basic, C, C#, C++.
- Familiar with database design and object oriented methodologies.
- Must be able to learn new applications and software tools quickly and independently.
- Prior experiencing with multiple network technologies including ATM, IP, SONET, TDM, etc.
- Good written and verbal communication skills.
- Good analytical skills and understanding of the software development life cycle.
- Must be familiar with Windows 2000/2003 operating system environment, and MS Office tools, including Outlook and Access.
- Experience with MS Visual Studio is highly desirable.
- Client/Server, COM, Telecommunications Network Management software experience
- Experience with other network management tools such as HP OpenView, Concord E-Health
- Ability to perform basic configuration of network technologies such as IP and ATM

## **PROFESSIONAL SERVICES WARRANTIES AND DISCLAIMERS**

**Limited Warranty.** Ai Metrix warrants that from the date of acceptance of the professional services performed, as acceptance is defined in the applicable Statement of Work, the Professional Services rendered will conform in all material respects to the agreed-upon Statement of Work. In the event of any breach of this warranty, provided that notice of the breach is given in writing to Ai Metrix not later than fifteen (15) calendar days from discovery of such breach, Ai Metrix will take the necessary steps to resolve the breach in a manner consistent with the Maintenance and Support Services Agreement.

**Exclusions From Ai Metrix Warranty.** The Professional Services Warranty above shall not apply to any modification of the application(s) developed through the professional services provided by Ai Metrix on behalf of Licensee (except to the extent of any modifications made by Licensor, its agents or subcontractors, or by Licensee pursuant to Licensor's instructions, or except to the extent permitted by the applicable Statement of Work); fault or negligence of Client; improper or unauthorized use of the application(s); use of the application(s) in a manner for which it was not designed; any combination of the application(s) with other software (other than Licensor Software or other software with which the application(s) was designed to be used).

## NEURALSTAR SOFTWARE LICENSE AGREEMENT

### 1. DEFINITIONS

1.1 As used in this Agreement, the following terms have the following meanings:

“**Affiliate**” means, with respect to a party hereto, any Person that directly or indirectly now or hereafter controls, is controlled by, or is under common control with that party, including, without limitation, with respect to Licensee.

“**Agents**” shall mean, with respect to each party any, consultants or any other Person acting for or on behalf of or in support of such party.

“**Cold Backup**” shall mean a system that is offline and the database is not accessible for online updating. Downtime required.

“**Commencement Date**” shall mean the date first set forth above or date set by Licensor.

“**Confidential Information**” shall mean any and all information related to a party that such party treats as confidential, and any information relating to third parties that such party has an obligation to treat as confidential, which is disclosed by such party to the other party in the course of realizing its rights and performing its duties and obligations under this Agreement, whether such information is in oral, written, graphic or electronic form; provided that if such information (i) is in writing or other tangible form, such information is clearly marked as “proprietary” or “confidential” when disclosed to the receiving party or (ii) is not in tangible form, such information is identified as “proprietary” or “confidential” when disclosed and is summarized in a writing which is marked “proprietary” and “confidential” and is delivered to the receiving party within thirty (30) days after the date of disclosure. Without limiting the generality of the foregoing, the Confidential Information of Licensee shall include Licensee data, the details of Licensee’s computer operations, and information, data and materials relating to the business, trade secrets or technology of Licensee, including, without limitation, of its Affiliates, customers, clients, employees and Agents. Without limiting the generality of the foregoing, the Confidential Information of Licensor shall include Licensor Products, Innovations, Licensor data, the details of Licensor’s operations, and information, data and materials relating to the business, trade secrets, business affairs and technology of Licensor, including, without limitation, of its Affiliates, customers, clients, employees and Agents. Confidential Information shall not include information that (i) is publicly available through no fault of the other party, (ii) is publicly disclosed by the disclosing party without restrictions on confidentiality, (iii) was or later is rightfully developed or obtained by the other party from independent sources free from any duty of confidentiality, (iv) was independently developed by the recipient without reference to the Confidential Information, or (v) is released with the prior written approval of the owner of the Confidential Information. “**Hot Backup**” shall mean an online standby system, connected to the network, which receives regular updates and is standing by ready to take over immediately. No downtime required.

“**Innovations**” shall mean all inventions, improvements, works of authorship and other innovations of any kind, including any improvements or modifications to a Licensor Product, that Licensor, or Persons working for or through Licensor, may make, conceive, develop or reduce to practice, alone or jointly with others, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

“**Licensee**” shall mean CLIENT

“**Licensor**” shall mean Ai Metrix, Inc. or its Affiliates

“**Licensor Documentation**” or “**Documentation**” shall mean any and all manuals, specifications, user guides and other documentation regarding the Licensor Software prepared by or for Licensor in connection with the Licensor Software.

“**Licensor Products**” or “**Products**” shall mean Licensor Software and Licensor Documentation, but does not include any computer software, computer hardware, documentation or other items that Licensor is precluded from distributing to Licensee by virtue of any existing license or distribution agreement with any other Person.

“**Licensor Software**” or “**Software**” shall mean the object code only of computer software systems, subsystems and programs (including programs intended for demonstration or tutorial purposes) produced and/or distributed by Licensor and any and all improvements, corrections, modifications, updates and enhancements related thereto. “**MAC Address**” or “**Media Access Control address**”, shall mean a hardware address that uniquely identifies each node of a network. The MAC layer interfaces directly with the network medium. Consequently, each different type of network medium requires a different MAC layer.

“**Person**” means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, government, governmental agency, regulatory authority or other entity of any nature.

“**Source Code**” refers to a software program in its human readable form which is not executable by a computer directly and which must be converted into machine language by compilers, assemblers and/or interpreters.

“**Warm Backup**” Shall mean a system that is turned on periodically to receive updates from the online system. Short downtime required.

1.2 As used in this Agreement “including” shall mean “including, but not limited to.”

## 2. LICENSE

2.1 This Agreement shall be effective on the Commencement Date and shall continue thereafter until terminated in accordance with its terms.

2.2 Licensor hereby grants to Licensee a perpetual, worldwide, non-exclusive license, transferable only in accordance with this Agreement, to use, in accordance with the terms and conditions of this Agreement (including, without limitation, any restrictions set forth herein), the Licensor Software and the related Licensor Documentation identified in Schedule A (as the same may be updated or supplemented from time to time in accordance with Section 2.3). All rights not expressly granted to Licensee by this Agreement shall remain in, and are reserved by, Licensor.

2.3 Licensor Software and Licensor Documentation may be accessed and used by Licensee and its employees only in connection with Licensee’s business. Licensee shall require such employees to comply with the terms and conditions of this Agreement and Licensee shall be fully liable for any breach of this Agreement by its employees. Access to the Licensor Software and Licensor Documentation shall be limited as described in this Article 2.

2.4 Licensor Software and Licensor Documentation shall be subject to the restrictions set forth in this Agreement as well as the restrictions set forth in Licensor Documentation; provided, however, that in the event of any conflict between Licensor Documentation and any other portion of this Agreement, such portion of this Agreement shall take precedence. Licensor Software and Licensor Documentation may be modified, revised, supplemented and updated by Licensor in improvements, enhancements and updates thereto as Licensor determines, at its sole discretion.

