



**STATE OF MICHIGAN**  
**ENTERPRISE PROCUREMENT**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number 1  
 to  
 Contract Number 071B6600007

<b>CONTRACTOR</b>	Munetrix, LLC
	3297 Five Points Drive
	Auburn Hills, MI 48326
	Robert Kittle
	248-499-8355
	bob@munetrix.com
	*****6087

<b>STATE</b>	Jeff Kolb	MDE
	517-373-1908	
	kolbj2@Michigan.gov	
	David Hatch	DTMB
	(517) 284-7044	
	hatchd@michigan.gov	

**CONTRACT SUMMARY**

<b>PREQUAL ANALYTICS TOOL FOR MI SCHOOL DISTRICTS</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
October 15, 2015	October 14, 2016	4 - 1 Year	October 14, 2016
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			

**DESCRIPTION OF CHANGE NOTICE**

<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		October 14, 2017
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$1.00	\$0.00	\$1.00		

**DESCRIPTION**

Effective 8/25/2016 the State is exercising the first option year. The revised contract expiration date is 10/14/2017. The following amendment is incorporated into this Contract per attachment A. This change includes the following:  
 Sec 102d of the School Aid Budget PA 249 of 2016. (Section 102d has been revised; intermediate districts will be allowed to participate in the reimbursement). The new language also adjusts the formula for reimbursement and revises the date by which schools must request reimbursement from MDE.  
 All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
PROCUREMENT  
P.O. BOX 30026, LANSING, MI 48909  
OR  
525 W. ALLEGAN, LANSING, MI 48933

**NOTICE OF CONTRACT NO. 071B6600007**

between

**THE STATE OF MICHIGAN**

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Munetrix, LLC 3297 Five Points Drive Auburn Hills, MI 48326	Robert Kittle	bob@munetrix.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	248-499-8355	6087

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDE	Jeff Kolb	(517) 373-1908	KolbJ2@michigan.gov
CONTRACT ADMINISTRATOR	DTMB - Procurement	Christine Mitchell	517-284-7020	Mitchellc4@michigan.gov

**CONTRACT SUMMARY**

**DESCRIPTION:**

Prequalification Program Contract for Licensing of Financial and Academic Data Analytics Tools for Michigan School Districts

<u>INITIAL TERM</u>	<u>EFFECTIVE DATE</u>	<u>INITIAL EXPIRATION DATE</u>	<u>AVAILABLE OPTIONS</u>
One Year	10/15/2015	10/14/2016	4, 1 Year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	Destination	NA	

**ALTERNATE PAYMENT OPTIONS**

**EXTENDED PURCHASING**

P-card     Direct Voucher (DV)     Other     Yes     No

**MINIMUM DELIVERY REQUIREMENTS:**

NA

**MISCELLANEOUS INFORMATION:**

This Contract is awarded from Request for Proposal (RFP) #007115B0005819 to establish a list of prequalified suppliers to provide licensing, installation and subscription services for financial and academic data analytics tools for Michigan public schools as detailed in the attached requirements, pricing, terms and conditions. This Contract executed to meet the requirements of the State School Aid Act, Section 102d.

Authority: Agency request and DTMB Procurement approval.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:

\$1.00 Established for MiDEAL Only.

**For the Contractor:**

\_\_\_\_\_  
\_\_\_\_\_,  
**Contract Administrator**  
\_\_\_\_\_

\_\_\_\_\_  
**Date**

**For the State:**

\_\_\_\_\_  
**Sharon Walenga-Maynard, Sourcing Director**  
**DTMB Procurement**  
**State of Michigan**

\_\_\_\_\_  
**Date**



# STATE OF MICHIGAN

## CONTRACT TERMS

### Software as a Service (SaaS)

This Software as a Service Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Munetrix, LLCI (“**Contractor**”), a Michigan Limited Liability Company. This Contract is effective on **10/15/2015** (“**Effective Date**”), and unless earlier terminated, will expire on **10/15/2016** (the “**Term**”).

This Contract may be renewed for up to **4 additional 1-Year period(s)**. Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

#### 1. Definitions.

“**Action**” has the meaning set forth in **Section 11.1**.

“**Actual Uptime**” means the total minutes in the Service Period that the Hosted Services are Available.

“**Allegedly Infringing Features**” has the meaning set forth in **Section Error! Reference source not found..**

“**Authorized Users**” means all Persons authorized by the State to access and use the Services through the State’s account under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

“**Availability**” has the meaning set forth in **Section 4**.

“**Availability Requirement**” has the meaning set forth in **Section 4**.

“**Available**” has the meaning set forth in **Section 4**.

“**Business Day**” means a day other than a Saturday, Sunday or State Holiday.

“**Change Notice**” has the meaning set forth in **Section 2.2**.

“**Code**” has the meaning set forth in **Section Error! Reference source not found..**

“**Confidential Information**” has the meaning set forth in **Section Error! Reference source not found..**

“**Contract**” has the meaning set forth in the preamble, and is a Licensing Agreement or Subscription Agreement between a Participating Organization and Contractor.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (B) approve and execute any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the Statement of Work.



“**Contractor**” has the meaning set forth in the preamble.

“**Contractor Personnel**” means all employees and agents of Contractor, all Subcontractors and all employees and agents of any Subcontractor, involved in the performance of Services.

“**Contractor Security Officer**” has the meaning set forth in **Section 2.5(a)**.

“**Contractor Service Manager**” has the meaning set forth in **Section 2.5(a)**.

“**Contractor Systems**” has the meaning set forth in **Section 9.3**.

“**Corrective Action Plan**” has the meaning set forth in **Section Error! Reference source not found.**

“**Critical Service Error**” has the meaning set forth in **Section Error! Reference source not found.**

“**Documentation**” means all generally available documentation relating to the Services, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

“**District**” includes local districts, public school academies and the Education Achievement Authority. It does not include intermediate school districts (see MCL 388.1603).

“**DR Plan**” has the meaning set forth in **Section Error! Reference source not found.**

“**Effective Date**” has the meaning set forth in the preamble.

“**Exceptions**” has the meaning set forth in **Section 4.1**.

“**Fees**” has the meaning set forth in **Section 7.1**.

“**Force Majeure Event**” has the meaning set forth in **Section 14.1**.

“**Harmful Code**” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services or Contractor Systems as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“**High Service Error**” has the meaning set forth in **Section Error! Reference source not found.**

“**HIPAA**” has the meaning set forth in **Section Error! Reference source not found.**

“**Hosted Services**” has the meaning set forth in **Section 2.1(a)**.



**“Intellectual Property Rights”** means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

**“Key Personnel”** means any Contractor Personnel identified as key personnel in this Contract or any Statement of Work.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Licensing Agreement”** means the Subscription Agreement” between the Contractor and the Participating Organization.

**“Loss”** means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers. “Losses” has a correlative meaning.

**“Low Service Error”** has the meaning set forth in **Section Error! Reference source not found..**

**“Medium Service Error”** has the meaning set forth in **Section Error! Reference source not found..**

**Participating Organization** – A school district, who by virtue of licensing Contractor’s Services, is eligible for reimbursement submission under this Contract

**“Person”** means an individual, corporation, partnership, joint venture, Limited Liability Company (LLC), governmental authority, unincorporated organization, trust, association or other entity.

**“Personal Health Information (PHI)”** has the meaning set forth in **Section Error! Reference source not found..**

**“Personally Identifiable Information (PII)”** has the meaning set forth in **Section Error! Reference source not found..**

**“Process”** means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.



“**Reject**” has the meaning set forth in **Section Error! Reference source not found.**

“**Rejection**” has the meaning set forth in **Section Error! Reference source not found.**

“**Representatives**” means a party’s employees, officers, directors, consultants, legal advisors and, with respect to Contractor, Contractor’s Subcontractors.

“**Resolve**” has the meaning set forth in **Section Error! Reference source not found.**

“**RFP**” means the State’s request for proposal designed to solicit responses for Services under this Contract.

“**Scheduled Downtime**” has the meaning set forth in **Section 4.2.**

“**Scheduled Uptime**” means the total minutes in the Service Period.

“**Service Availability Credits**” has the meaning set forth in **Section Error! Reference source not found.**

“**Service Error**” means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Contract and the Specifications.

“**Service Level Credits**” has the meaning set forth in **Section Error! Reference source not found.**

“**Service Level Failure**” means a failure to perform the Support Services fully in compliance with the Support Service Level Requirements.

“**Service Period**” has the meaning set forth in **Section 4.**

“**Service Software**” means any and all software applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Contractor provides remote access to and use of as part of the Services.

“**Service Support Level Requirements**” has the meaning set forth in **Section Error! Reference source not found.**

“**Services**” has the meaning set forth in **Section 2.1.**

“**Source Code**” means the human readable source code of the Service Software to which it relates, in the programming language in which the Service Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Service Software.

“**Specifications**” means the specifications for the Services set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.



“**State**” has the meaning set forth in the preamble, and also includes all organizations referred to as “Participating Organizations” as defined in Schedule, A, the Statement of Work.

“**State Data**” has the meaning set forth in **Section Error! Reference source not found.**

“**State Modification**” has the meaning set forth in **Section Error! Reference source not found.**

“**State Project Manager**” has the meaning set forth in **Section Error! Reference source not found.**

“**State Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

“**Statement of Work**” has the meaning set forth in **Section 2.1(a)**. The Initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedule A-1, A-2, A-3, etc.

“**Subcontractor**” means any entity that performs any Services under this Contract and otherwise has the meaning set forth in **Section 2.4(a)**.

“**Subscription Agreement**” is synonymous with Licensing Agreement

“**Support Request**” has the meaning set forth in **Section Error! Reference source not found.**

“**Support Service Level Requirements**” has the meaning set forth in **Section Error! Reference source not found.**

“**Support Services**” has the meaning set forth in **Section 5**.

“**Term**” has the meaning set forth in the preamble.

“**Transition Period**” has the meaning set forth in **Section 6.2**.

“**Transition Responsibilities**” has the meaning set forth in **Section 6.2**.

“**User Data**” means any and all information reflecting the access or use of the Hosted Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, click-through or click-stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

## 2. **Services.**

2.1 Services. Throughout the Term and at all times in connection with its actual or required performance under any Contract with a Participating Organization, Contractor will, in accordance with all terms and conditions set forth in any Contract with a Participating Organization, and corresponding Statement of Work, provide the Participating Organization and its Authorized Users the following services (“**Services**”):



(a) the hosting, management and operation of the Service Software and other services for remote electronic access and use by Participating Organizations and their Authorized Users (“**Hosted Services**”) as described Contractor’s standard Licensing/Subscription Agreement, a sample of which is included as **Schedule D**, to this Contract and by this reference are incorporated in and made a part of any individual Contract.

