



**AVUE TECHNOLOGIES CORPORATION: AVUE DIGITAL SERVICES<sup>®</sup>  
ENTERPRISE MASTER SUBSCRIPTION AGREEMENT WITH [CLIENT NAME]**

**PURCHASED THROUGH CARAHSOFT TECHNOLOGY CORPORATION, AN AUTHORIZED AVUE PRIVATE  
SECTOR HRLOB SHARED SERVICE CENTER (HRLOB SSC) RESELLER**

Effective: \_\_\_\_\_, 2012

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## 1.0 Enterprise Subscription

This enterprise Subscription Agreement (the "**Agreement**") for Avue Digital Services® ("**ADS**"), is effective as of \_\_\_\_\_, \_\_ 2012 (the "**Effective Date**") between Avue Technologies Corporation ("**Avue**") and [Client Name] ("**Subscriber**"). The ADS modules covered by this Agreement (the "**Subscribed ADS Modules**") and the Covered User Community entitled to access to the Subscribed ADS Modules under this Agreement are identified in Attachment 1.

## 2.0 Subscription Periods

Avue enterprise subscriptions are sold on: (a) an annual basis, in which case the client may elect to make its subscription fee payments either (i) with a single annual payment on or before the first day of the subscription period, or (ii) in 12 monthly installments; and (b) a monthly basis, in which case the client pays its subscription fees on a month to month basis. In either event, the initial Subscription Period shall commence on the Effective Date and shall continue for the period stated in Attachment 1 (in the case of an Annual Subscription) or month to month so long as the monthly fee is paid in a timely manner (in the case of a Monthly Subscription). The Subscriber may renew its Annual Subscription for a succeeding annual period by issuing an appropriate written renewal order prior to the end of its then-current Subscription Period.

## 3.0 Scope of Subscription and Incidental Services

3.1 The Subscribed ADS Modules, extranet access, and services related to this subscription (the "**Subscribed Services**") shall consist of the following for each Subscriber: (a) extranet access to Subscribed ADS Modules, including their associated user interface and content databases; (b) on-going software application and database management and administration, including updates and upgrades; (c) startup and ongoing configuration for each of the Subscribed ADS Modules; (d) professional deployment services support such as training and briefings for all managers and employees; (e) help desk assistance for employees and applicants using the system; (f) professional human resources staff support directly to managers using the

Subscribed ADS Modules. Avue Digital Services constitutes "software maintenance as a product" and includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self-diagnostics. In addition, certain ADS Modules may include the loan by Avue, at Avue's sole risk and expense, of a relatively small number of Avue-owned personal electronic devices such as tablet computers, which are necessary or desirable for certain individuals who are employees of the Subscriber to be able to access certain data and feature-functionality not otherwise available.

3.2 Each Avue enterprise subscription is offered on an "all-you-can-eat" basis which means Avue supports unlimited use by the client organization and its employees, as well as, depending upon the module, external users such as applicants. For its enterprise customers, Avue does *not* assess fees for ADS on a per-seat, per-server, per-transaction, or professional service fee basis. Avue enterprise subscription fees constitute fixed price, all-inclusive fee coverage of ADS start-up activation and use, including, where applicable, the addition of client-specific occupational and workforce management content, job requirements, and business logic rules engines, as well as all the training, internal communications and marketing, change management, and support the client reasonably needs throughout the life of the subscription. Training and other periodic presentations offered by Avue to its customers are typically offered in a setting where modest food and refreshments are provided throughout the day to attendees; attendees have the option of partaking or not.

3.3 The Subscriber's enterprise subscription to Avue Digital Services includes, as part of the fixed-price, for the entire life of the Subscription, at no additional charge, Avue Enterprise Direct<sup>®</sup>. Avue Enterprise Direct<sup>®</sup> includes Avue expert call center support directly to managers such that, used in combination with the Subscribed Modules, the Subscriber need not maintain internal HR resources to provide manager support. Avue Enterprise Direct<sup>®</sup> helps managers, for example, create positions, vacancy announcements, applicant intake questionnaires and associated documents, as well as creating and modifying performance plans, and similar workforce management tasks depending upon the module(s) subscribed.

3.4 Pursuant to Section 7, upon the Subscriber's request and for additional charge, Avue may provide supplemental and incidental services as mutually agreed.

3.5 The current Avue Digital Services offering is described in [Attachment 2](#); additional ADS modules may be added, or current modules withdrawn, from time to time by Avue, provided that a Subscribed ADS Module to which a valid subscription is in place will not be withdrawn by Avue without reasonable notice to the Subscriber.