2.5 If applicable, Licensor Software described in Schedule A as a “Designated Computer” license or a “Designated Location” license may be installed and utilized only as follows:

(a) If a Designated Computer(s) is specified for the Licensor Software, Licensee may change the Designated Computer(s) to another make, model and type of computer(s), and the platform(s) to another type of platform(s), provided that any such change must be compatible with the Licensor

Software. Licensee may change the Designated Computer to another Computer, and such other Computer shall be deemed the Designated Computer for the Software. Following such a change of Designated Computer, Licensee shall cease using the Software on the replaced Computer. Following such a change of Designated Computer(s), Licensee shall give prompt written notice (but in any event, within 5 days of such change) of such change to Licensor. Licensee is entitled to “two” free transfers per year. Licensee will incur a fee equal to five (5) percent of software license cost for subsequent transfers.

(b) If a Designated Location(s) is specified for Licensor Software, Licensee may change the Designated Location to another location(s), and such other location(s) shall be deemed the Designated Location(s) for the Software. Following such a change of Designated Location(s), Licensee shall cease using the Software at the replaced location. Further, Licensee shall give prompt written notice (but, in any event, within 5 days of such change) to Licensor of such change to Licensor, i.e., by stating the address(es) of the new location(s) and certifying that the applicable Software is not located at the replaced location. Failure to adhere to the recommendations in Schedule A, may materially, adversely or substantively affect the efficacy of the Licensor Software for which Licensor shall have no liability. Licensee is entitled to “two” free relocations. Licensee will incur a fee equal to five (5) percent of software license cost for subsequent relocations.

**2.6** If applicable, Software described in Schedule A as a “Designated User” license or a “Designated Subscriber” license shall be subject to the limit(s) on the number of “Users” and “Subscribers” specified in Schedule A.

**2.7** If applicable, Software described in Schedule A as “NeuralStar Designer” or “Development Environment”, Licensee shall restrict use of this Software to a Lab or non-production environment. This software is not authorized to be used in an on-line Operational network environment.

**2.8** Licensee is licensed to use only the binary format of the Licensor Software. Licensee shall not (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the Source Code of the Licensor Products, (b) permit any Affiliate or other third party to use the Licensor Products, (c) process or permit to be processed the data of any other party, (d) use the Licensor Products in the operation of a service bureau, or (e) with respect to Software licensed for a Designated Location, allow access to the Licensor Products through any terminals not located at the Designated Location. Licensee may not bypass license server components and all nodes running Ai Metrix software must have a unique MAC Address with an individual license provided from Ai Metrix. License file must contain corresponding MAC Address matching the node’s MAC Address.

**2.9** As between Licensor and Licensee, Licensee agrees that all right, title and interest in the Licensor Products, including, without limitation, in any patent, copyright, trademark and other intellectual property, and all copies thereof in whatever form, shall at all times remain solely with Licensor. Licensor specifically retains and reserves all right, title and interest to any improvement, enhancement or modification to the Licensor Products made by Licensor. Licensee shall not be an owner of any copies of the Licensor Products; provided, however, that Licensee is hereby licensed to use such copies in accordance with the terms and conditions of this Agreement.

**2.10** Licensee, solely to enable it to use the Licensor Software, may make one (1) copy of Licensor Software to the extent necessary for cold backup, archival and disaster recovery purposes at no additional charge. Further, Licensee may make copies of the Licensor Documentation to the extent reasonably necessary for use of the Licensor Software in accordance with the terms and conditions of this Agreement. All copyright or proprietary notices in the original must be included in such copies of Licensor Software and Licensor Documentation. Any copy of the Licensor Products made by Licensee shall remain the exclusive property of Licensor. If desired, Licensee may procure rights to use Licensor Software in a “Hot Backup” or “Warm Backup” mode as outlined in Schedule A.

**2.11** Licensee acknowledges that certain Licensor Products may be subject to the export laws and regulations of the United States (“Export Laws”). Licensee agrees to comply with relevant Export Laws and not to

export the Licensor Products outside the United States without the prior express written consent of Licensor.

**2.12** Licensee specifically agrees that each of the terms and conditions of this Article 2 are material and that a failure of Licensee to comply with any of these terms and conditions shall constitute sufficient cause for Licensor to terminate this Agreement and any license granted hereunder. The presence of this Section 2.12 shall not be relevant in determining the materiality of any other provision or breach of this Agreement by either party.

### 3. ACCEPTANCE

Acceptance by Licensee of the Software shall occur, or be deemed to occur, by Licensee on the date on which the Software has been delivered.

### 4. OTHER OBLIGATIONS

**4.1 Access to Facilities and Employees.** Licensee shall provide Licensor with access to the Licensee's equipment, facilities and employees, and shall otherwise cooperate with Licensor, as reasonably necessary for Licensor to perform its obligations under this Agreement; provided, however, that (a) Licensor shall comply with the reasonable requirements of Licensee and shall be subject to the limitations imposed by Licensee with respect to such access, including but not limited to, building, equipment, system and security requirements and limitations, and (b) the performance of any such activities shall be subject to such scheduling as shall be mutually agreed between the parties.

**4.2 Notices and Certifications.** Licensee shall give written notice to Licensor whenever Licensee intends to increase the number of Designated Locations, Users and/or Subscribers of the Licensor Products; provided, however, that such notice shall only be required to the extent that such increase would trigger an increase in the fees applicable thereto. Further, Licensee, as applicable, shall promptly complete and return to Licensor periodic certifications, which Licensor in its reasonable sole discretion may from time to time send to Licensee (but no more than once quarterly), certifying the then-current number of Designated Locations, Users and Subscribers of the Licensor Products.

#### 4.3 Certain Legal Requirements.

(a) Licensee shall be responsible, at its expense, for complying with all laws and regulations applicable to Licensee in each jurisdiction in which Licensee performs its business activities and uses the Licensor Products. Licensee shall indemnify and hold harmless Licensor (and Licensor's Affiliates, and the respective directors, officers, employees and Agents of Licensor and of its Affiliates) from and against all actions, claims, damages or liabilities (including reasonable attorneys' fees) arising out of any violation by Licensee of any such laws or regulations, except to the extent caused by the Licensor Products.

(b) Licensor shall be responsible, at its expense, for complying with all laws and regulations applicable to Licensor in each jurisdiction where Licensor distributes the Licensor Products. Licensor shall indemnify and hold harmless Licensee (and Licensee's Affiliates, and the respective directors, officers, employees and Agents of Licensee and of its Affiliates) from and against all actions, claims, damages or liabilities (including reasonable attorneys' fees) arising out of any violation by Licensor of any such laws or regulations.

**4.4 Change Control Process.** If Licensee desires to make any changes to Schedule A, Licensee shall notify Licensor of such changes and Licensor shall promptly deliver to Licensee a proposal describing the effect of such changes on the delivery schedule and the cost and the scope of Licensor's duties and obligations under the Agreement. If Licensee accepts Licensor's proposal and elects to implement the changes, Schedule A shall be deemed amended thereby and Licensor shall perform as provided in Schedule A as so amended.

## 5. PAYMENTS

**5.1 License Fees.** Licensee shall pay to Licensor the license fee(s) stated on Schedule A in accordance with the payment terms stated set forth herein below:

(a) All invoices will be issued in conjunction with shipment of the Licensor Products following the receipt of purchase orders reflecting the pricing set forth in Schedule A. Invoices will be issued to the Licensee upon shipment and are due and payable 30 days after invoice date.