(b) service maintenance and the Support Services as set forth in **Section 5**, the applicable Subscription Agreement, and any incorporated Statements of Work; and

(c) such other services as may be specified in the purchasing agreement any school District may have entered into and paid for (a Licensing Agreement), on behalf of a Participating Organization, whether or not the Participating Organization executed the actual Licensing or Subscription Agreement on its own.

## 2.2 Change Notices.

(a) Any modifications or changes to the Services under any executed Statement of Work will be effective only if and when memorialized in a mutually agreed written change notice (“**Change Notice**”) signed by both Parties, provided, however, that for any Services provided on a limited basis (for example, on a per user, server, CPU or named-user basis), the State or Participating Organization may, at any time, increase or decrease the number of its licenses hereunder subject to a corresponding forward-going adjustment of the Fees to reflect these changes in accordance with the pricing set forth in the applicable Statement of Work.

(b) In the event the Services are customizable, a more detailed change control process may be specified in the applicable Statement of Work. In such event, the change control process set forth in such Statement of Work shall control.

2.3 Compliance With Laws. Contractor must comply with all applicable Laws as they concern any Contract with a Participating Organization including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

2.4 Subcontracting. Contractor will not itself, and will not permit any Person to, subcontract any Services, in whole or in part, without the State’s prior written consent, which consent may be given or withheld in the State’s sole discretion, but will not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing:

(a) Contractor must ensure each Contractor subcontractor (including any subcontractor of a Contractor subcontractor, each, a “**Subcontractor**”) complies with all relevant terms of this Contract, including all provisions relating to State, or Participating Organization Data or other Confidential Information of the State;

(b) the State’s consent to any such Subcontractor does not relieve Contractor of its representations, warranties or obligations under this Contract;

(c) Contractor will remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor’s employees and agents, who, to the extent they are



involved in providing any Services, are deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor;

(d) any noncompliance by any Subcontractor or its employees or agents with the provisions of this Contract or any Statement of Work will constitute a breach by Contractor;

(e) prior to the provision of Services by any Subcontractor, Contractor must obtain from each such proposed Subcontractor:

- (i) the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing.

#### 2.5 Contractor Personnel. Contractor will:

(a) appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Support Services (the “**Contractor Service Manager**”); and (ii) a Contractor employee to respond to the State’s/Participating Organization’s inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor.

(b) Contractor will remain responsible and liable for: (i) performance required in conjunction with any Contract with a Participating Organization, including the proper supervision, coordination and performance of its Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor’s employees and agents, who, to the extent they are involved in providing any Services, are deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor.

#### 2.6 Management and Payment of Contractor Personnel.

(a) Contractor is solely responsible for the payment of Contractor Personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor Personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments and disability benefits.

(b) Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities.

2.7 State License Grant. The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State’s (or individual agency’s, department’s or division’s) name, trademarks, service marks or logos, solely in accordance with the State’s specifications, and (ii) to display, reproduce, distribute and transmit in digital form the State’s (or individual agency’s, department’s or division’s) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Contractor by the State. Use of the State’s (or individual agency’s, department’s or division’s) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.



### 3. Service Preparation, Testing and Acceptance.

3.1 Service Preparation. Promptly upon the Contractor's' execution of a Subscription Agreement and/or Statement of Work, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the Participating Organization's use in accordance with the Subscription Agreement or any other instrument executed between the Participating Organizations and the Contractor.

### 4. Service Availability.

4.1 Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a "Service Period"), at least 99.95% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions:

- (i) failures of the Participating Organization's or its Authorized Users' internet connectivity;
- (ii) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Contractor; or
- (iii) Scheduled Downtime as set forth in Section 4.2.

4.2 Scheduled Downtime. Contractor must notify the Participating Organization at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part ("**Scheduled Downtime**")

5. **Support and Maintenance Services**. Contractor will provide Hosted Service maintenance and support services (collectively, "**Support Services**") in accordance with the provisions of this **Section 5**. The Support Services are included in the Services, and Contractor may not assess any additional Fees, costs or charges for such Support Services.

5.1 Support Service Responsibilities. Contractor will use its best efforts to:

- (a) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;
- (b) provide unlimited telephone support during the hours of 8 a.m. to 5 p.m. Eastern Time on Business Days, and;
- (c) Provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers;
- (d) Respond to and Resolve Support Requests as specified in this **Section 5**.



5.2 Service Maintenance. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to Participating Organizations and Authorized Users:

- (a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Service Software, that Contractor provides at no additional charge to its other similarly situated customers; and
- (b) all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with this Contract and the Specifications.

## 6. Termination, Expiration and Transition.

6.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Contract:

(a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of State Systems, State Data, or the State's facilities or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) If the State terminates this Contract under this **Section 6.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period.

(c) A termination by the State will give each Participating Organization the right to also terminate their agreement(s) with the contractor with respect to the subject matter hereof. If a Participating Organization elects to terminate its agreement(s) with Contractor, such Participating Organization will only pay for amounts due to Contractor for Services accepted on or before the date of termination, subject to the Participating Organization's right to set off any amounts owed by the Contractor for the Participating Organization's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the Participating Organization any Fees prepaid; prorated to the date of such termination.

6.2 Effect of Termination. Upon and after the termination or expiration of this Contract:

(a) All licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any.

(b) Contractor will (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.



(c) Notwithstanding any provisions of this Contract or any Statement of Work to the contrary, upon the termination of this Contract or any Statement of Work for cause pursuant to **Section 6.1**, Participating Organizations will have the right and option to continue to access and use the Services under each applicable Subscription/Licensing Agreement or Statement of Work, in whole and in part, for a period coinciding with any continuation of licensing as long as they pay on their own accord.

6.3 Survival. The rights, obligations and conditions set forth in this and (Definitions), (Effect of Termination; Data Retention), (State Data), (Confidentiality), (Security), (Indemnification), (Limitations of Liability), (Representations and Warranties), (Insurance) and (Effect of Contractor Bankruptcy) and (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

## 7. Fees and Expenses.

7.1 Fees. Subject to the terms and conditions of any Contract/Purchase Order (PO) with a Participating Organization, this Contract and any applicable Statement of Work or Subscription Agreement, including the provisions of this **Section 7**. The Participating Organization shall pay the fees set forth in the applicable Subscription Agreement; and the State will reimburse the Participating Organization or qualified District that entered into a Contract on behalf of a Participating Organization, in accordance with any legislated provisions for it to perform such reimbursement. **(See Section 15.5 b for process)**.

7.2 Fees During Option Years. Contractor's Fees are fixed during the initial 1-year period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the Participating Organization at least thirty (30) calendar days prior to the commencement of such renewal period. Unless otherwise agreed to in writing by the Parties, an increase of Fees for any renewal period may not exceed three percent (3%) of the Fees effective during the immediately preceding twelve (12) month period. No increase in Fees is effective unless made in compliance with the provisions of this **Section 7.2**.

7.3 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.

7.4 Taxes. Participating Organizations are exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the Participating Organizations use. Notwithstanding the foregoing, all Fees are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under any Contract with Participating Organizations executed through this Contract agreement.

### 7.5 State Audits of Contractor.

(a) During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 7**. During the Term, and for four (4) years



after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

(b) The State may take copies and abstracts of materials audited. The State will pay the cost of such audits unless an audit reveals an overbilling or over-reporting of five percent (5%) or more, in which case Contractor shall reimburse the State for the reasonable cost of the audit. Contractor must immediately upon written notice from the State pay the State the amount of any overpayment revealed by the audit, together with any reimbursement payable pursuant to the preceding sentence.

## **8. State Data.**

8.1 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of any Participating Organization or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of any Participating Organization's Data, Contractor must, as applicable: (a) notify the Participating Organization as soon as practicable but no later than forty eight (48) hours of becoming aware of such occurrence; (b) cooperate with the Participating Organization in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required.

## **9. Security.**

9.1 Protection of the State's Confidential Information. Throughout the Term and at all times in connection with its actual or required performance of the Services hereunder, Contractor will:

(a) ensure that the Service Software and all Participating Organization's Data is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States

(b) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of any Participating Organizations Confidential Information and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;

(c) provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of any Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards.

9.2 Unauthorized Access. Contractor may not access, and shall not permit any access to, State or Participating Organization's Systems, in whole or in part, whether through Contractor's Systems or



otherwise, without the State's or Participating Organizations express prior written authorization, unless it is normally publicly available information.

9.3 Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor ("**Contractor Systems**") and shall prevent unauthorized access.

**10. Redundancy, Data Backup and Disaster Recovery.** Contractor must provide redundancy, data backup and disaster recovery, in accordance with industry best practices and as follows.

10.1 Redundancy, Data Backup and Disaster Recovery. Contractor must, in accordance with the provisions of this section, maintain or cause to be maintained disaster avoidance procedures designed to safeguard State Data and the State's other Confidential Information, Contractor's Processing capability and the availability of the Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. The force majeure provisions of this Contract do not limit Contractor's obligations under this Section.

10.2 Redundant Hosting and Connectivity. Unless otherwise incapable of assuring uninterrupted service to Participating Organizations, Contractor will simultaneously operate a mirror system at a location in the United States that is geographically remote from the primary system on which the Service Software and Hosted Services are hosted. Except for its location, the mirror system must: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all the State Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Contract and the Specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Contractor will operate, monitor and maintain such mirror system so that it may be activated within five (5) hours of any failure of the Hosted Services to be Available.

**11. Indemnification.**

11.1 General Indemnification. Contractor must defend, indemnify and hold harmless the State, Participating Organizations and State's agencies, departments, officers, directors, employees, agents contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out Services performed by virtue of its Licensing Agreement with any Participating Organization of or resulting from:

(a) any negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of Contractor (including, in the case of Contractor, any Contractor Personnel) under this Contract, provided that, to the extent that any Action or Losses described in this section arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with respect to such Action and Losses.



11.2 Infringement Indemnification By Contractor. Contractor must indemnify, defend and hold the State and any Participating Organization, and their agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the Participating Organization's Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any activity deemed to be directly caused by the contractor.

11.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State and/or any Participating Organization of such fact in writing, and take all commercially reasonable actions necessary to ensure the continued right to access and use such Services and otherwise protect the State or Participating Organizations from any Losses in connection therewith, including investigating such allegation and obtaining a credible opinion of counsel that it is without merit.

(b) Subject to the exclusions set forth herein, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) procure for the Participating Organization the right to continue to access and use the Services to the full extent contemplated by this Contract and the Specifications; or
- (ii) modify or replace all components, features and operations of the Services that infringe or are alleged to infringe ("**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Contract.