3.6 ***For federal government Subscribers, the Subscribed Services are commercial items under FAR 2.101 and this standard commercial license to the Subscribed Services shall be incorporated into and attached to the applicable contract.***

#### 4.0 Covered User Community

4.1. Except as otherwise provided in this Section 4, the Covered User Community identified in [Attachment 1](#) includes only those users who are employees of the Subscriber.

4.1.1 The Covered User Community does not include employees of contractors to the Subscriber or of any other entities that may provide services to or receive services from the Subscriber or any of its subordinate organizations; provided

that, contractors to the Subscriber may be permitted limited access comparable to professional staff in the event they: (a) are not employees of a competitor of Avue; and (b) agree to be bound to the terms of a system use agreement in a form reasonably satisfactory to Avue.

4.1.2 Professional services contractors to the Subscriber may also be granted limited access to the system in the same manner as full-time employees for purposes of providing information to the Subscriber in connection with contractor management feature functionality in the Avue system.

4.2. The Subscriber agrees not to use the Subscribed Services on behalf of any other organization or entity, including but not limited to product demonstrations to others outside of the specific licensed governmental entity, except as may otherwise be provided in this Agreement.

#### 5.0 Right to Use Avue Digital Services

5.1 Definitions. For purposes of this Article:

5.1.1 "ADS Material" includes any and all of the following aspects of Avue Digital Services<sup>®</sup>, whether owned by Avue and/or third parties -- databases, data, services, functions, content, functionality, rules, documents, reports, and associated Avue-provided interfaces -- which exist at any time during the Subscription Period except for data and documents that constitute Client Data.

5.1.2 "Client Data" includes:

5.1.2.1 Individual historical data elements relating to specific individuals that are customarily contained in an individual employee record. These include, for example, name, date of birth, SSN, education, occupational series, grade, salary, and similar data; and

5.1.2.2 Individual historical data

elements that are quantitative or otherwise arise from one or more specific transactions so long as these data elements can be downloaded in the course of authorized use by the Subscriber from a report generated from the "Online Reports" interface embedded in Avue. These include, for example, individual performance ratings, transaction processing cycle time metrics, employee complaint proceeding outcomes, and similar data; and

5.1.2.3 Documents, solely in their original form, provided to Avue by Subscriber. These include, for example, position descriptions and performance plans produced by or for Subscriber prior to the relevant Subscription Period.

5.1.3 For a Subscriber that is a U.S. Government agency ("Government Subscriber"), the following shall apply notwithstanding any other section of this Agreement:

5.1.3.1 In addition to section 5.1.2, "Client Data" shall include the following (the "Government Data"): any data in its original form that: (1) the Government Subscriber owns and provides to Avue under this Agreement, and (2) the Government Subscriber first develops and enters into an Avue-hosted database using a Subscribed ADS Module during the Subscription Period; provided any such data are not, in whole or in part, ADS Material and/or include Avue's proprietary format, display or database correlations. Government Data does not include derivative works of ADS Material prepared by the Government Subscriber. Avue shall maintain the ability to segregate all Government Data from ADS Material, including segregating Government Data embedded in derivative works of ADS Material or other Avue proprietary information.

5.1.3.2 To the extent that the Government Subscriber does not already own the Government Data, the Government Subscriber shall have unlimited rights under

FAR 52.227-14 to the Government Data, including the right to use, duplicate and disclose the Government Data for purposes of migrating such data to a non-Avue database after the Subscription Period. The Government Subscriber's unlimited rights to the Government Data shall survive the expiration or termination of this Agreement.

5.1.3.3 All Government Data shall be returned upon request to the Government Subscriber in a .csv, ASCII, or other format agreed upon by Avue and the Government Subscriber, provided such request occurs within the Subscription Period or thirty (30) days after the Subscription Period.

5.1.3.4 The Covered User Community in Attachment 1 may include other government agencies and third parties expressly listed in Attachment 1, provided Attachment 1 lists the number of maximum authorized third-party users and the Government Subscriber pays the Third Party Subscription Fee listed in Attachment 1.

5.2 Subject to sections 5.3 through 5.9 of this Article, Subscriber shall have a non-exclusive, non-transferable, limited right to use Avue Digital Services<sup>®</sup> for access to the Subscribed ADS Modules during the relevant Subscription Period under this Agreement, including the right to make use, for its own internal operations, of any printable output (whether in hard copy or electronic form) of data that it generates or downloads by means of its authorized use of Avue Digital Services<sup>®</sup>.