(b) All undisputed charges shall be deemed overdue if they remain unpaid thirty (30) days from the date of Licensor's invoice. Any undisputed charges payable by Licensee hereunder which remain unpaid after the due date shall be subject to late penalty charges equal to one-and-onehalf percent (1.5%) per month until paid. Licensor shall be notified of all disputed invoices within fifteen (15) days of Licensee's receipt of such invoice. Licensee's and Licensor's accounting departments shall attempt to reasonably resolve said dispute within ten (10) days thereafter. Should such accounting departments be unable to resolve the dispute within ten (10) days, each party shall designate a senior executive officer of its company to resolve the dispute. Should such officers be unable to resolve the dispute within a further thirty (30) days, the dispute shall be submitted to a third party arbitrator acceptable to both parties, such acceptance not to be unreasonably withheld or denied. In such case, each party shall incur its own legal expenses, however, all arbitrator expenses shall be paid as determined by the arbitrator. Invoices not disputed within fifteen (15) days of issuance shall be deemed undisputed.

**5.2 Expense Reimbursements.** Licensee shall reimburse Licensor for its reasonable travel, lodging, meal and related expenses incurred by Licensor personnel in providing any services to Licensee. Any such expenses shall be invoiced to Licensee on a monthly basis, which invoices shall be accompanied by copies of paid receipts. Licensor shall make all reasonable attempts to obtain the most favorable pricing for all expenses subject to this Section 5.2.

**5.3 Taxes.** The fees and other amounts set forth in Schedule A do not include any taxes of any jurisdiction that may be assessed or imposed upon the copies of the Licensor Software and Licensor Documentation, in connection with the Installation Services provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement. Licensee shall, in addition to the other amounts payable under this Agreement, pay all sales, use, excise, value added, personal property, export, import or other taxes (whether federal, state, local, foreign or otherwise) which are levied or imposed by reason of the transactions contemplated by this Agreement. Licensee shall directly pay any such taxes assessed against it, and Licensee shall promptly reimburse Licensor for any such taxes payable or collectable by Licensor. If Licensee pays any tax to Licensor and the tax is later determined not to be due or is subject to a refund, Licensor shall immediately refund the amount thereof to Licensee, together with any interest paid by the taxing authority.

If Licensee disputes and refuses to pay any tax, Licensee agrees to indemnify and hold Licensor harmless if such tax is later determined to be due and payable by Licensee. Licensor agrees that Licensee is not responsible hereunder for paying, collecting or withholding any federal, state or local income or employment taxes or any workmen's compensation, unemployment or social security taxes or contributions. Licensor shall, when reasonably requested by Licensee, assist and cooperate with Licensee in challenging the validity of any such tax that Licensee may pay under the terms of this Agreement.

## 6. INDEMNITY AND EXCEPTIONS

### 6.1 INDEMNIFICATION BY LICENSOR.

(a) Licensor shall indemnify, defend and settle any action brought against Licensee, its officers, directors, employees and Agents (including attorney fees and costs) based on a claim that a Licensor Product infringes or misappropriates any United States copyright or patent and shall pay the amount of any settlement or award against Licensee to the extent arising from such defense or settlement by Licensor, provided that Licensee shall have (a) notified Licensor promptly in writing of the claim (but in any event, within ten (10) days of Licensee's receipt of

notice thereof), (b) given reasonable assistance to Licensor in the prosecution of the claim (at Licensor's sole expense), and (c) given Licensor exclusive authority to defend or settle such claim. If, as a result of a final and binding settlement among the parties or a final determination by a court of competent jurisdiction, the Licensor Product is held to infringe and its use is enjoined, Licensor shall have the option, at its own expense, to (1) provide Licensee with the right to continue using the Licensor Product, (2) replace the Licensor Product with a non-infringing product, provided such replacement product does not materially interrupt the business activities of Licensee and/or diminish the functionality or the level of service or features of the Licensor Product, (3) modify the Licensor Product so it becomes non-infringing, provided such modified product does not materially interrupt the business activities of Licensee and/or diminish the functionality or the level of service or features of the Licensor Product or (4) return a pro rata portion of the license fee(s) paid to Licensor by Licensee amortized on a monthly straight-line basis over five (5) years beginning on the Commencement Date (for example, if Licensor were to terminate the license pursuant to this provision three (3) years following the Commencement Date, Licensee would be entitled to a refund equal to two-fifths (2/5ths) of the total license fee paid for the terminated license). Licensor shall have no liability to Licensee for any claim or action alleging infringement or misappropriation based upon (i) any modification of the Licensor Product by or on behalf of Licensee (except to the extent of any modifications by Licensor, its Agents or subcontractors or except to the extent permitted by this Agreement), (ii) fault or negligence of Licensee, (iii) improper or unauthorized use of the Licensor Product, (iv) use of the Licensor Product in a manner for which it was not designed or (v) any combination of the Licensor Product with other software (other than Licensor Software or other software with which the Licensor Product was designed to be used). **THE FOREGOING STATES LICENSOR'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OF COPYRIGHTS, PATENTS AND OTHER THIRD-PARTY PROPRIETARY RIGHTS.**

(b) Licensor shall indemnify and hold Licensee harmless from any and all liabilities, causes of action, lawsuits, penalties, claims or demands (including the costs, expenses and reasonable attorneys' fees on account thereof) that may be made for injuries limited to personal injury, death and property damage arising directly out of or directly resulting from Licensor's act or omission. The foregoing obligations are contingent on Licensor having sole control of the investigation, defense and settlement of any such claim, provided that Licensor may not agree to any such settlement that imposes any additional liability on Licensee without Licensee's prior written consent, which shall not be withheld unreasonably. Licensee reserves the right to employ counsel at its own expense and participate in the defense and/or settlement of any claim. Licensee shall notify Licensor of any claim it becomes aware of and for which it believes Licensor is responsible for under this section promptly after Licensee becomes aware of such claim. Licensee shall provide Licensor with reasonable assistance in the defense of any such claim at Licensor's expense. Within thirty (30) days from receipt of notice from Licensee of a claim, Licensor shall acknowledge receipt of such notice to Licensee in writing and provide Licensee its position with respect to the allegations.

**6.2 Indemnification By Licensee.** Licensee agrees to indemnify, defend and settle any action brought against Licensor, its officers, directors, employees and Agents (including attorney fees and costs) with respect to any claim arising out of any act or omission of Licensee which is prohibited by this Agreement. In addition, Licensee agrees to indemnify, defend or settle any action brought against Licensor (including attorney fees and costs) for any claim arising out of use of the Licensor Product which is prohibited by this Agreement.

## **7. LIMITED WARRANTY; DISCLAIMERS**

### **7.1 Licensor Product Warranties.**

(a) Licensor warrants that, for a period of ninety (90) days following acceptance of Licensor Products, the Licensor Products will substantially comply with the specifications set forth in the Documentation; provided, that such Licensor Products are not (1) combined with programs or products, equipment, devices, software, systems or data, not provided or approved for use by

Licensor in combination with the Licensor Product (including without limitation, any software produced by Licensee for use with the Licensor Product) or (2) altered, modified or customized by any person or party, other than Licensor. With respect to Licensor Documentation, Licensor reserves the right to correct manuals due to typographical or clerical errors. In the event of any breach of the foregoing warranties, Licensor will, at its option, (i) repair the Licensor Product, (ii) replace the Licensor Product, or (iii) terminate this Agreement upon reasonable prior written notice to Licensee and refund any charges paid by Licensee. The parties agree that this warranty shall be a separate and distinct obligation from any that Licensor may have pursuant to a Maintenance and Support Agreement, if such an agreement is entered into by the parties.