(c) If neither of the remedies set forth above are reasonably available with respect to the Allegedly Infringing Features then Contractor may direct the State and Participating Organizations to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

- (i) refund to the Participating Organization any prepaid Fees for Services that have not been provided; and
- (ii) in any case, at its sole cost and expense, secure the right for the Participating Organization to continue using the Allegedly Infringing Features for a transition period of up to six (6) months to allow the Organization to replace the affected Services or Allegedly Infringing Features without disruption.



(d) The remedies set forth in this **Section 11** are in addition to, and not in lieu of, all other remedies that may be available to the State and Participating Organizations under this Contract or otherwise, including the State's/Participating Organization's right to be indemnified.

11.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Subject to the following proviso, Contractor will have the right to control the defense of any third party claims or actions for which indemnification is being sought; provided that Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary in light of any conflict of interest or the inability of the Contractor to adequately defend such claim. Contractor will not, without the State's prior written consent (not to be unreasonably withheld, conditioned or delayed), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 10**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

## 12. Contractor Representations and Warranties.

12.1 Authority and Bid Response. Contractor represents and warrants to the State and Participating Organizations, that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
- (c) the execution of this Contract by its Representative has been duly authorized by all necessary organizational action;
- (d) when executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;
- (e) the prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;
- (f) all written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's bid response to the RFP, is true, accurate, and complete, and to Contractor's



knowledge, contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading; and

(g) Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

12.2 Software and Service Warranties. Contractor represents and warrants that:

(a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or to Contractor's knowledge, at any time will: (i) conflict with or violate any applicable Law, including any Law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party;

(c) as accessed and used by the State or any Authorized User in accordance with this Contract and the Specifications, the Hosted Services, Documentation and all other Services and materials provided by Contractor under this Contract will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party;

(d) there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened Action, and it has not received any written, oral or other notice of any Action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services or Service Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services or its other obligations under this Contract, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding;

(e) the Service Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract.

(f) all Specifications are, and to the extent necessary, will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;



(g) Contractor will use its best efforts to ensure the Contractor Systems and Services are and will remain free of Harmful Code;

(h) Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State, which will not be unreasonably withheld conditioned or delayed.

(i) Contractor will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Contractor's obligations. (including the Availability Requirement and Support Service Level Requirements) under this Contract;

(j) During the term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Services, will apply solely to Contractor's (or its subcontractors) facilities and systems that host the Services (including any disaster recovery site), and regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State systems or networks; and

(k) Contractor acknowledges that the State or its Participating Organizations cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever.

12.3 **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF.

**13. Insurance.**

13.1 Required Coverage.

(a) **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit	Contractor must have their policy endorsed to add "the State of



<p>\$1,000,000 Personal &amp; Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u> \$50,000 Each Occurrence</p>	<p>Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insured’s using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.</p>
<p><b>Automobile Liability Insurance</b></p>	
<p><u>Minimal Limits:</u> \$1,000,000 Per Occurrence</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.</p>
<p><b>Workers' Compensation Insurance</b></p>	
<p><u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.</p>	<p>Waiver of subrogation, except where waiver is prohibited by law.</p>
<p><b>Employers Liability Insurance</b></p>	
<p><u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.</p>	
<p><b>Professional Liability (Errors and Omissions) Insurance</b></p>	
<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate</p> <p><u>Deductible Maximum:</u> \$50,000 Per Loss</p>	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

(b) If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.



(c) Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

13.2 Non-waiver. This **Section 13** is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

#### 14. Force Majeure.

14.1 Force Majeure Events. Neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

(a) no Force Majeure Event modifies or excuses Contractor's obligations contained herein.

#### 15. General Provisions.

15.1 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.

15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

15.3 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.

15.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Contractor:



3297 Five Points Drive Auburn Hills, MI 48326  
E-mail: bob@munetrix.com  
Attention: Robert Kittle  
Title: President & CEO

If to the State:

Christine Mitchell  
Buyer Specialist  
DTMB Procurement  
Mitchellc4@michigan.gov

Notices sent in accordance with this **Section 15.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5<sup>th</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

15.5 Extended Purchasing Program. Upon written agreement between the State and Contractor, this Contract may be extended to: (a) MiDEAL members, (b) other states (including governmental subdivisions and authorized entities), MiDEAL members include local units of government and school districts.

(a) If extended, Contractor must supply all Contract Activities at the established Contract prices and terms, and the State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**(b) Contractor must submit invoices to, and receive payment from, extended purchasing program members (Participating Organizations) on a direct and individual basis.**



## STATE SCHOOL AID ACT SECTION 102d PAYMENT PROCESS

State School Aid Act Section 102d (MCL 388.1202d) appropriates \$1.5 million for reimbursements to school districts\* for the licensing of school data analytical tools.

The following information must be provided to the Michigan Department of Education no later than December 15, 2015, by the successful bidder(s).

1. The District Code number of the districts (local, PSA or EAA) that have purchased a licensing agreement with the respective vendor
2. The District Name of the districts (local, PSA or EAA) that have purchased a licensing agreement with the respective vendor
3. The dollar amount of the respective agreement
4. The date of the licensing agreement

According to the language in Section 102d, reimbursement of the licensing agreement costs will be made to districts on an equal per pupil basis on a schedule determined by the Michigan Department of Education. Therefore, the funds will be distributed in a school aid payment subsequent to receipt of the above required information. No funds will be disbursed until all agreements have been obtained and the total pupil count can be determined.

The amount of the equal per-pupil reimbursements will fluctuate as the pupil counts are adjusted by audits and State School Aid Act Section 25e changes (MCL 1625e).

\*The definition of the word "district" in Section 102d includes local districts, public school academies and the Education Achievement Authority. It does not include intermediate school districts (see MCL 388.1603). Consequently, if an intermediate has purchased the license for constituent districts, the funds will be paid to the constituent district.

**MDE Contact for questions:** Jeff Kolb - (517) 373-1908, KolbJ2@michigan.gov

15.6 Headings. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

15.7 Entire Agreement. This Contract, including all Statements of Work and other Schedules and Exhibits, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Contract and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Contract as of the Effective Date. UNLESS SPECIFICALLY ACCEPTED BY THE PARTICIPATING ORGANIZATION; NO TERMS ON CONTRACTORS WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.



15.8 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services, Licenses, Subscriptions, or Statements of Work hereunder, pursuant to **Section 6**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 15.8** is void.

15.9 Amendment and Modification; Waiver. This Contract may only be amended, modified or supplemented by an agreement in writing signed by each party's Contract Administrator. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.10 Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.11 Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process

15.12 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.



15.13 Unfair Labor Practice. Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, after award of the contract, the contractor as an employer or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

15.14 Schedules All Schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	General Company Information
Schedule C	Pricing
Schedule D	Licensing/Subscription Agreement/Privacy Policy

15.15 Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.



**Contract No 071B660007  
Licensing Data Analytics Financial and Academic Tool(s) - MI Schools**

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## SCHEDULE A - Statement of Work

### 1.000 Project Identification

#### 1.001 PROJECT REQUEST AND BACKGROUND

This Contract is to provide for licensing, and installation of financial and academic data analytics tools for Participating Organizations within the Michigan school system to fulfill the requirements of Section 102d, of Public Act (PA) 85 of 2015. Tools provided must be capable of utilizing financial and academic data available on publicly accessible Websites from municipalities, local and intermediate Participating Organization “Districts” and/or the Michigan Department of Education to provide analytics and reports detailing fiscal and academic stress indicators to be used as an early warning mechanism for Participating Organizations.

For purposes of this Contract, “Participating Organizations” includes the following:

1. Local School Districts,
2. Public School Academies, and
3. Education Achievement Authority (EAA).

For the purposes of reimbursement under this Contract, Participating Organizations will be classified as Districts. The definition of the word “**District**” in Section 102d includes local districts, public school academies and the Education Achievement Authority. It does not include intermediate school districts (see MCL 388.1603). Consequently, if an intermediate has purchased the license for constituent districts, the funds will be paid to the constituent district.

### 1.100 Scope of Work and Deliverables

#### 1.101 IN SCOPE

- Contractor must provide a web service, only requiring a browser to login and begin use. It is pre-loaded with all the information required as per the Contract specifications.

A. Contractor data analytical tool(s) must:

1. Analyze financial data
2. Analyze academic data
3. Provide early warning indicators of financial stress
4. Have the capability to provide peer district comparisons of both financial and academic data
5. Have the capability to provide financial projections for at least 3 subsequent fiscal years

B. Licensing agreements with approved vendors must be in place no later than December 1, 2015 for a Participating Organization to qualify for reimbursement under this program; however, Participating Organizations do not need to use the State negotiated contracts to be eligible. Reimbursements shall be made on a schedule determined by the department. (See Terms and Conditions, Section 15.5b).

C. In accordance with the Standard Terms and Conditions this Contract will be made available to Districts.

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

#### 1.102 OUT OF SCOPE

Custom development of new tools and applications.

#### 1.103 ENVIRONMENT

##### Look and Feel Standard

All software items provided by the Contractor must be ADA compliant.

##### Agency Specific Technical Environment

Will be addressed as required for individual tool implementations.



**1.104 WORK AND DELIVERABLES**

**I. Services and Deliverables To Be Provided**

Contractor must have tools available for licensing and purchase by December 1, 2015.

**A. Business Requirements**

Contractor tool(s) must be capable of being effectively used by Participating Organizations to analyze available financial and academic data as an “early warning” system to allow for proactive remedy or avoidance of approaching financial or academic stressors.

To effectively assist districts in assessment, the data must be provided at the following level of detail to the extent possible:

- o Program level,
- o Grade level, and
- o Grant level.

**Deliverable(s)**

1. Contractor’s Financial and Academic Data Tool Functionality for a district must include, but is not limited to the following:

- Analyzes financial and academic data
  - o Available from: <https://www.mischooldata.org/>
  - o Assistance from: [helpdesk@misd.net](mailto:helpdesk@misd.net)
- Provides early warning indicators of financial stress
- Provide peer district comparisons of financial/academic data
- Provide financial projections for at least three subsequent years
- Pupil Enrollment
- Fund balance trends
- Fund balance as a % of revenues/expenditures
- Resident students utilizing charter schools or schools of choice
- Student/teacher ratio
- Revenues/expenditures per pupil
- Operations/maintenance, transportation, and workers’ compensation costs
- Debt service per student
- Foundation allowance
- Graduation and dropout rates
- Number of priority/focus schools
- Achievement results (proficiency scores)

**Contractor Commitment:**

Munetrix School Edition™ is compliant with these functional requirements except as noted below:

1. Resident Students Using Charter Schools or Schools of Choice
2. Verification of the data used and output of the Student Migration Map™ in Munetrix must be confirmed by the District.
3. Operations/Maintenance, Transportation and workers compensation costs
4. Current data available from the Department does not include building square feet, bus utilization or lane miles, and the FID data, which drops the last 2-digits, may preclude workers’ compensation costs from being analyzed to the degree requested.
5. Number of Priority/Focus Schools
6. Priority and Focus Schools are identified per the most recent data available from MDE.