5.3 So long as separated from Avue's proprietary format, display, or database correlations, Subscriber shall have the right to use and maintain Client Data outside the Avue Digital Services<sup>®</sup> system at any time.

5.4 Avue Digital Services<sup>®</sup> may be used only by members of the Covered User Community and may be accessed only through the use an Avue provided software interface.

5.5 Use of Avue Digital Services<sup>®</sup> by Subscriber shall be only for the Subscriber's own business purposes solely in the course of satisfying the Subscriber's own business needs during the

term of this Agreement.

- 5.6 ADS Material (including archival documents) may only be copied and used for: (1) processing of current human resources transactions during the Subscription Period (e.g., creating positions, staffing vacancies); and (2) record keeping with respect to current and past human resources transactions. Use of ADS Material to feed another system in any form other than as a "read-only" image, or to compile or create a competing or successor human resources database or system (whether or not a Subscribed Module) for use by Subscriber or any other organization – e.g., a library or electronic system usable in processing future transactions independent of ADS - is strictly prohibited.
- 5.7 Except for record keeping purposes described in the preceding section, In no event shall Subscriber access, download, print, store, extract, copy, publish, transmit, transfer, or transport to another program, ADS Material for use after termination or expiration of the Subscription Period, or use independent of, the Subscribed ADS Modules. The Subscriber shall not incorporate any of the ADS Material in any other work.
- 5.8 In no event shall Subscriber access or otherwise use Avue Digital Services® (including any ADS Material) to develop a product, program, or resource that provides similar functionality or is otherwise similar to Avue Digital Services®, including, without limitation, the Subscribed ADS Modules, whether for internal use or for the use of other agencies or third parties. Subscriber shall not reverse compile, disassemble, or reverse engineer the ADS Material. Subscriber shall not sell, license, or distribute any ADS Material to third parties (including, without limitation, other government agencies) or use any ADS Material as a component of or as a basis for any material offered for sale, license, or distribution.
- 5.9 With respect to section 5.0 of this agreement and its subsections, those provisions do not prevent internal use by Subscriber for internal Subscriber purposes

of the output from the ADS Material, including but not limited to reports, position descriptions, and vacancy announcements. Additionally, except for sections 5.6, 5.7, and 5.8, the provisions in section 5.0 do not otherwise limit the rights of Subscriber in any way to data and information developed, entered into, and processed through Avue's information system(s) by Subscriber which is not technical data or computer software, and the reference to documents or data in their "original form" is not intended to limit the rights of Subscriber in data developed by Subscriber which may be modified or updated. By the same token, simply by using the ADS Material or inputting its own data into the ADS Material, Subscriber does not obtain any rights in the ADS Material. Nothing in this section is intended to narrow the scope of ADS Material or expand the scope of Client Data for purposes of sections 5.6, 5.7, and 5.8 of this Agreement, which shall apply to any data and information developed, entered into, and processed through Avue's information system(s) by Subscriber that includes ADS Material. At any time during the term of the contract at the request of the Subscriber, and at contract closeout, Avue will provide said data in a format previously identified by Subscriber. Data formats include, but are not limited to, XML, CSV, and PDF, but do not include MS Word.

#### 6.0 Extranet Access

As described in Attachment 3, as part of the client's enterprise subscription, Avue will provide Subscriber with on-going Extranet access to the Subscribed ADS Modules. This includes on-going access to the applications, databases, and services for these modules sufficient to serve the Covered User Community identified in Attachment 1. Avue will be responsible for data and database administration throughout the course of the Subscribed Period. In addition, the Subscriber shall receive the following startup and configuration services:

- Capacity planning
- Functional and technical implementation and deployment Consulting
- Internal marketing planning and consulting

- Training and briefings of employees, managers, and staff professionals
- Database customization, specialized occupational cluster development, as well as application functionality and rules engine configuration
- Creation of User ID's, passwords, profiles, and permissions.

## 7.0 Supplemental or Incidental Services

The Subscriber may request that Avue perform supplemental or incidental services that relate to the Subscribed Services. Each work request for such supplemental or incidental services shall describe the requested services to be completed and, if applicable, the requested date of completion. All such work requests are subject to written acceptance by Avue.