(b) Licensor warrants that it is the sole owner of the Licensor Products, or to the extent that Licensor is not the sole owner of the Licensor Products, Licensor has the full right and authority to grant the license and rights under this Agreement, and that the Licensor Products will not infringe or otherwise violate any duly issued copyright, patent, trademark, trade secret or other intellectual property right. In the event of any breach of the foregoing warranties, Licensor, in addition to any other remedies available to Licensee pursuant to Section 6.1, may at its option, terminate this Agreement upon reasonable prior written notice to Licensee and refund any charges paid by Licensee.

(c) Licensor warrants that the Licensor Products as delivered to Licensee shall not contain any “back door,” “time bomb,” “drop dead device,” or other software routine which may disable the computer program either automatically, with the passage of time or under the control of any Person; nor shall it contain any “virus,” “Trojan horse,” “worm” or other routine which may permit unauthorized access by any Person, or on its own, disable, erase or otherwise harm or modify the Software or any data or other software whatsoever. In the event of any breach of the foregoing warranty, Licensor shall correct the non-conformity and shall indemnify and hold harmless Licensee with respect to any loss or damage arising there from.

**(d) EXCEPT AS OTHERWISE REQUIRED BY LAW OR AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE WARRANTIES SET FORTH IN THIS SECTION 7.1 SHALL BE LICENSEE'S EXCLUSIVE WARRANTIES WITH RESPECT TO LICENSOR PRODUCTS AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE REMEDIES STATED THEREIN ARE THE EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**

**7.2 Exclusions From Licensor Product Warranty.** The Licensor Product Warranty above shall not apply to any (a) modification of the Licensor Product by or on behalf of Licensee (except to the extent of any modifications by Licensor, its Agents or subcontractors or except to the extent permitted by this Agreement), (b) fault or negligence of Licensee, (c) improper or unauthorized use of the Licensor Product; use of the Licensor Product in a manner for which it was not designed or (d) combination of the Licensor Product with other software (other than Licensor Software or other software with which the Licensor Product was designed to be used).

### **7.3 LIMITATIONS OF LIABILITY.**

**EXCEPT FOR LIABILITY ARISING PURSUANT TO A BREACH OF SECTION 2 OR 8, EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE FEES ACTUALLY PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT. FURTHER, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER OR NOT FORESEEABLE, EXCEPT FOR LIABILITY ARISING PURSUANT TO A BREACH OF ARTICLES 2 OF 8.**

**7.4 Other Limitations.** Except as otherwise provided herein, the warranties made under this Agreement, and the rights, benefits and obligations under this Agreement, run only to the parties to this Agreement and their respective successors and assigns. Under no circumstances shall any other Person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement. Neither party shall have any rights or remedies against the other party except as specifically provided in this Agreement.

## **8. CONFIDENTIALITY, OWNERSHIP AND RESTRICTIVE COVENANTS**

**8.1 Confidential Information.** All Confidential Information disclosed by one party (“Disclosing Party”) to the other party (“Receiving Party”) in connection with or during the course of performance of this Agreement shall be treated as Confidential Information unless it is or later becomes publicly available through no fault of the Receiving Party or it was or later is rightfully developed or obtained by the Receiving Party from independent sources free from any duty of confidentiality. Confidential Information shall be held in strict confidence by the Receiving Party using at least the same standard of care as it uses to protect its own confidential information of a similar nature (but no less than reasonable care); and such Confidential Information shall not be disclosed by the Receiving Party except to persons with a “need to know” to perform this Agreement or as otherwise permitted by this Agreement, provided that such persons shall be subject to the confidentiality obligations herein contained. Receiving Party shall notify the Disclosing Party if it receives a subpoena or other legal process relating to the Disclosing Party’s Confidential Information. Receiving Party shall provide the Disclosing Party reasonable cooperation in any lawful effort to contest such subpoena or other legal process or demand.

**8.2 Non-Solicitation of Employees and Independent Contractors.** The parties agree that during the effective period of this Agreement and for a period of two (2) years thereafter, that neither party shall, directly or indirectly, either for its own account or on behalf of any other Person, solicit, suggest or request that any person employed by the other party leave his or her position with the other party to become employed with the soliciting party or any other Person. The parties further agree, during the term of this Agreement, and for a period of two (2) years thereafter, that neither party shall hire, or engage as an independent contractor, any person whose last position was an employee, or independent contractor of the other party without prior written consent of the other party.

**8.3 Notice and Remedy of Breaches.** Each party hereto shall promptly give written notice to the other party of any actual or suspected breach of any of the provisions of this Article 8, whether or not intentional, and each party hereto shall take all steps reasonably requested by the other party to prevent or remedy the breach.

**8.4 Enforcement.** Each party hereto acknowledges that any breach of the provisions of this Article 8 shall result in irreparable injury to the non-defaulting party for which money damages could not adequately compensate. If there is a breach, then the non-defaulting party shall be entitled, in addition to all other rights and remedies that it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. The existence of any claim or cause of action that any person may have against a party hereto shall not constitute a defense or bar to the enforcement of any of the provisions of this Article 8.

## **TERMINATION**

**9.1** The parties shall have the right to terminate this Agreement and any license granted hereunder, upon the occurrence of any of the following events:

(a) By Licensee, if a Licensor Product does not substantially conform in all material respects to the Licensor Documentation when operated on and with the equipment specified in the applicable Licensor Documentation, provided that:

(i) Licensee has notified Licensor in writing of the non-conformity of the Licensor Product, and

(ii) Licensor has failed to repair or replace the non-conforming Licensor Product within sixty (60) days following the notice described in Section 9.1(a)(i).

(b) By Licensee, upon nonperformance by Licensor of any other material term or condition of this Agreement, which nonperformance continues for a period of sixty (60) days following Licensee's written notice thereof.

(c) By Licensee, upon ten (10) days' prior written notice to Licensor, for any reason or for no reason at all. In such event, Licensor shall retain any and all prepaid fees.

(d) By Licensor, for the following:

(i) Nonpayment by Licensee of any amount due under the applicable invoices for the Licensor Product, which nonpayment continues for a period of thirty (30) days following Licensor's written notice thereof; or

(ii) Nonperformance by Licensee of any other material term of this Agreement, which nonperformance continues for a period of thirty (30) days following Licensor's written notice thereof.

(e) By either party, in the event the other party (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute (whether voluntary or involuntary), (iii) becomes insolvent or subject to direct control of a trustee, receiver or similar authority or (iv) has wound up or liquidated, whether voluntarily or involuntarily.

**9.2 Effect of Termination.** Upon termination of this Agreement or any license hereunder, whether pursuant to this Article 9 or otherwise, Licensee shall (a) discontinue all use of the applicable Licensor Software and Licensor Documentation, (b) promptly return to Licensor all copies of such Licensor Software, Licensor Documentation and the applicable Licensor Confidential Information then in Licensee's possession, and (c) deliver to Licensor a written notice certifying that all copies of the applicable Licensor Software have been permanently deleted from its computers in the form attached hereto as Schedule B. Licensee shall remain liable for all payments due to Licensor with respect to Licensed Products previously furnished and any services properly performed by Licensor through the date of termination. If this Agreement is terminated, then Licensor, upon the request of Licensee, shall promptly return to Licensee all Confidential Information of Licensee.