2. **As an Option, Contractors are encouraged to Include:**

- Display multiple years of publically accessible data
- User ad hoc reports
- Public viewing access



- Short-term borrowing as a % of school aid
- Integrated budget transparency tool
- District has ability to post financial documents as required by legislation
- Easy to use
- Housing market data
  - Housing and Urban Development – <http://www.huduser.org/>
  - National Center for Education Statistics – <https://nces.ed.gov/>

Contractor Commitment:

Munetrix School Edition™ is compliant with these optional requirements except as noted below:

- User ad hoc reports
  - The User Group that helped shape the Munetrix Platform did not want users to have learn how to use or create reports using database “drag and drop” or “join” technologies. They specifically called for the reports they need to be “one click” canned reports with filters.
- Short-term borrowing as a % of school aid
  - This measure is currently not in the system, but can be added easily if the data is available
- Certain housing market data is available in aggregate reports at the Region and County Level, but not on a specific school webpage currently. This could easily be added, but without the specifics being understood by the respondent, would require discussion. At this time, links to the HUD and NCES website are available to users on the State Education Homepage.

*The system tool shall provide configurable access to “early warning” data analysis and academic data relevant to financial decision making.*

- Data for use with the tool will come from several different sources, in different formats, and at different times throughout the year. Data Sources are listed in table format after the list of functional requirements for each category above.
- The tool shall provide graphical displays, as defined by the Participating Organization, of various metrics such as current year data, 5-year trend data, and comparison capabilities within and without a local unit or public Participating Organization.

Contractor Commitment:

1. Munetrix meets all the requirements stated above. Early warnings were designed in from the beginning, and the system was enhanced to include the new early warning metrics as authorized by HB-4325 of 2015. Intermediate School Districts have their own data aggregation for Early Warning reports and other audit features. This could also be made available to the State if they so choose, for a modest fee.

**Key notes about the system:**

- The system is built to accept and currently functions with data from multiple sources, including most state agencies.
- School district staff can load their own data, including FID, Accounting Software exports and they can hand enter data that is not available from bulk sources. This allows them to run reports outside of the standard reports the system has off-the-shelf.
- Beyond the basic canned reports, districts have the ability to show or not show many reports based on their own desires. Many of these reports can be generated to conduct in-depth analysis for bargaining unit negotiations or can be hypothetical in nature. Subsequently these may not be best suited for public consumption or may need board approval before doing so.

2. Application updates are released frequently due to the nature of the system. Munetrix accepts suggestions from and conducts user group sessions to allow districts to have a say in better shaping the system and have it adjusted to their



needs. Three-and-a-half years of school district, PSA and ISD usage – with 170 districts, 15 PSAs and 18 ISDs has created a very user friendly and robust interface

There has not been a major release since the School Edition was launched in March, 2012 – after 7 months of vetting by school business officers and practitioners.

- 3. In the event of Contract expiration or termination, all data must be provided by Contractor to Participating Organization within five (5) business days of request in a mutually agreeable format. All data has to be removed from any Contractor system(s) and all backups must be given to the Participating Organization in a mutually agreeable format. Upon termination, the Contractor must remove all association with the Participating Organization and from the applicable websites.

<b>Contractor Commitment:</b>	<p>The Munetrix system is loaded with historical public data dating back to 2006 and including the state’s most recent audited records from the 2013-2014 school year. When a district or municipality disengages as a premium user (a very infrequent occurrence) the system is reduced to what would normally be available publicly. Any district specific detail is made non-public or deleted, and all association with the district is eliminated, including dropping the Blue Mitten and associated transparency documents since this information ages quickly. Reference to the district’s data accessibility in the Access column on the Directory page is also dropped in any disengagement.</p> <p>Over time, future year data will automatically be purged, as a 2015 Amended Budget for example, gets over-written when the 2015 FID data is released. Munetrix has never been asked to “return” any data, since the platform lives beyond any individual district’s engagement, and displays generally available public data.</p>
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- 4. The Contractor shall perform the following System Testing and Miscellaneous Support:
  - a. The Contractor must have tools and staff in place to monitor that the system is up and available as expected.

<b>Contractor Commitment:</b>	<p>Munetrix has a canned testing protocol that requires certain elements to be tested daily, weekly, monthly, quarterly and annually based on the criticality of the item. The company uses 100% internal resources to conduct this function.</p> <p>System “up time” monitoring is performed as a part of the normal website hosting service – and in five years has run at 99.9% available.</p> <p>Munetrix uses a third-party provider to monitor system performance.</p>
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**B. Training**

Vendor must provide training in tool operation, data queries, analysis and reporting.

**Deliverable(s)**

Training shall provide users with the knowledge of how to utilize the system on a day-to-day basis.

<b>Contractor Commitment:</b>	<p>Munetrix uses a combination of training methods for its customers, including regional ‘hands-on’ sessions, individual sessions (which sometimes involve board and budget workshops), Webex, phone sessions, association meeting and group workshops, and in several instances customers even come to the Munetrix office for individual or group sessions. Recently, a short video series called “The Munetrix Minute” has also been added as part of Munetrix University, and will be available to licensed users.</p> <p>All training material is available online in 4 ways.</p>
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	<ol style="list-style-type: none"> <li>1. A written manual available in PDF.</li> <li>2. Context sensitive search tool (sample image with embedded video play is included below)</li> <li>3. An “anyhow, anyway, anytime” approach with short videos</li> <li>4. Webinars, which are also recorded and archived for future retrieval by the district users, all at no additional cost.</li> </ol>
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**C. Operation Services**

**Deliverable(s)**

1. Participating Organizations use the latest versions of Microsoft Internet Explorer version Safari, Chrome, or Firefox, and two previous version prior and must be viewable through mobile devices. No additional software or hardware will be required for the public customer and the customer may wish to choose the format of the reports in HTML, PDF, XLS, or CSV.

<b>Contractor Commitment:</b>	<p>The current browser compatibility structure of Munetrix is as follows:</p> <ul style="list-style-type: none"> <li>- IE: 9, 10, 11</li> <li>- FF: 30 - 38</li> <li>- Chrome: 30 - 40</li> <li>- Safari: 5, 5.1</li> </ul> <p>The mobile version of our website work on all major tablets and phones running:</p> <ul style="list-style-type: none"> <li>- iOS - 7 &amp; 8</li> <li>- Android - Kitkat &amp; Lollipop</li> </ul> <p>The system today is not fully mobile responsive in that users would have a hard time working in the data tables on screens smaller than normal sized tablets.</p> <p>The system does have the capability to export reports in HTML, PDF, XLS, and CSV, and other formats depending on the modules being used.</p>
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2. The system response time for the end-user should not be excessively long. Response time must be on average three (3) seconds and in no circumstances longer than ten (10) seconds.

<b>Contractor Commitment:</b>	<p>With the data storage and retrieval processes contained in the system, page load times are quite fast (usually 2-3 seconds). However, since Munetrix has no control of internet connections, up/down speeds, as well how well maintained or new user desk or laptops are, we cannot guarantee this requirement can be met for circumstances out of its control.</p>
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**3. Availability**

<b>Contractor Commitment:</b>	<p>With five years of production experience the system has demonstrated an up-time of 99.99%.</p>
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**D. Maintenance and Support**

**Deliverable(s)**

1. All new releases to tool purchased must be provided at no additional cost during the term of the Contract and shall be include in the maintenance costs.

<b>Contractor Commitment:</b>	<p>Upgrades and revisions (continuous improvements) and data loading/management driven by the company or required as part of the contract will be performed at no additional cost beyond the annual maintenance fee.</p> <p>However, if the Participating Organization requires new configurations or customizations, these must be handled on an individual basis, and costs and timing will have to be reviewed. Any changes requested out of the scope of work and/or final agreement must be confirmed in writing and signed by both parties.</p>
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Districts also have the option to purchase richer subscription packages, depending on their level of sophistication or depth of analytical needs.

2. Contractor process for managing scheduled downtime.

Contractor Commitment:	<p>The Munetrix platform automatically and transparently receives the latest product and service updates. Although available 24x7x365, we strive to maintain the highest levels of reliability for our customers which makes periodic maintenance necessary to perform upgrades or network changes.</p> <p>We schedule time windows once per month where the entire platform may be inaccessible for a short period of time. However, in not all instances is it necessary to take the system down for maintenance per the schedule. When the system is going to be offline for any period of time, all users to the system are notified via the auto-notification protocol built into the platform.</p>
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3. The Contractor must provide telephone support (technical and non-technical) to the Participating Organization as part of the cost of licensing the tool.

Contractor Commitment:	The company's office hours are 8:00am to 5:30pm EST, but support extends into evenings and weekends as well.
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**1.200 Roles and Responsibilities**

**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

**I. Contractor Staff**

The Contractor must identify a Single Point of Contact (SPOC). The duties of the SPOC shall include, but are not limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The Contractor must provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

<p>Contractor SPOC;</p> <p>Bob Kittle, President &amp; CEO will be the Single Point of Contact for Munetrix          3297 Five Points Drive          Auburn Hills, MI 48326  <a href="mailto:Bob@munetrix.com">Bob@munetrix.com</a>          248-499-8355 (O)          248-797-1337 (C)</p> <p>Amanda Benno will be assigned the role of Key Customer Service Representative  <a href="mailto:Amanda@Munetrix.com">Amanda@Munetrix.com</a>          248-499-8355 (O)</p> <p>No work per this contract requires additional contracted or sub-contracted staff. The system is already built and fully functional for the entire state of Michigan.</p>
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**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

**I. State Program Manager- (MDTMB and Agency)**

MDE will provide a Program Manager who will be responsible for the State’s day-to-day Contract activities and will coordinate with the Contractor in addressing any issues which may arise.

The State’s Program Manager will provide the following services:

- Facilitate communication between different Participating Organizations
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements

Name	Agency/Division	Title
Jeff Kolb	MDE	Program Manager

**1.300 Project Plan**

**1.301 REPORTS**

Reporting formats must be submitted to the State’s Program Manager for approval within 5 business days after the execution of this Contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

- Required Report:
  - List of Schools who have purchased the tool, provided monthly through December, 2015.