## 8.0 Subscriber Obligations

The Subscriber shall (a) provide Avue with full, good faith cooperation and such information as may be required by Avue in order to promptly and fully deploy the Subscribed Services throughout the Subscriber; (b) provide such assistance and information as may be reasonably requested by Avue from time to time, and (c) timely and fully carry out all other Subscriber responsibilities set forth herein, including the Attachments hereto. For Subscribers purchasing the Avue Command Center Module (ACC), Subscriber specifically agrees to cooperate with Avue to establish a full bi-directional interface between the Avue system and the payroll system used by Subscriber.

## 9.0 Level of Performance

9.1. Definitions: For purposes of this Section 9.0, the following terms will have the meanings given:

9.1.1. "**Service Availability**" means the up-time of the Extranet Data Center and the relevant applications.

9.1.2. "**Hours of Operation**" means 2060 hours per quarter calendar year, calculated as follows: 7x24 for 365 days divided by 4 quarters per year less: (a) six daily

maintenance and backup as required not to exceed one hour per day between 12 AM and 1AM (EST) and (b) one weekly maintenance and backup as required not to exceed one four hour period occurring from Saturday midnight to 4AM (EST) Sunday morning. "**Performance Standard**" means 95% of the Hours of Operation, i.e. 1957 hours per calendar quarter.

9.1.3. "**Service Accessibility**" means the ability for the Covered User Community to access the Subscribed ADS Modules from the following locations: within the Subscriber intranet environment; from Subscriber employee homes; and through general Internet access providers. Access from these locations is subject to meeting technical and security requirements.

## 9.2. Performance Availability and Service Accessibility

9.2.1. Avue will be responsible for maintaining Service Availability and Service Accessibility at a level not less than the Performance Standard.

## 9.3. Service Metrics

9.3.1. Avue will be responsible for the provision of Service Availability and Service Accessibility statistics on a monthly basis, as well as providing quarterly summary reports to the Subscriber. The monthly and quarterly statistics will reflect the number of actual hours of service delivered.

9.3.2. Any deficiency in achieving the Performance Standard in a quarter year may be subject to Service Credit, as defined and provided for in Section 9.4.

## 9.4. Service Credit:

9.4.1. In the event that, on an aggregate basis within any given quarter of a year, Avue does not provide Service Availability and Service Accessibility for any Subscribed ADS Module at a level that is at least equal to the Performance Standard due to a failure within the Extranet Data Center, the Subscriber may deduct from the Subscription Fee one percent

(1%) of the Subscription Fee for such Subscribed ADS Module, prorated with respect to such quarter, for each full one percent (1%) of the cumulative shortfall below the Performance Standard (“**Service Credit**”).

9.4.2. Service Credit applied to Avue, will be subject to offset, pro rata, to the extent that Avue has provided service in excess of the Performance Standard, calculated on a rolling-average basis, during the preceding four quarters.

9.4.3. Service Credit, if any, may only be credited against the Subscriber’s Subscription Fees, if any, next occurring for the affected Subscribed ADS Module(s)-

9.4.4. The application of Service Credit will not apply in the event of a declared disaster where a business continuity plan is being executed, for the duration of the time required to relocate to the secondary data center. In addition, the application of Service Credit shall be subject to the terms contained elsewhere in this Agreement, including without limitation Section 9.5, Section 14.0, and Section 17.2.

9.4.5. The first quarter of the provision of any particular Subscribed ADS Module will be excluded from any Service Credit determination.

9.4.6. Major revisions to any Subscribed ADS Modules shall be excluded from the availability calculations for the first quarter that the major revision is in production. Avue and the Subscriber will jointly determine when a revision is considered to be a major revision.

9.5. Maximum Service Credits: Notwithstanding any other provision of this Agreement, including without limitation Section 9.4 in the event that the Subscriber is entitled to any Service Credit as a result of any shortfall in Service Availability and Service Accessibility in any calendar quarter, such Service Credit shall not exceed five percent (5%) of the Subscription Fee for the affected Subscribed ADS Module, pro-rated with respect to such calendar quarter.

9.6. Sole Remedy. Subscriber acknowledges and agrees that any Service Credit provided for under this Section 9 shall be the Subscriber’s sole and only remedy in the event that there is any shortfall regarding Service Availability and Service Accessibility during the Subscription Period. This provision does not limit the government’s rights to terminate for convenience or for cause pursuant to FAR 52.212-4(l) and (m).