**9.3 Survival.** The provisions of Sections 6, 7 and 8 shall survive any termination of this Agreement, whether under this Article 9 or otherwise.

## 10. OTHER PROVISIONS

**10.1 Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class certified mail, or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, provided that a written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. Licensee's address for notices shall be CLIENT, CLIENT ADDRESS attn.CLIENT POC. Licensor's address for notices is Ai Metrix, Inc., 11911 Freedom Drive, Suite 510, Reston, VA 20190, and Attn. Director Operations. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section 10.1.

**10.2 Publicity.** Licensee consents to Licensor's inclusion of the name of Licensee on Licensor's customer list and other use of Licensee's name in any Licensor marketing.

**10.3 Parties in Interest; Successors.** Neither party may assign or transfer this Agreement or any license granted hereunder without the express prior written consent of the other party. Notwithstanding the foregoing, both parties shall have the right to assign and transfer this Agreement and the license granted

hereunder pursuant to the sale of all or substantially all of the assets of such party, whether by operation of law, by merger, sale or exchange of stock, consolidation, purchase of assets, acquisition or in any other means. This Agreement shall bind, benefit and be enforceable by and against Licensor and Licensee and to the extent permitted hereby, their respective permitted successors and assigns.

**10.4 Force Majeure.** Neither party hereto shall be liable for, nor shall such party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than the payment of money) as a result of a cause beyond its reasonable control, including any act of God or a public enemy, act of any military, civil or regulatory authority, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, or any other similar cause which could not have been prevented with the exercise of reasonable care by such party.

**10.5 Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures or Agents.

**10.6 Entire Understanding.** This Agreement, which includes and incorporates by reference the schedules referred to herein, states the entire understanding between the parties with respect to its subject matter (software licenses), and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. Without limiting the generality of the foregoing, no purchase order or purchase order acknowledgement may modify the terms and conditions of this Agreement.

**10.7 Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

**10.8 Severability.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.

**10.9 Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

**10.10 Applicable Law.** The parties hereto agree that the laws of the Commonwealth of Virginia without giving effect to the rules governing conflict of laws thereof.

**10.11 Copies.** Licensor and Licensee agree that a facsimile copy of this Agreement shall be considered an original for purposes of validity and enforcement of this Agreement.

## **ATTACHMENTS**

**Schedule A** Overview of Software, Licensing Details and Fees

**Schedule B** Certificate of Removal/Destruction of Ai Metrix Software

**Schedule C** Software Maintenance and Support

**SCHEDULE A**

**SOFTWARE LICENSE AGREEMENT**

OVERVIEW OF SOFTWARE, RESTRICTIONS AND FEES

**SOFTWARE DESCRIPTION:**

SOFTWARE	QTY	DESCRIPTION

**SOFTWARE RESTRICTIONS:**

SOFTWARE	DESIGNATED COMPUTER(S)	DESIGNATED LOCATION(S)	DESIGNATED ENVIRONMENT	DESIGNATED MODE (HOT BACKUP OR WARM BACK UP)	DESIGNATED SUBSCRIBERS

**NUMERICAL RESTRICTIONS**

SOFTWARE	DESIGNATED LOCATION(S)	DESIGNATED USERS	DESIGNATED SUBSCRIBERS*

**LICENSE FEES:**

SOFTWARE	QTY	UNIT LICENSE PRICE	TOTAL LICENSE FEES
TOTAL PRICE			

DOCUMENTATION DESCRIPTION:

SOFTWARE	DESCRIPTION

**ADDRESS FOR INVOICES:**

**CLIENT  
CLIENT ADDRESS**

\_\_\_\_\_  
Attention: Accounts Payable( Ai Metrix Invoices)

**SCHEDULE B**

**Certificate of Removal/Destruction of Ai Metrix Software**

The undersigned \_\_\_\_\_ (Individual or Partnership or Corporation), certifies the following:

1. **[Client Name]** has ceased using the Ai Metrix Software listed below (the “Software”).
2. All of the Software has been de-installed/removed from all **[Client Name]** systems/machines and is certified destroyed on **[Date]**. Any and all physical copies of the Software in **[Client Name]**'s possession will be returned to Ai Metrix on or before **[Date]**.
3. All local and backup copies of the Software have been destroyed and copies of the Software have not been provided to any other person, company, or entity.
4. The principal place of business of **[Client Name]** in the State of \_\_\_\_\_, is at \_\_\_\_\_, in the City of \_\_\_\_\_, County of \_\_\_\_\_.

**Licensed Ai Metrix Products**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

**[Client Name]**

By:  
Name:  
Title:  
Date:

## SCHEDULE C SOFTWARE MAINTENANCE AND SUPPORT

### 1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

**“Bug(s)”** means a reproducible malfunction of the Product reported to Ai Metrix by Licensee that prevents the Product from performing in accordance with the operating specifications described in the then current Documentation.

**“Case”** means a formal technical support request made by Licensee's authorized Contact Person for assistance as set forth in this Agreement and identified by Ai Metrix with a unique tracking identification number issued by Ai Metrix. The priority level of the Case shall be initially designated by Licensee as set forth herein.

**“Contact Person”** has the meaning given such term in Section 2.2.

**“Documentation”** shall mean any and all manuals, specifications, user guides and other documentation regarding the Software prepared by or for Ai Metrix in connection with the Software.

**“Emergency Release”** shall mean a new version of the Product that incorporates Fixes to one or more Level One Failures and/or Level Two Failures.

**“Essential Support”** means the standard baseline technical Support Services as set forth in this Agreement, including Updates, telephone support during normal office hours, internal web access, and response priorities set forth herein.

**“Failure”** shall mean a failure in the Product or a failure of the Product to conform substantially with its then-current Documentation. In the event the Failure is a result of Licensee's use of the Product in a manner other than that for which it was designed, Ai Metrix shall have no liability to Licensee under this Agreement or otherwise for any claim or action.

**“Fix”** shall mean the replacement of a portion or module of the Product to correct any Failure reported to Ai Metrix, which will include the Software, as applicable, and may include additions or replacements to the Documentation, at Ai Metrix's sole discretion.

**“Level One Failure (Critical)”** shall mean a Failure that prevents Licensee from using the Product in its production environment and there is no Workaround. A Level One Failure includes but is not limited to the database server, master controller pair, agent interface connectivity, and any production processes that are unable to run (i.e., when all data flow has stopped).

**“Level Two Failure (High)”** shall mean a Failure on a component of the Product that does not preclude operation in production, but requires an immediate Workaround. Level Two Failures only affect a portion of the production system, but the development or production system is down or impaired. Level Two Failures also occur when the development system ceases to work, when a process fails to run as designed or a production system is impaired by data flow problems, such as process or system performance.

**“Level Three Failure (Medium)”** shall mean a problem with the Product exists, but a defined Workaround is available.

**“Level Four Failure (Low)”** shall mean that a Product feature does not exist or does not function to the customer's expectations or requirements. (i.e. an Enhancement Request would be completed)

**“Maintenance Releases”** means a change in the version number of a Product indicated by a change in the third digit of a version number, i.e. from 8.0.1 to 8.0.2. Maintenance Releases are provided as needed in response to Licensee inquiry.