**1.400 Project Management**

**1.401 CHANGE MANAGEMENT**

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Program Manager will submit a request for change to the Department of Technology, Management and Budget, Procurement Buyer, who will make recommendations to the Director of DTMB-Procurement regarding ultimate approval/disapproval of change request. If the DTMB Procurement Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the DTMB-Procurement Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB-Procurement, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.



**1.500 Acceptance**

**1.501 FINAL ACCEPTANCE**

The system is a cloud solution, already built and ready for use. If a School District chooses to become a Participating Organization, a subscription agreement is executed, the appropriate personnel register and are granted appropriate permissions, and an invoice is simultaneously generated, payable net 30. Usage can begin immediately, and the anniversary date defaults to the first day of the next month to allow ample time for training.

**1.600 Compensation and Payment**

**1.601 COMPENSATION AND PAYMENT**

Prices shall remain firm for the duration of this Contract agreement and are listed in Schedule C.

- The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract by the Participating Organization.

**Invoicing**

Contractor will submit properly itemized invoices to the address included in the Bill To field on the Purchase Order issued against this Contract.

**SCHEDULE B - GENERAL COMPANY INFORMATION**

	<b>Bidder Response</b>
<b>1. Company Contact Information.</b>	
Sole contact authorized to receive and sign Contract.	Robert Kittle President 3297 Five Points Drive Auburn Hills, MI 48326 248-499-8355 <a href="mailto:bob@munetrix.com">bob@munetrix.com</a>
<b>2. Company Background Information.</b>	
Legal business name and address.	Munetrix, LLC 3297 Five Points Drive Auburn Hills, MI 48326
What State is your business incorporated in?	Michigan
Phone number.	248-499-8355
Website address.	<a href="http://www.munetrix.com">www.munetrix.com</a>
<b>3. Principal Place of Business.</b>	
The Contractor must identify the location (city, state and zip code) that would have primary responsibility for this account if awarded a contract.	Munetrix, LLC 3297 Five Points Drive Auburn Hills, MI 48326



**Contract 071B660007  
SCHEDULE C - PRICING**

Licensing Data Analytics Financial and Academic Tool(s) - MI Schools



**Schedule C - Pricing**

Munetrix, LLC

10-Sep-15

**Public School District and Public School Academy Pricing Table - BASIC SUBSCRIPTION**

Access Level	District Name	Type	Enrollment	Base Fee	Per Student Fee	Per Student Total	Annual Fee	Average Price Per Student
Basic	Sample	K12, PSA	1,000	\$998	\$0.50	\$500.00	\$ 1,498.00	\$ 1.50
Basic	Sample	K12, PSA	5,000	\$998	\$0.50	\$2,500.00	\$ 3,498.00	\$ 0.70
Basic	Sample	K12, PSA	10,000	\$998	\$0.50	\$5,000.00	\$ 5,998.00	\$ 0.60

**Notes:**

The Basic Subscription Package is a "lite analytics" offering for districts.

**Public School District and Public School Academy Pricing Table - PREMIUM SUBSCRIPTION**

Access Level	District Name	Type	Enrollment	Base Fee	Per Student Fee	Per Student Total	Annual Fee	Average Price Per Student
Premium	Sample	K12, PSA	1,000	\$998	\$0.75	\$750.00	\$ 1,748.00	\$ 1.75
Premium	Sample	K12, PSA	5,000	\$998	\$0.75	\$3,750.00	\$ 4,748.00	\$ 0.95
Premium	Sample	K12, PSA	10,000	\$998	\$0.75	\$7,500.00	\$ 8,498.00	\$ 0.85

**Notes:**

The Premium Subscription Package is a "heavy analytics" offering, plus access to many other utilities.

**Intermediate School District Pricing Table - Subsidy**

**Same for Management Companies**

Options	District Name	Type	District Count	Per District Fe	Sponsor Total	Description
Subsidy - Light I	Sample	ISD Only	1	\$349	\$349	\$349 Credit to District - Light Up Access to Level 2
Subsidy - Light I	Sample	ISD Only	5	\$349	\$1,745	\$349 Credit to Districts - Light Up Access to Level 2
Subsidy - Light I	Sample	ISD Only	10	\$349	\$3,490	\$349 Credit to Districts - Light Up Access to Level 2

**Notes:**

This sponsorship takes the district from Level 1 access to Level 2 access, subsidizes the district's investment, but does not provide analytic access to the ISD.



**Intermediate School District Pricing Table - Subsidy + ISD Basic Use Package**

**Same for Management Companies**

Sponsorship Pkç	District Name	Type	District Count	Per District Fee	Sponsor Total	Description
Basic	Sample	ISD Only	1	\$649	\$649	\$349 Credit to District - Basic Use License for ISD Personnel
Basic	Sample	ISD Only	5	\$649	\$3,245	\$349 Credit to Districts - Basic Use License for ISD Personnel
Basic	Sample	ISD Only	10	\$649	\$6,490	\$349 Credit to Districts - Basic Use License for ISD Personnel

**Notes:**

Requires all districts to be sponsored to Level 2 and the \$649 fee provides the ISD the ability to use the system for its own transparency and analytics.

**Intermediate School District Pricing Table - Sponsor + Premium Use Package**

**Same for Management Companies**

Sponsorship Pkç	District Name	Type	District Count	Sponsor Fee	Sponsor Total	Description
Premium	Sample	ISD Only	1	\$998	\$998	\$349 Credit to District - Premium Use License for ISD Personnel
Premium	Sample	ISD Only	5	\$998	\$4,990	\$349 Credit to Districts - Premium Use License for ISD Personnel
Premium	Sample	ISD Only	10	\$998	\$9,980	\$349 Credit to Districts - Premium Use License for ISD Personnel

**Notes:**

Requires that all districts are at least sponsored to Level 2, this fee gives ISD Access to use the system for Early Warning, Analytics and full functionality. If an ISD wants to purchase licenses for (conduct the transaction) for all its districts, the \$998 fee will be reduced by 50%.

**Additional Notes/Assumptions - All Fee Schedules**

No additional charge for set-up and training if an ISD is engaged in the transaction for its districts.

No additional charge for extra users within each district.

Emergency Preparedness Management use districts or districts over 3 users may be required to conduct their own user admin function



\$998 + \$.50/student

## TRANSPARENCY EDITION

Exceeds State Transparency Requirements and Saves Time!

- ✓ Meet & Monitor your Transparency with dynamic Audit Reports
- ✓ A Citizen's Guide to Finances using GFOA PAFR terminology
- ✓ Customizable Data Driven Dashboard
- ✓ Benchmark expenses and district performance with peers & cohorts
- ✓ Network in the Munetrix® Collaboratorium™ to share success stories
- ✓ Full use of the Munetrix® BudgetBuilder™
- ✓ Load your own data – from audited to infinity
- ✓ Measure your fiscal health using vetted industry metrics

\$998 + \$.75/student

## PREMIUM EDITION

Includes all Transparency Features, plus....

- ✓ Analyze trends with robust Operational & Educational Achievement analytics
- ✓ Complete Building Level Student Trend Reports
- ✓ Dynamic "Open Checkbook" Check Register
- ✓ MAC and Investor Reports for Overlapping Debt & Bond Underwriters
- ✓ Full use of the Munetrix® ForecastBuilder™
- ✓ Use of the Munetrix® Debt Manager™ for long term debt issue tracking
- ✓ Full access to the Munetrix® Project Tracker™
- ✓ Manage Public Safety drills with the Emergency Preparedness Manager™ (1)
- ✓ Student Migration Map **NEW**
- ✓ Early Warning Fiscal "Stress Tester" **NEW**



**SCHEDULE D – DOCUMENTS**  
**Attachment 1 – Privacy Policy Notice**  
**MUNETRIX LLC**

Privacy Policy Notice

Munetrix, LLC is committed to respecting your privacy.

In general, you can visit Munetrix, LLC on the Internet without identifying yourself or revealing any personal information. Once you choose to provide us personally identifiable information (any information by which you can be identified), you can be assured that it will only be used to support your customer relationship with us.

The purpose of this Privacy Policy is to make you aware of Munetrix, LLC privacy practices and of the choices you can make about the way your information is collected and used. To make this notice easy to find, we make it available on our homepage and from the bottom of every web page. Please read the following to learn more about our privacy policy.

This policy discloses the information practices of Munetrix, LLC, including...

- What type of information is covered in this policy?
- When is the information gathered?
- Where is the information maintained and how is it kept safe?
- Who has access to this information?
- Who is bound to this policy?
- How is the information used?

What type of information is covered by this policy?

This policy covers Personal Information. This is information about you that is personally identifiable and is not otherwise publicly available, such as:

1. your name, address, email address or phone number, and if applicable.
2. your IP address, name, contact and billing information, transaction, and/or credit card information.

If you give us personal information about someone else, such as a work associate or spouse, we will assume that you have their permission to do so.

When is this information gathered?

Personal Information is received from you each time you perform the following during your visit to our web site:

1. register to access application demos, literature or downloadable materials.
2. purchase products or services online.

Munetrix, LLC automatically receives and records other non-identifiable information on our server logs from your browser, including your IP address, Munetrix, LLC cookie information, and the page you request.

Where is this information maintained and how is it kept safe?

Personal information is maintained on our secure servers. We have security measures in place to protect your personal information and to maintain its quality. We implement appropriate measures and processes, such as using 128 bit encryption when transmitting information, to help us to keep your information secure and to maintain its quality.



Unless we have your permission or are required by law, no one is granted access to your information, except in the general course of business as outlined below.

#### Who has access to this information?

We limit access to personal information about you to:

1. employees of Munetrix, LLC who we believe reasonably need to come into contact with that information to provide products or services to you or in order to do their jobs, and
2. trusted business partners, as required to fulfill your transaction requests with us. These companies do not have any independent right to share this information.

#### Who is bound by this policy?

Munetrix, LLC, its employees and legal representatives are bound by this policy. The policy does not apply to the practices of companies that Munetrix, LLC does not own or control, or to people that Munetrix, LLC does not employ or manage.

#### How is this information used?

Munetrix, LLC will never sell, rent, or lease your personally identifiable information to others.

Munetrix, LLC uses your information to better understand your needs and to provide you with better service. Specifically, we use your information to help you complete a transaction, to communicate back to you, to update you on service and benefits, and to personalize our web sites for you. Credit card numbers are used only for payment processing and are not retained for other purposes.

From time to time, we may also use your information to contact you for market research or to provide you with marketing information we think would be of particular interest. At a minimum, we will always give you the opportunity to opt out of receiving such direct marketing or market research contact. We will also follow CAN-SPAM requirements, such as allowing you to opt in before receiving unsolicited contact.