## 10.0 Fees and Expenses

10.1. Enterprise Annual Subscriptions. As set forth in Attachment 1, and invoiced and payable as set forth in Section 11, for Enterprise Annual Subscriptions there shall be an Initialization Fee, an Annual Subscription Fee, and an Annual Extranet Fee for each ADS Module.

10.2. Enterprise Monthly Subscriptions. As set forth in Attachment 1, and invoiced and payable as set forth in Section 11, for Enterprise Monthly Subscriptions there shall be a single monthly Subscription Fee for each ADS Module.

10.3. Determination of Fees and FTE Modification. For all Enterprise Subscriptions all ADS fees are determined by the number of employees within the Subscribing Entity. The number of employees is determined by the authorized FTE’s, in the enacted budget for the entity, for the fiscal year in which the initial purchase takes place. Subsequently, at each renewal the Subscriber will have its Annual Subscription and Extranet Fees adjusted as necessary to bring these-fees into alignment with the Subscriber’s enacted budget FTE for that subscription fiscal year.

10.4. Supplemental or Incidental Services. For any of the supplemental or incidental services described in Section 7, the Subscriber shall pay at the specified rates agreed upon between the Subscriber and Avue at the time an order for such services is accepted by Avue. The Subscriber shall be responsible for all actual, reasonable, out-of-pocket expenses incurred by Avue in performing any supplemental or incidental services. For government Subscribers, reimbursement of

expenses under this subparagraph is limited to allowable costs under the applicable regulations.

#### 11.0 **Acceptance, Invoicing and Payment Terms**

11.1. Avue shall not be required to initiate the Subscribed Services for any Subscription Period unless there is a procurement contract in place against which a valid purchase order for the Subscribed Services may be placed.

11.2. Subscriber's acceptance of any Subscribed ADS Module shall be deemed to occur at the time of Avue's first release of the Subscribed ADS Module for Subscriber's use which will be deemed to occur at the time when Avue provides Subscriber with its first user accounts permitting access to the fully functioning system.

11.3 With respect to Enterprise Annual Subscriptions:

11.3.1 Initialization Fees shall be invoiced commencing on the date the Subscribed ADS Modules are first released to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.3.2 Annual Subscription Fees shall be invoiced as follows:

11.3.2.1 In the event that Subscriber has not elected to take advantage of the standard pre-payment discount Avue offers its customers, the Annual Subscription Fees shall be invoiced in twelve (12) monthly installments, commencing on the date the Subscribed ADS Modules are first released to the Subscriber. Each ensuing subscription renewal shall be invoiced, due and payable in same manner. Payment is due upon receipt of invoice by the Subscriber. The fact that Annual Subscription Fees are paid monthly does not relieve the Subscriber of the full year subscription obligation to which such fees relate.

11.3.2.2 In the event that Subscriber has elected to take advantage of the standard pre-payment discount Avue offers its

customers, initial year Subscription Fees are invoiced in full on the date the Subscribed ADS Modules are first released to the Subscriber. Payment is due upon receipt of invoice by the Subscriber. Each ensuing subscription renewal shall be invoiced, due and payable on the first day of the new subscription period.

11.3.3 Annual Extranet Fees are invoiced in twelve (12) monthly installments, commencing on the date the Subscribed ADS Modules are first released to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.4 With respect to Enterprise Monthly Subscriptions, subscription fees shall be invoiced monthly commencing on the date the Subscribed ADS Modules are first released to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.5. Fees for new ADS modules are invoiced on the first day of the Subscription Period to which the fees relate. Payment is due upon receipt of invoice by the Subscriber.

11.6 For Government subscribers, payment of all Avue fees shall be in accordance with the Prompt Payment Act.

11.7. Each invoice for fees and expenses relating to supplemental or incidental services under Section 7 is due and payable within thirty (30) days after the invoice date.

11.8. Any early termination of this Agreement shall not result in a refund or reduction of the fees for that portion of the Subscription Period so terminated.

#### 12.0 **Subscriber Point of Contact**

The Subscriber's COTR, as identified in [Attachment 1](#), will serve as the Subscriber's primary point of contact with Avue for all technical purposes.