“**Major Functional Release**” means a change in the version number of a Product indicated by a change in the first digit of a version number, i.e. from 7.0.0 to 8.0.0.

“**Minor Functional Release**” means a change in the version number of a Product indicated by a change in the second digit of a version number, i.e. from 8.0.0 to 8.1.0.

“**Person**” means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, government, governmental agency, regulatory authority or other entity of any nature.

“**Premium Support**” means the services set forth in Essential Support plus access after normal office hours to Ai Metrix personnel via Primary/Backup pager for Level One Failures, accelerated response for Level Two Failures, an assigned technical support contact at Ai Metrix, quarterly account reviews, and the additional response priorities set forth herein.

“**Product(s)**” shall mean the Software and Documentation, but does not include any computer software, computer hardware, documentation or other items that Ai Metrix is precluded from distributing to Licensee by virtue of any existing license or distribution agreement with any other Person.

“**Software**” shall mean the object code only of computer software systems, subsystems and programs (including programs intended for demonstration or tutorial purposes) produced and/or distributed by Ai Metrix and any and all improvements, corrections, modifications, Updates and enhancements related thereto.

“**Support Services**” means the technical support provided by Ai Metrix to Licensee pursuant to this Agreement, which may include Essential Support and/or Premium Support.

“**Updates**” means collectively, Maintenance Releases, Minor Functional and Major Functional Releases. Updates do not include any Products for which Ai Metrix charges separately.

“**Workaround**” shall mean a modification to the procedures Licensee follows or data it supplies when using the Product, which is designed to enable the Product to operate without materially and adversely affecting Licensee’s ability to use the Product in its production environment.

**2. TECHNICAL SUPPORT SERVICES for Ai Metrix Direct Customers** In consideration for the fees described in the Order Form, Ai Metrix will provide the following Essential Support services.

**2.1 Required Customer Information.**

For efficient communications, Ai Metrix requires that the following information be prepared and available before contacting the Ai Metrix support services helpdesk:

- (a) Company Name;
- (b) Statement of Problem or Issue – Clearly defined production outage vs. non-production issue;
- (c) Licensed Product Version Number (NeuralStar 6.0 build X, NeuralStar 8.2.X)/ Hotfixes installed;
- (d) Module affect and version (Ncontrol.exe v 8.0.4.6);
- (e) Operating System (OS) Platform/Service Packs and Patches installed;
- (f) Database Type and Version;
- (g) Problem location, contact phone number and escalation policy (if required);
- (h) Complete text of error message, screen shot, log file, etc.;
- (i) Process steps and/or circumstances to reproduce the problem; and
- (j) Updates and reporting time frames, if applicable.

**2.2 Contacts and Alternate Contact Person.**

Licensee shall designate three (3) employees of Licensee who shall be the primary, alternate and backup contact persons. One (1) of these employees shall be designated as the primary contact for matters relating to Updates of the Product (each of which is a “**Contact Person**”).

Only the Contact Persons will be entitled to access Support Services.

### **2.3 Support Center Procedures.**

Upon being notified by Licensee of any Failure, Ai Metrix shall initiate work to advise Licensee of Ai Metrix’s plans to resolve Failure conditions, and provide a resolution of it to the extent and in accordance with the procedures set forth in Exhibit B, attached hereto.

### **2.4 Product Updates.**

Ai Metrix shall provide Licensee with new and interim versions of Products for no additional cost as part of the Support Services described herein whenever such versions are generally made available to Ai Metrix’s other customers.

Ai Metrix will notify Licensee of the availability of Updates via email or other mutually agreeable methods. As part of the Support Services, Ai Metrix will make available to Licensee, at no additional cost, each Minor Functional Release and Major Functional Release. Each Update is intended to replace a prior Product release.

### **2.5 Bug Fixes.**

Metrix shall exercise commercially reasonable efforts to correct any Bugs.

## **3. CONDITIONS OF SERVICE**

### **3.1 Retirement of Releases.**

Ai Metrix provides Essential Support services for a Product version from the date the Product version becomes generally available until such version is retired. Ai Metrix retires commercial releases of the Product as follows:

- a) One (1) month after the release of the subsequent Maintenance Release;
- (b) Six (6) months after the release of a subsequent Minor Functional Release; and
- (c) Twelve (12) months after the release of a subsequent Major Functional Release.

In all cases, Ai Metrix will provide support services with respect to questions regarding general “How-To” use of a retired release of the Product for twelve (12) months following its retirement.

### **3.2 Discontinued Products.**

Ai Metrix will notify the Licensee of any discontinued Products in advance. Ai Metrix will fully support a discontinued Product for six (6) months and support “How-To” type questions for up to 12 months.

### **3.3 Limitations and Reservations.**

Ai Metrix reserves the right to change the services in Support Services to take effect at the termination of the then current maintenance agreement term. Ai Metrix is not responsible for correcting any Failures that are (a) non-reoccurring or are not reproducible or (b) are from a source other than the Product. Ai Metrix may evaluate costs and resource allocation for any Failure if Failure resolution costs become unreasonable, in Ai Metrix’s sole discretion. Ai Metrix reserves the right to make revisions and enhancements to the Products, to cease providing Updates for any Product, to create new Products and to incorporate all or any portion of any existing Product into new Products, all as Ai Metrix deems appropriate, in its sole discretion.

AI METRIX MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT IT WILL BE ABLE TO SUCCESSFULLY REMEDY ANY FAILURE.

#### 4. TERMS AND TERMINATION

##### 4.1 Term.

The term of Support Services shall commence with the effective date of an Order Form and may be extended by Licensee each year for annual periods thereafter unless terminated by either party as provided herein.

##### 4.2 Termination.

Either party may terminate Support Service at the end of the then current term by giving written notice to the other party at least thirty (30) days prior to the end of any such term. Ai Metrix may suspend or cancel Support Services or this Agreement if Licensee fails to make payment of the fees as set forth in the Order Form. Either party may terminate Support Services or this Agreement if the other party breaches any of the terms and conditions hereof and the breach is not remedied within thirty (30) days after receiving written notice of such breach. In the event that Licensee is no longer licensed to use any Product of Ai Metrix, Support Services will terminate automatically.

#### 5. FEES AND PAYMENT

##### 5.1 Fees.

Fees for Support Services for the first year for any Product shall be specified in the applicable Order Form. Unless otherwise set forth in an Order Form, the fee for any renewal period shall be set forth in Ai Metrix's then prevailing price list. For Products licensed after Licensee's initial order, the term of Support Services will be set, and the fee therefore will be pro-rated, so that the coverage periods for all Products licensed to Licensee and covered by Support Services will coincide. When ordered, Support Service must be ordered for all components in the Product.

##### 5.2 Payment.

Fees will be billed on an annual basis, payable in advance.

##### 5.3 Lapse of Coverage.

In the event that coverage for Support Service lapses as a result of termination by Licensee for any reason or by Ai Metrix for Licensee's non-payment, renewal of such Support Service shall require payment by Licensee of a reinstatement fee to Ai Metrix equal to one hundred and fifty percent (150%) of the sum of the fees for any previously unpaid Support Service period(s) plus full payment for the pending annual period.

#### 6. EXCLUSIONS

Ai Metrix shall have no obligation to provide Support Services for:

- (a) Products that are modified without Ai Metrix's written consent;
- (b) Use of the Products other than in accordance with the Documentation; or
- (c) Products installed on any computer hardware or in combination with other software, except as specified in the Documentation.