#### Links to non-Munetrix, LLC web sites

Our web sites may contain links to other web sites. Munetrix, LLC is not responsible for the privacy practices or the content of those other web sites.

#### Notification of Changes

This privacy statement was last updated on Feb 4, 2015. A notice will be sent via our web site notification system whenever this privacy statement is changed in a material way.

#### Privacy Questions and Access

If you have a question about this policy, you can send an email to us at [support@munetrix.com](mailto:support@munetrix.com).



## Attachment 2 – MUNETRIX SUBSCRIPTION AGREEMENT

### MUNETRIX SUBSCRIPTION AGREEMENT

THIS MUNETRIX SUBSCRIPTION AGREEMENT (the “Agreement”) is made by and between MUNETRIX, LLC a Michigan Limited Liability Company whose address for purposes of this Agreement is 3297 Five Points Drive Auburn Hills, MI 48326 (the “Company”) and *Licensee Name* whose address is *Licensee Address* (the “Licensee”).

WHEREAS, MUNETRIX, LLC, offers subscriptions to the Munetrix “Municipal Metrics” financial transparency database (the “Tool”) for the benefit of Administrators, Finance Officers, Business Managers, and Elected Officials, whereby they may subscribe to and be issued rights to use the Tool for fiscal transparency or business management practices;

NOW, THEREFORE, the parties hereby agree as follows:

1. Subscription. As a condition to the Agreement, the Licensee shall pay the Company an annual fee (the “License Fee”) within a commercially reasonable time following the Company’s receipt of the executed Subscription Agreement, the Company agrees to provide the Licensee with full access to Editing Rights to the Munetrix Tool (the “Tool”) through the Company’s website (Munetrix.com).

The annual subscription will have a start date coinciding with the later of the signing of this agreement, or upon registering for use of the Tool after being granted access by the company. The end date will be the first day of the following month of the subsequent year (the “Term”). Payment is due within 30 days of a) receipt of invoice and/or b) registration for use of the Tool.

The Parties agree that the term shall automatically be renewed for successive one-year periods, and the Licensee shall pay the company a subsequent License Fee for each renewal period within 30 days of receipt of the renewal invoice. If the Licensee fails to pay the subsequent License Fee, this Agreement, and the licensed access to the Tool, shall automatically terminate. The Licensee acknowledges that the License Fee may increase in subsequent renewal periods. The Company agrees to notify the Licensee at least 60 days prior to the renewal date if any increase in the License Fee will be implemented, and if a "Rate Lock" option is available.

2. Users. The Subscription shall provide up to three Authorized Users of the Licensees organization the right to use the Tool during the Term. For the purposes of this Agreement, the term “Authorized Users” shall mean any finance directors, chief administrators, clerks, or other employees of the Licensee that are elected or appointed during the time the Tool is being utilized and who agree to be bound by Munetrix’s Terms of Use, and/or designated by the Local Government's Chief Administrative Officer.

One of these Users is for full fiscal editing, one for demographic or background editing, and one for IT support. In the case the Licensee desires to have a third party provider, such as a CPA consultant, have editing access to the Tool, a nominal administrative fee shall apply and the addition of the third party user must be authorized by the Company and the Municipality.

3. Licensee and User's Responsibilities. The Licensee and User shall (i) be responsible for the accuracy, quality and legality of its data entered into the Tool (or any database that utilizes the Tool) and of the means by which such data is acquired, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Tool, and notify the Company promptly of any such unauthorized access or use, and (iii) use the Tool only in accordance with the Terms of Use and applicable laws and government regulations.



The Licensee and its Users shall not (a) make the Tool available to anyone other than Authorized Users, unless otherwise allowed or authorized per this agreement, (b) sell, resell, rent or lease the Tool, (c) use the Tool to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Tool to store or transmit viruses or malicious code, (e) interfere with or disrupt the integrity or performance of the Tool or any third-party data contained therein, or (f) attempt to gain unauthorized access to the Tool or their related systems or networks and (g) discontinue, decommission or otherwise notify Munetrix to decommission any Authorized Users from having access to the Tool upon termination of their employment from the Licensee's organization.

4. Company Responsibilities. At a minimum of once per year, and as long as State Agencies continue to provide access to bulk data downloads, updated F65, FID and other Financial Reports released by the State will be uploaded and will replace any information in the system that has been input. This data will be labeled as "Historic" and subsequently be "locked down so no further editing is allowed.

Public safety, traffic safety, certain educational performance and other data will be refreshed by the Company annually, and basic system enhancements will occur periodically at no additional charge. These updates will be in the form of slight modifications that make the system more user-friendly or intuitive, and may include various additions to data or charts that can help a municipality or the general public understand the data better. No version downloads are required by the Licensee; these updates will automatically appear once released for production and a User Notification will appear upon the Licensees next log-in. The Notification feature is TURNED ON as the Tool's default setting, and this preference may be changed by the Licensee using the system's settings.

5. Terms of Use. The Licensee agrees to be bound by (and comply with) and agrees to cause its Authorized Users to be bound by (and comply with) Munetrix's Terms of Use. For the purpose of this Agreement, the "Terms of Use" shall mean those certain terms of use that are set forth on Munetrix's website and relate to the usage of Munetrix's site, tools, and products, as modified from time to time. To the extent that there is any direct conflict between the terms of this Agreement and the Terms of Use, the terms of this Agreement shall control and prevail.
6. Guest User Link. As a condition to this Agreement, the Licensee agrees to place an approved Munetrix Citizens Guide to Finances guest user link or other means to hyperlink the Munetrix Tool to their websites homepage.
7. Limitation of Liability. The liability of the Company arising out of or related to this Agreement or the Tool shall not exceed the amount of the most recent Subscription Fee paid by the Licensee under this Agreement.
8. Relationship of the Parties. The parties to this Agreement are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
9. Assignment. Licensee may not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the Company.
10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

In addition to any other rights and remedies that the parties might have at law or in equity, the Company reserves the right to suspend or cancel the Licensee's Subscription and access to the Tool in the event that the Licensee breaches (or threatens to breach) any term of this Agreement.



11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Use of the system is also deemed an acceptance of the agreement.
12. Governing Law. This Agreement shall be bound by the laws of the State of Michigan without regard to its conflicts of law provisions.
13. Entire Agreement. This Agreement along with the Terms of Use constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

The Licensee agrees to the provisions of this agreement and by signing authorizes the transaction to executed as of the Effective Date.

**LICENSEE SIGNATURE:**

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

Name:

Title:

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



**Attachment 3 – TERMS OF USE AGREEMENT**  
**MUNETRIX LLC**

**TERMS OF USE AGREEMENT**

ANY ACCESS TO, OR USE OF, THE BELOW-DEFINED MUNETRIX SITE AND ANY CONTENT HOUSED ON, OR ACCESSED THROUGH, THAT SITE (INCLUDING, BUT NOT LIMITED TO, ANY TOOLS OR OTHER PRODUCTS OR SERVICES) BY ANY PERSON IS STRICTLY LIMITED TO THOSE INDIVIDUALS WHO MANIFEST THEIR ASSENT TO THE TERMS OF THIS TERMS OF USE AGREEMENT ("AGREEMENT") BY CLICKING THE "AGREE" ICON BELOW OR BY OTHERWISE ACCESSING DATA ON THE MUNETRIX SITE. BY CLICKING THE "AGREE" ICON BELOW OR BY OTHERWISE ACCESSING DATA ON THE MUNETRIX SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND ITS TERMS AND AGREE TO BE BOUND BY THEM.

BY ACCEPTING THE TERMS AND CONDITIONS, YOU FURTHER REPRESENT, WARRANT AND COVENANT THAT: (1) YOU ARE A MUNETRIX SITE LICENSEE IN GOOD STANDING OR ARE CURRENTLY AUTHORIZED BY SUCH A LICENSEE TO USE THE MUNETRIX SITE; (2) YOU WILL NOT HOLD OUT MUNETRIX LLC, A MICHIGAN LIMITED LIABILITY COMPANY (THE "COMPANY"), OR ANY OF ITS AFFILIATES, MEMBERS, OFFICERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES, AS AN "INVESTMENT ADVISER," AS SUCH TERM IS DEFINED IN THE U.S. INVESTMENT ADVISERS ACT OF 1940 ("ADVISERS ACT") OR ANY OTHER SIMILAR LAW OR REGULATION IN ANY JURISDICTION IN WHICH THE PRODUCT IS ACCESSED, USED OR DISTRIBUTED BY YOU; (3) YOU ASSUME ALL SUITABILITY (AND OTHER RELATED) RESPONSIBILITIES FOR YOURSELF, YOUR CLIENTS AND AFFILIATES; AND (4) YOU WILL LIMIT DISTRIBUTION OF THE PRODUCT (OR ANY PORTION THEREOF) TO THOSE INDIVIDUALS PROVIDED HEREIN.

YOU FURTHER REPRESENT, WARRANT AND COVENANT THAT, IF YOU PROVIDE ANY PERSON WITH ANY PRODUCTS OR SERVICES IN CONNECTION WITH YOUR USE OF THE PRODUCT HEREUNDER THAT COULD REASONABLY BE CONSTRUED AS "INVESTMENT ADVICE" UNDER THE TERMS OF THE ADVISERS ACT OR ANY OTHER SIMILAR LAW OR REGULATION IN ANY JURISDICTION IN WHICH YOUR COMPANY IS LOCATED OR IN WHICH YOU PROVIDE INVESTMENT ADVICE OR IN WHICH YOU ACCESS, USE OR DISTRIBUTE THE PRODUCT AND, IF YOU ARE NOT OTHERWISE EXEMPT FROM THE REGISTRATION REQUIREMENTS THEREIN, YOU WILL ACT AS THE "INVESTMENT ADVISER" TO THAT PERSON AND COMPLY WITH ALL APPLICABLE LAWS AND OBLIGATIONS RELATED TO THAT ROLE.

THIS AGREEMENT SUPERSEDES ANY PREVIOUS AGREEMENT BETWEEN YOU AND THE COMPANY WITH RESPECT TO THE PRODUCT.

1. The Product Licensed. The term "Product" shall mean the computer programs, Internet web pages, data (excluding specific fiscal and other data that is entered by certain Subscriber Licensees, from time to time, on the Munetrix Site; provided, that the Company reserves the right to use, copy, store, display, and distribute such entered data, as may be revised from time to time by such Subscriber Licensees, on the Munetrix Site and in Product Output), analyses, screens, manuals and other information of any kind that are housed on and accessible to you through, the Company's website located at the URL: <http://munetrix.com> ("Munetrix Site") as well as all updates, enhancements and modifications thereto, and all intellectual property contained therein. Without limiting the generality of the foregoing, the Product shall include: (i) a database of financial information relating to various cities, municipalities, and/or other Governmental Entities (as defined below) accessible via the Munetrix Site by means of a subscription paid for by the below-defined Licensee and/or otherwise made available to Users through a non-revenue user license



(the "Database"); (ii) the format and organization of information entered by a user of the Product, and the integration of such information with the Database (the "Format"); (iii) the HTML code, Java code, C++ code, C# code, ASP scripts, text, help screens, CGI scripts, other computer programs and associated documentation that provide a graphical user interface and system to store, process, retrieve and output information contained in either or both the Database and the User-Entered Information (the "Programs"); (iv) the format and organization of information output by the Product; and (v) Internet web page reports, spreadsheets, graphs, charts, tables, documents and other materials, whether in printed, electronic or any other form, that contain copies of all or part of the Database or Format, together with any works derived from such materials (collectively, "Product Output"). The licensed Product does not include the right to view or obtain, and the Company does not have an obligation to provide, any financial information of Governmental Entities for any future time periods, unless and until such time as this information has been provided by the Company through the Munetrix Site.

2. Licensee. The term "Licensee" shall mean (i) the person, whether an individual or entity, that is responsible for subscribing to, and paying for, the license to use the Product hereunder through a separate agreement ("Subscriber Licensee") or (ii) the person, whether an individual or entity, that uses the Product to view or access elements of the Product that are not generally accessible to public without the use, directly or indirectly, of a log-in username or password (e.g., public data) ("Non-Subscriber Licensee").

3. Authorized User. The term "Authorized User" shall mean (i) in the case of a Subscriber Licensee, an individual for whom Licensee has paid the necessary licensing fees and whom the Licensee permits to access or otherwise use the Product by providing that individual with a user name and password for access to the Product and (ii) in the case of a Non-Subscriber Licensee, an individual that accesses or otherwise uses the non-subscription elements of the Product that are generally available to the public without the use, directly or indirectly, of a log-in username or password. An Authorized User must be the Licensee (if an individual) or a partner, employee, or agent of the Licensee.

4. User. The term "User" shall mean an individual who is the Licensee, any Authorized User and/or any other third party who accesses or uses the Product hereunder. Each User understands and agrees that the Company may use auditing software to monitor IP address access and excess bandwidth use. Should usage levels exceed what the Company deems reasonable for individual use, or should multiple IP addresses be detected on an Authorized User's account, the Company reserves the right to assess additional charges for that bandwidth usage or terminate this Agreement.

5. Client. The term "Client" shall mean any individual or entity for which the Licensee, Authorized User, or User is currently providing or is proposing to provide products or services to.

6. Grant of License. Subject to the terms and conditions of this Agreement, the Company grants to each Authorized User a limited nonexclusive, nontransferable (except as otherwise provided by the Company in writing) license to do the following:

6.1 Authorized User's Internal Use of the Product to Generate Product Output. Only an Authorized User may use the Programs and Database to generate Product Output and then, only for the Licensee's normal business use.

6.2 Authorized Users' Distribution of Product Output. Only an Authorized User may distribute Product Output. Product Output may be distributed internally, subject to the terms of this Agreement and the following additional restrictions: (1) Product Output in non-static, electronic format, including, without limitation, that maintained in any database, spreadsheet or the like, may only be distributed to other Authorized Users; and (2) Product Output containing substantially similar content and/or analysis may be distributed only in print and/or static electronic (e.g., .pdf) format. In addition to internal distribution of Product Output as provided above, Product Output may be distributed externally to Clients or other third parties, subject to the following conditions: (i) the Product Output must be in print or static electronic format;



(ii) no part of the Database is resold; and (iii) in no event shall the aggregate Product Output distributed to any Client or other third party consist of more than an insubstantial portion of the Database. The distribution of any Product Output that does not meet all of the conditions set forth herein will require the express prior written consent of the Company, and the payment of additional fees or royalties to be determined in the Company's sole discretion. Except as otherwise explicitly provided in Section 6.2 or elsewhere in this Agreement, in no event shall Product Output be copied or distributed to any person.

Any Product Output that is distributed to any third party must contain the following statement, in legible type:

"(c) Munetrix LLC 2010. All rights reserved. The information contained herein: (1) is proprietary to Munetrix LLC and/or its content providers; (2) may not be copied, adapted or distributed; and (3) is not warranted to be accurate, complete or timely. Neither Munetrix LLC nor its affiliates or content providers are responsible for any damages or losses arising from any use of this information."

6.3 Additional Rights of the Company. The Company reserves the right, in its sole discretion, to: 1) determine to whom it will provide the Product 2) change the price for the Product on an annual, semi-annual, or more frequent basis, and 3) to change, limit, or discontinue any aspect, content, tool, or feature that is a part of the Product. The Company further reserves the right, in its sole discretion, to restrict the use of the Product as well as suspend or revoke your rights to use the Product if the Company determines that such use is in violation of this Agreement or applicable law.

7. Payment. In exchange for the rights granted hereunder, in the case of a Subscriber Licensee, such Subscriber Licensee has agreed to pay the Company the subscription fees in the amount specified in a separate agreement between the Licensee and the Company. In addition to any other rights that the Company may have hereunder, if full payment of all fees owed by such Subscriber Licensee is not forthcoming when due, the Company reserves the right to immediately terminate this Agreement and all of Users' rights hereunder.

8. Ownership. User acknowledges and agrees that: (i) the Product, including, without limitation, any modifications, enhancements and updates, and any originals and copies thereof, in whole or in part, and all intellectual property rights therein (collectively, "Proprietary Information"), is owned by the Company and/or its third party content providers ("Content Providers"), as applicable; (ii) the Proprietary Information shall be treated as copyrighted and proprietary material of the Company and/or its Content Providers, as the case may be, and is protected by United States and international copyright law and international treaty provisions; (iii) the Proprietary Information is licensed, rather than sold, to Authorized User pursuant to this Agreement; and (iv) User has no rights in the Proprietary Information, other than the rights and licenses explicitly granted to it pursuant to this Agreement or otherwise available under applicable law. The Company may, from time to time, disclose additional information to Authorized User in the form of upgrades, documentation or other support. User agrees that such information shall also be deemed Proprietary Information.

9. Trademarks. User acknowledges that the Company, Inc. has acquired, and is the owner of, trademark rights in: (1) the name and word mark: "MUNETRIX"; and (2) the design mark: "MUNETRIX". User shall not, at any time or for any reason, challenge the validity of, or the Company's ownership of, the foregoing names and marks, and User waives any rights User may have at any time to do so. All marks not owned by the Company are the property of their respective owners.

10. Restrictions on Use. Except as expressly provided in this Agreement or any amendment or addendum thereto or in a separate agreement, no User may: (i) use, copy, modify, merge, install, transfer or distribute the Product; (ii) reverse-engineer, decompile, translate, disassemble or separate the components of the Product (including, without limitation, viewing or otherwise obtaining HTML source code); (iii) sublicense, rent, sell or lease the Product or any part thereof; (iv) use any program, procedure, device



or method other than the Programs and a web browser to access, use, reproduce or process the Database, the Programs, the Product Output or Format or any part thereof, without the Company's express prior written authorization; (v) encourage or facilitate any other User's breach of the terms of this Agreement; (vi) permit use of the Product by a person other than an Authorized User; (vii) use the same password and user name combination as another User, unless permitted by the Company; (viii) export the Product to any country where export is prohibited by the United States, or any other export laws; (ix) attempt to defeat, modify or work around any security devices protecting the Product, including, but not limited to, any attempt to probe, scan or test the vulnerability of a Product system or network or to breach Product security or authentication measures without proper authorization; (x) attempt to interfere with service to any User, host or network, including, without limitation, via means of submitting a virus to the Product, overloading, conducting "denial of service attacks", "flooding", "spamming", "mail bombing" or "crashing", (xi) send unsolicited e-mail, including, but not limited to, promotions and/or advertising of other products or services, via the Product or any affiliated system, (xii) forge any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting. Violations of Product system or network security may result in civil or criminal liability. The Company reserves the right, at its sole discretion, to investigate such occurrences and to cooperate with law enforcement authorities in prosecuting Users who are involved in such violations.

11. Warranty and Disclaimer of Warranty. The Company warrants that it will make commercially reasonable efforts (or their equivalent under applicable law) to ensure that the Product is free of viruses and damaging or disabling code, errors or other defects. The Company reserves the right, without the obligation, to correct any known and correctable errors or defects in the Product.

EXCEPT AS OTHERWISE EXPLICITLY PROVIDED HEREIN, THE PRODUCT IS PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH USER. AUTHORIZED USER ACKNOWLEDGES FOR ITSELF AND ALL USERS ACCESSING THE PRODUCT THROUGH IT THAT, BECAUSE OF THE NATURE OF SOFTWARE AND THE INTERNET, THE PRODUCT MAY NOT BE ACCESSIBLE WHEN NEEDED, AND THAT INFORMATION TRANSMITTED OVER THE INTERNET (INCLUDING, BUT NOT LIMITED TO, DATA UPDATES, THE PRODUCT OUTPUT AND THE USER-ENTERED INFORMATION) MAY BE SUBJECT TO THIRD PARTY INTERCEPTION AND MODIFICATION. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COMPANY DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, AND ABSENCE OF VIRUSES AND DAMAGING OR DISABLING CODE. NEITHER THE COMPANY NOR ITS CONTENT PROVIDERS WARRANT THE ACCURACY, CORRECTNESS, COMPLETENESS, OR TIMELINESS OF THE PRODUCT. EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY PROHIBITED BY APPLICABLE LAW, NEITHER THE COMPANY NOR ITS AFFILIATES (COLLECTIVELY, THE "COMPANY PARTIES") NOR THEIR CONTENT PROVIDERS SHALL BE RESPONSIBLE FOR INVESTMENT DECISIONS, DAMAGES, OR OTHER LOSSES RESULTING FROM USE OF THE PRODUCT OR THE INFORMATION CONTAINED THEREIN. PAST PERFORMANCE DOES NOT GUARANTEE FUTURE RESULTS. ANY INFORMATION PROVIDED IS FOR INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY.