#### **7. LIMITATION OF LIABILITY EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE FEES ACTUALLY PAID BY LICENSEE TO AI METRIX UNDER THIS AGREEMENT. FURTHER, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER OR NOT FORESEEABLE.**

## **8. MISCELLANEOUS**

### **8.1 Parties in Interest; Successors.**

Neither party may assign or transfer this Agreement without the express prior written consent of the other party. Notwithstanding the foregoing, both parties shall have the right to assign and transfer this Agreement pursuant to the sale of all or substantially all of the assets of such party, whether by operation of law, by merger, sale or exchange of stock, consolidation, purchase of assets, acquisition or in any other means. This Agreement shall bind, benefit and be enforceable by and against Ai Metrix and Licensee and to the extent permitted hereby, their respective permitted successors and assigns.

### **8.2 Force Majeure.**

Neither party hereto shall be liable for, nor shall such party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than the payment of money) as a result of a cause beyond its reasonable control, including any act of God or a public enemy, act of any military, civil or regulatory authority, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, or any other similar cause which could not have been prevented with the exercise of reasonable care by such party.

### **8.3 Entire Understanding.**

This Agreement, which includes and incorporates by reference the schedules referred to herein, states the entire understanding between the parties with respect to its subject matter (software licenses), and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. Without limiting the generality of the foregoing, no purchase order or purchase order acknowledgement may modify the terms and conditions of this Agreement.

### **8.4 Modifications and Waiver.**

No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

### **8.5 Severability.**

A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.

### **8.6 Headings.**

Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

### **8.7 Applicable Law.**

The parties hereto agree that this Agreement shall be governed by the laws of the Commonwealth of Virginia without giving effect to the rules governing conflict of laws thereof.

### **8.8 Copies.**

Ai Metrix and Licensee agree that a facsimile copy of this Agreement shall be considered an original for purposes of validity and enforcement of this Agreement.

## **ATTACHMENTS**

**Exhibit A** – Support and Maintenance Fees

**Exhibit B** – Service Level Objectives

[End of Agreement]

**Exhibit A**

**Support and Maintenance Fees :**

SOFTWARE COVERED	ANNUAL FEE

**Exhibit B**  
**Service Level Objectives**

***Support Services Schedule & Contact Information***

Office hours are from 6:00 a.m. to 5:00 p.m. prevailing Pacific Time, excluding weekends and holidays. Methods of support include helpdesk, web page, email and pager access.

Help Desk:	6:00 a.m. to 5:00 p.m. prevailing Pacific Time	
Phone:	1-800-388-3669	*
International:	1-916-941-2111	
Pager:	<Provided on date of signing>	
Email:	<a href="mailto:Support@KratosNetworks.com">Support@KratosNetworks.com</a>	
Web:	<a href="http://www.aimetrix.com/support.htm">http://www.aimetrix.com/support.htm</a> *	

Contact the Ai Metrix support services to obtain your user name and password.

***Case Initiation:***

After Licensee has reported a Case to Ai Metrix with the associated priority level, Ai Metrix shall:

- (a) Exercise commercially reasonable efforts to respond to Licensee's request for Support Services and assign technical support resources in accordance with the response times shown in the tables below; and
- (b) Provide progress reports in accordance with the response times shown in the tables below. Thereafter, Ai Metrix will communicate with Licensee as appropriate pursuant to mutually agreed upon requirements.

In Level One Failure Cases where the Licensee has purchased Premium Support, Ai Metrix, working with Licensee personnel, shall use commercially reasonable efforts, twenty-four (24) hours a day, seven (7) days a week, for disposition of the Case.

**Targeted Response Times:**

**Premium Support**

	<b>Response Time</b>	<b>Reporting Interval</b>
One	30 minutes, if reported via Primary pager to Ai Metrix, otherwise 1 business hour	Mutual agreement
Two	2 business hours	Once per business day or mutual agreement
Three	1 business day	Once per month or mutual agreement
Four	3 business days	Once per quarter or mutual agreement

**Workarounds and Downgrade of Failure Levels**

Ai Metrix may resolve a Level One Failure or Level Two Failure condition by either a Workaround or an Emergency Release. Whenever practicable, Ai Metrix will notify Licensee of a Workaround verbally, followed by a written confirmation. If a Workaround would not provide a resolution to the Failure condition (i.e., would not enable the Product to operate without materially and adversely affecting Licensee’s ability to use the Product in its production environment), Ai Metrix will use commercially reasonable efforts to provide an Emergency Release. If a Workaround is provided and resolves the Failure condition, the Level One Failure or Level Two Failure, as the case may be, will be downgraded to a Level Three Failure.

**Other Sources as Cause of Failure**

***In the event LICENSOR discovers that the cause of a NeuralStar failure is from a source other than the AI METRIX PRODUCT and/or SERVICES, LICENSOR will immediately notify LICENSEE of said cause and begin negotiation on reimbursement of any costs LICENSOR incurred above and beyond normal customer support entitlements. Additionally, LICENSOR will provide any necessary assistance to LICENSEE and/or LICENSEE’S vendors, if requested, at an agreed upon rate with LICENSEE, in an effort to assist in correcting the failure.***

**ESCALATION**

If no effective Case resolution or Workaround is achieved or no acceptable approach is evident within the following time lines, Ai Metrix will ensure that the Company resources set forth below are involved until an appropriate resolution or interim resolution target is in place:

If a Level One Failure is not resolved within 48 hours, Licensee and Ai Metrix will review the issue and mutually agree on the next course of action and costs associated with putting an engineer on-site to better assess and expedite problem resolution.

<b>Ai Metrix Action</b>	<b>Premium Level One Failure</b>	<b>Premium Level Two Failure</b>
Ai Metrix Customer Service management is notified. Product engineering resources are assigned to assist towards disposition.	2 hours	4 hours
Director of Customer Service is notified. Senior engineering resources are assigned.	4 hours	8 hours
Director of Development is notified. Account added to executive account review list. Code Red team engaged (Level One Failure only)	8 hours	24 hours

Part Number	Description	GSA	SIN
8X_BASE_FM_SNMPP	SNMP Fault Management - Unlimited (1) NeuralStar Event Management Platform (1) SNMP Management Interface Protocol	86,005.04	132-33
8X_BASE_PF_SNMPP	SNMP Performance Management - Unlimited (1) NeuralStar Event Management Platform(1) SNMP Poller	86,005.04	132-33
8X_FM/PF_SNMPP/PK	SNMP Fault and Performance Management Pack - Unlimited (1) NeuralStar Event Management Platform(1) SNMP Management Interface Protocol ) SNMP Poller	106,397.98	132-33
8X_ENT_FM/SNMPP/ASCI-II/PK	Enterprise Network Management Pack - Unlimited (1) NeuralStar Event Management Platform (1) SNMP Management Interface Protocol(1) Management Interface Protocol (choose any 1)	106,397.98	132-33
8X_ENT_FM/PF/SNMPP/ASCI-II/PK	Advance Enterprise Network Management Pack - Unlimited (1) NeuralStar Event Management Platform (1) SNMP Management Interface Protocol (1) Management Interface Protocol (choose any 1) (1) SNMP Poller	130,337.53	132-33
8X_BASE_MGNT	NeuralStar Event Management Platform (1) Master Controller (1) Web Server (1) NeuralStar Node (1) Concurrent Support Client (2) Concurrent Operator Clients	60,735.52	132-33
8X_PROT_SNMPP	SNMP Management Interface Protocol Priced per NeuralStar Node limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_UDP	UDP Management Interface Protocol Priced per NeuralStar Node Limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_TCP	TCP Management Interface Protocol Priced per NeuralStar Node limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_SSH	SSH Management Interface Protocol Priced per NeuralStar Node Limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_TELNET	TELNET Management Interface Protocol Priced per NeuralStar Node limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_X.25	X.25 Management Interface Protocol Priced per NeuralStar Node Limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_SERIAL	SERIAL GATEWAY Management Interface Protocol Priced per NeuralStar Node Limited to 32 concurrent connections	25,269.52	132-33
8X_PROT_SERIAL PEER	SERIAL PEER GATEWAY Management Interface Protocol Priced per NeuralStar Node	25,269.52	132-33