EACH USER OF THE PRODUCT ACKNOWLEDGES AND AGREES THAT ALL DATA ON THE MUNETRIX SITE IS PROVIDED BY THIRD PARTIES AND NOT THE COMPANY AND THAT NO MEMBER OF THE COMPANY GROUP IS RESPONSIBLE FOR THE ACCURACY, FINALITY, OR RELIABILITY OF ANY SUCH DATA. EACH USER OF THE PRODUCT ACKNOWLEDGES AND AGREES THAT THE COMPANY PROVIDES CERTAIN LICENSED USERS, INCLUDING CERTAIN GOVERNMENT ENTITIES THE ABILITY TO ENTER AND REVISE PROJECTIONS, FORECASTS, FISCAL AND OTHER DATA ON THE MUNETRIX SITE, FROM TIME TO TIME, AS DETERMINED IN THE DISCRETION OF SUCH LICENSED USERS. EACH USER OF THE PRODUCT ACKNOWLEDGES AND AGREES THAT ANY USE OF THE PRODUCT AND THE DATA CONTAINED THEREON SHALL BE AT SUCH USER'S SOLE RISK.



11.1 AUTHORIZED USER: EACH AUTHORIZED USER WHO MANIFESTS HIS OR HER ASSENT TO THE PROVISIONS OF THIS AGREEMENT REPRESENTS, WARRANTS AND COVENANTS THAT HE OR SHE IS COMPLETELY AND UNCONDITIONALLY AUTHORIZED BY LICENSEE TO ENTER INTO THIS AGREEMENT, THAT HE OR SHE IS BOUND BY ALL OF ITS TERMS, THAT HE OR SHE IS AUTHORIZED TO ACKNOWLEDGE AND AGREE TO ITS TERMS ON BEHALF OF ANY USER ACCESSING OR USING THE PRODUCT THROUGH HIM OR HER AND THAT HE OR SHE IS RESPONSIBLE FOR THE USE OF THE PRODUCT BY ANY OTHER USER WHO ACCESSES OR USES IT THROUGH OR ON BEHALF OF THAT AUTHORIZED USER.

12. Limitation of Liability. In addition to any other disclaimer, limit and/or restriction contained in this Agreement, each User expressly agrees that it is solely responsible for (i) the manner by which, and the purpose for which it accesses and uses the Product hereunder, (ii) the results it obtains (or not) from such access or use; and

(iii) any damages to itself, any Licensee, any other User or Authorized User, any Client and/or any other third parties arising from its use of the Product. Except as otherwise specifically prohibited by applicable law, the Company Parties and their content providers will not be liable for: (i) loss of, or damage to, records or information

of any User, Licensee, Authorized User, Client or other third party; or (ii) any damages suffered or claimed by any such person(s) based on any third party claim related to use of the Product.

EXCEPT AS SPECIFICALLY PROHIBITED BY APPLICABLE LAW OR OTHERWISE EXPLICITLY PROVIDED HEREIN, THE AGGREGATE LIABILITY FOR THE COMPANY FOR ANY DIRECT DAMAGES ARISING UNDER OR IN ANY WAY RELATING TO THIS AGREEMENT, THE PRODUCT OR ANY OTHER SERVICES PROVIDED BY THE COMPANY, WHETHER ARISING IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNT PAID TO THE COMPANY BY SUCH LICENSEE, AUTHORIZED USER, OR USER, AS APPLICABLE, FOR USE OF THE PRODUCT DURING THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF SUCH CLAIM FOR DAMAGE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY AND EXCEPT AS OTHERWISE SPECIFICALLY REQUIRED BY APPLICABLE LAW, THE COMPANY WILL NOT BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR OTHER, SIMILAR FORMS OF CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF GOODWILL OR ANTICIPATED SAVINGS, OR LOSS OF DATA. NO PARTY AFFILIATED WITH THE COMPANY SHALL HAVE ANY LIABILITY TO ANY LICENSEE, AUTHORIZED USER, USER, CLIENT OR ANY OTHER THIRD PARTY UNDER THIS AGREEMENT.

13. Termination. Notwithstanding any provision in this Agreement to the contrary, the Company may immediately terminate this Agreement without notice in the event that Licensee or any Authorized User or any User accessing the Product through Licensee or any Authorized User commits any act or omission that would be a breach of the ownership, use, copying, distribution, confidentiality provisions of this Agreement if such act or omission were committed by the Authorized User, including, but not limited to, (i) permitting use of the Product by a person other than an Authorized User; or (ii) using, copying or distributing Product Output other than as expressly authorized by this Agreement.

14. Effect of Termination. Upon expiration or termination of this Agreement for any reason, all of Authorized User's rights in and to the Product (excluding previously obtained Product Output; provided, that the restrictions applicable to the use and distribution of Product Output remain adhered to), as well as the rights of all Users and any Licensee obtaining access to the Product through such Authorized User, shall immediately terminate. Expiration or termination shall not affect any obligation to pay all fees and/or royalties due prior to that event, and expiration/termination shall not relieve any party of any liability for breach of this Agreement. The terms of Sections 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 25 shall survive expiration or termination of this Agreement.



15. Confidentiality. Except as expressly provided in this Agreement, Authorized User shall keep secret and confidential and shall not disclose, provide or otherwise make available to any person the Proprietary Information and shall cause each User accessing or using the Proprietary Information through, or on behalf of that Authorized User to do the same. Authorized User (i) shall use his or her best efforts, and shall employ reasonable security measures, to prevent any unauthorized disclosure of the Proprietary Information and (ii) shall immediately advise the Company of any information Authorized User has or receives of any actual or potential unauthorized disclosure or access. Authorized User acknowledges that the Product is only being disclosed to Authorized User based on a confidential relationship established under this Agreement. Authorized User further acknowledges that such information is to be used only as expressly permitted hereunder, and that the restrictions of this Agreement are necessary to protect the secrecy of the information and to protect against the occurrence of irreparable injury or harm to the Company.

16. Compliance with Regulations. User is solely responsible -- either by itself or through Licensee -- for obtaining appropriate regulatory approval of any Product Output to the extent necessary. User understands and agrees that (i) certain personally-identifiable information of User or Clients may be processed in the United States to enable the Company to fulfill its obligations hereunder and (ii) in providing such personally-identifiable information to the Company, User consents to such transfer and processing and agrees that, as between itself and the Company, User is solely responsible for complying with any rules or regulations applicable to such transfers. For absence of doubt, unless an applicable separate agreement expressly provides otherwise, the Company's role in the handling of any such personally-identifiable data is strictly limited to that of being a data processor for and on behalf of Licensee.

17. Governmental Licensee. Notwithstanding anything to the contrary contained in this Agreement, if Licensee is a Governmental Entity (a "Government Licensee"), then such Government Licensee and its Authorized Users may disclose the Product Output to the extent reasonably necessary to comply with any applicable foreign, domestic, federal, state, or local laws (as each of the same may be in effect from time to time), including, without limitation, any Freedom of Information Act or other disclosure requirements imposed by law. Notwithstanding anything to the contrary contained in this Agreement, a Governmental Licensee does not waive any sovereign or governmental immunity from suit or liability by entering into this Agreement and fully retains all immunities and defenses provided by law with respect to any action based upon or occurring as a result of this Agreement. For the purposes of this Agreement, a "Governmental Entity" means any government or political subdivision thereof, whether foreign or domestic, federal, state, provincial, county, local, municipal or regional, or any other governmental entity, any agency, authority, department, division or instrumentality of any such government, political subdivision or other governmental entity, any court, arbitral tribunal or arbitrator, and any nongovernmental regulating body, to the extent that the rules, regulations or orders of such body have the force of law.

18. No Advice. User acknowledges and agrees that the Munetrix Site does not provide investment advice (as defined in the applicable jurisdiction(s)), that nothing within the Product constitutes such investment advice and that the User will not treat any Product Output as investment advice or make any representation to any third party to that effect. User further acknowledges and agrees that; (i) the Company does not endorse or oppose the financial strength or spending decisions of any Governmental Entities or other parties whose information is accessed through or analyzed by the Product; and (ii) nothing within the Product is intended to be or to be treated as an inducement or invitation to engage or not engage in any kind of business activity or relationship with any Governmental Entities or other parties.

19. Inadequacy of Legal Remedy. User acknowledges that the Company's legal remedies (including the payment of damages) may not be sufficient in the event of any breach by User of any provisions of this Agreement including, but not limited to, those related to the ownership, use, copying, distribution, confidentiality or nondisclosure of the Product, Product Output or other the Company proprietary information, and that the Company may suffer continuing and irreparable injury to its business as a direct result of such breach. Therefore, in the event of any such breach, the Company may seek any injunctive relief necessary to prevent or cure such breach (including temporary and preliminary relief, and relief by order of specific performance), without notice or the need to post bond.



20. Place for all Disputes. All disputes arising out of this Agreement or the performance thereof shall be determined exclusively under the laws of the State of Michigan, United States of America, without regard to its conflict-of-law provisions. In the event of any legal proceedings arising out of this Agreement or the performance thereof, User agrees and consents to the exercise of personal jurisdiction over User by any state or federal court of law or equity located in Oakland County, Michigan, U.S.A. User shall not initiate any legal proceeding arising out of this Agreement or the performance thereof except in the applicable jurisdiction set forth above. Alternatively, at the Company's sole option, disputes arising out of this Agreement or the performance thereof, including all claims for non-performance by the Company, may be finally settled by arbitration in Pontiac, Michigan U.S.A. under the Rules of the American Arbitration Association. Such arbitration shall be conducted by one or more arbitrators appointed in accordance with such rules applying this Agreement and consistent provisions of the internal laws (except conflict of law rules) of the State of Michigan, U.S.A.

21. Entire Agreement; Variation. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. The Company reserves the right to modify this Agreement from time to time at its discretion and User agrees that it will be bound by such modified Agreement upon User's accessing the Product after the date of the modification in question.

22. Assignment. No Licensee or Authorized User may assign any of its rights under this Agreement without the Company's prior written consent. Any purported assignment by a Licensee or Authorized User without such prior written consent will be void.

23. Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement (including, without limitation, any Licensee) and no law or regulation providing to the contrary shall apply to this Agreement.

24. Severability. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provisions shall be modified, or if not possible, severed, to reflect the fullest valid, legal and enforceable expression of the intent of the parties and the remainder of this Agreement shall not be affected thereby.

25. Additional Product Features.

25.1 Links. The Munetrix Site may contain information, products, and services provided by third parties and links (including advertisements) to third party web sites. This information and these products, services, and links are provided only as a convenience to Users. The Company does not review or control this information or these products, services, or other web sites, and the Company does not make any representations or warranties, express or implied, regarding this information or these products, services, or web sites. Inclusion of any of the foregoing in the Product does not constitute or imply an endorsement, authorization, sponsorship, or affiliation by or with the Company with respect to any third party or its web site or content, or any information, products, or services provided by that third party.

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