8X_PROT_XML	XML BRIDGE Management Interface Protocol Priced per NeuralStar Node Limited to 32 concurrent connections	25,269.52	132-33
8X_POLLER_SNMP	SNMP Measurement Poller Priced per NeuralStar Node	25,269.52	132-33
8X_POLLER_WMI	WMI Measurement Poller Priced per NeuralStar Node	25,269.52	132-33
8X_ENV_DEV	NeuralStar Designer Suite	34,579.35	132-33
8X_SEC_MSTR_CTRLR	Secondary Master Controller	30,589.42	132-33
8X_NS NODE	Additional NeuralStar Nodes	30,589.42	132-33
8X_ALRM SVC	Web Services - Alarm	15,073.05	132-33
8X_INV SVC	Web Services - Inventory	15,073.05	132-33
8X_CLIENT_OPR_5PK	5 Pack - Operator Clients	6,649.87	132-33
8X_CLIENT_OPR_10PK	10 Pack - Operator Clients	12,413.10	132-33
8X_CLIENT_OPR_50PK	50 Pack - Operator Clients	57,632.24	132-33
8X_CLIENT_SUPT_EA	Support Clients (Administration and Engineering)	3,546.60	132-33
8X_TRN_OPR_WEB	NeuralStar 8.0 OPERATOR UPGRADE (2 hours via web)	94.76	132-50
8X_TRN_OPR_1	NeuralStar OPERATOR training (1 day)	478.59	132-50
8X_TRN_ENG_3	NeuralStar ENGINEER Complete (3 Day)	1,435.77	132-50
8X_TRN_ENG_2	NeuralStar ENGINEER Only (2 day, see prerequisite courses)	957.18	132-50
8X_TRN_ADM_5	NeuralStar Administrator Complete (5 Day)	2,392.95	132-50
8X_TRN_ADM_2	NeuralStar Administrator Only (2 Day, see prerequisite courses)	957.18	132-50
8X_TRN_DEV_5	NeuralStar Developer Complete (5 Day)	2,392.95	132-50
8X_TRN_DEV_2	NeuralStar Developer Only (2 Day, see prerequisite courses)	957.18	132-50
7X_OP_AINODE	Ai Node, Additional Ai Nodes	17,733.00	132-33
7X_OP_CLIENT_FM	NeuralStar Rich Client (EA)	1,773.30	132-33
7X_OP_ENV/ADV_DEV1	NeuralStar Developer Suite (1 Standalone version, 1 User Seat, Non-Production Development Environment, Runs on only one machine)	31,032.75	132-33
7X_OP_PROT_AGNT	Protocol Agents (per Ai Node), Price is per each protocol agent: TCP/IP Agent, UDP Agent, TELNET Agent, X.25 Agent, Serial Peer Gateway	12,679.09	132-33
7X_OP_SEC_MSTR_CTRLR	Secondary Master Controller, System Redundancy Option	25,491.18	132-33
7X_OP_WEB/INT	NeuralStar Web Integrator (includes one instance each of Alarm Web Services, Inventory Web Services, XML Bridge, and Web Services SDK)	33,692.70	132-33
7X_OP_WEB/SVR	NetPortal WebAdvisor for Fault Management, WebAdvisor Server and 10 clients (internal use only)	12,413.10	132-33
7X_OP_WEB_CLIENT_FM	NeuralStar Web Client (EA)	1,329.97	132-33
7X_OP_WEB_CLIENT_FM_10PK	NeuralStar Web Clients 10 Pack	8,866.50	132-33
7X_OP_WEB_CLIENT_FM_5PK	NeuralStar Web Clients 5 Pack	5,763.22	132-33

7X_OSS_BASE_FM/PF_PK/SNMP	NeuralStar Basic Fault Management Pack, SNMP MIB II fault and network discovery and NeuralStar Performance Pack, SNMP only	78,025.19	132-33
7X_OSS_BASE_FM_PK/SNMP	Basic NetAdvisor Fault Management Pack, SNMP MIB II fault and network discovery	38,125.94	132-33
7X_OSS_BASE_FM_PK/TL1 ASCII	Basic NetAdvisor Fault Management Pack, ASCII/TL1 fault and network discovery	75,365.24	132-33
7X_OSS_ENT_PK/FM	Enterprise NetAdvisor Fault Management, SNMP MIB II and ASCII TL1 fault and network discovery	101,964.74	132-33
7X_OSS_ENT_PK/FM/PF	NeuralStar Enterprise Pack, Discovery, SNMP and ASCII/TL1 fault, SNMP Performance	110,831.23	132-33
7X_OSS_PERMGT_PK/SNMP	NeuralStar Performance Pack, SNMP Performance only	39,899.24	132-33
7X_TRN_EO	Executive Overview (1/2 Day), Executive Summary of the functionality available in the NeuralStar Suite.	239.29	132-50
7X_TRN_USER	User/Operator Training (1/2 Day), 3-hr course. Hands-on Operator training NS Network Status and Control application.	478.59	132-50
7X_TRN_ADM	Administrator Course (5 Days), 5-day course. Thorough overview of NS framework: Installation, administration, troubleshooting and maintenance of a runtime system	1,914.36	132-50
7X_TRN_DEV_1	Developer I Course (5 Days), 5-day course. Emphasizes skills needed to implement solution from start to completion. Exercised provide experience developing service assurance and inventory reconciliation solutions.	2,392.95	132-50
PS_SE_D DAILY	System Engineer, Daily rate	1,105.54	132-51
PS_PM_D DAILY	Project Manager, Daily rate	1,263.48	132-51
PS_DE_D DAILY	Deployment Engineer, Daily rate	1,368.77	132-51
PS_SDE_D DAILY	Sr. Deployment Engineer, Daily rate	1,579.35	132-51
PS_SAA_D DAILY	Sr. Application Architect, Daily rate	1,579.35	132-51
PS_SPM_D DAILY	Sr. Project Manager, Daily rate	1,722.92	132-51
PS_SE_D HOURLY	System Engineer, Hourly rate	138.19	132-51
PS_PM_D HOURLY	Project Manager, Hourly rate	157.93	132-51
PS_DE_D HOURLY	Deployment Engineer, Hourly rate	171.10	132-51
PS_SDE_D HOURLY	Sr. Deployment Engineer, Hourly rate	197.42	132-51
PS_SAA_D HOURLY	Sr. Application Architect, Hourly rate	197.42	132-51