#### 13.0 **Ownership and Use of Intellectual Property**

13.1. The Subscriber acknowledges that Avue



and/or its licensors own all intellectual property rights relating to the ADS Material and the Subscribed Services, including but not limited to all patents, trademarks, copyrights, trade secret, and data rights in all such materials including such rights as embodied in all hardware, software, and data components and any associated documentation, and all customizations, developments, derivative works, and outputs. The parties agree that, except as stated herein, this Agreement does not grant the Subscriber any rights to patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered), data or any other rights or licenses in respect of the Subscribed Services or the ADS Materials. Upon termination of the Subscription Period and except as specifically permitted under section 5.6, the Subscriber agrees to return any Avue intellectual property in its possession, including but not limited to ADS Material and Avue copyrighted material, within 30 days of Avue's written request.

- 13.2. The ADS Material embodies information that is confidential and proprietary to Avue and its licensors. In addition but not in limitation of the foregoing, the Subscriber understands and agrees that the content databases of the ADS Materials include a data structure incorporating complex associations between data elements, that was created by Avue and which constitute or contain confidential information and trade secrets which are proprietary to Avue.
- 13.3. The Subscriber acknowledges that the Subscribed Services are purchased under the name Avue Digital Services, ADS, and the various individual module names designated by Avue. Subscriber agrees that it will only use Avue Digital Services, ADS, and the applicable module names when referring to the Subscribed Services, whether for internal use or external reference, and will not re-name, or otherwise refer to the Subscribed Services, provided that Subscriber shall not use Avue, Avue Digital Services, ADS, or other Avue intellectual property in connection with any internal or external communications, presentation or marketing material without the Avue's review and express written

consent.

#### 14.0 Warranties and Disclaimers

- 14.1. *Warranty and Disclaimer.* The ADS Material, including all software and data used to provide access to Subscribed ADS Modules, are protected by copyright laws and international copyright treaties, as well as other intellectual property laws. Avue warrants that it has sufficient rights to provide access to the ADS Material in accordance with this Agreement. However, due to the complex nature of software and digital services, Avue does not warrant that the ADS Materials are completely error free, will operate without interruption, are compatible with all equipment and software configurations, or will otherwise meet the Subscriber's needs. AVUE DOES NOT MAKE, AND HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY TRADE USAGE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND NONINFRINGEMENT.
- 14.2. The Subscriber assumes sole responsibility for results obtained from the use of any ADS Material and for conclusions drawn therefrom, except to the extent damage results from Avue's failure to exercise a reasonable standard of care in providing the ADS Material. Avue shall not be responsible for loss, destruction, alteration, or disclosure to any person of the Subscriber's data submitted by the Subscriber or resultant output thereof (or loss, destruction, alteration or disclosure to any person of any physical media on which such the Subscriber data or resultant output are stored), unless caused by Avue's negligence or willful misconduct. Furthermore, Avue shall have no liability for any errors or omissions in any information, instructions, or scripts provided to Avue by the Subscriber in connection with the services provided hereunder.
- 14.3. **LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE**

OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUE, LOST SAVINGS, LOSS OF USE OF THE SUBSCRIBED ADS MODULES OR ANY COMPONENT OF SUBPART THEREOF, BUSINESS INTERRUPTION, OR COST OF SUBSTITUTED FACILITIES, EQUIPMENT OR SERVICES, OR OTHER ECONOMIC LOSS ARISING OUT OF BREACH BY THE OTHER PARTY OF ANY OF ITS REPRESENTATIONS, WARRANTIES OR AGREEMENTS CONTAINED IN THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 41 U.S.C. §§ 3729-3733. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 41 U.S.C. §§3729-3733.

15.0 [Reserved]

16.0 **Additional Terms and Conditions**

In the event that certain "premium" features (e.g., where proprietary third party data access requires payment of a fee) are made available to Subscriber, the Subscriber will be given written notice of all applicable terms and conditions, including charges, which are different from those set forth in this Agreement ("**Additional Terms**"). Subscriber will not be given access to such "premium" features without accepting the Additional Terms, but once accepted, Subscriber agrees to, and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement.

14.4. **DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES:** AVUE DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE DATA CENTER AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET OR PORTIONS THEREOF. ALTHOUGH AVUE WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, AVUE CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, AVUE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS, INCLUDING WITHOUT LIMITATION ANY SERVICE ACCESSIBILITY AND SERVICE AVAILABILITY SHORTFALL RESULTING FROM IN WHOLE OR IN PART FROM SUCH EVENTS.

17.0 **General**

17.1. *Notices:* Any notice or request hereunder shall be made in writing, delivered in person to an authorized officer of the respective party, sent by first-class mail or reputable express courier (postage or charges prepaid) or transmitted by confirmed facsimile to the other party at its address stated at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Any notices, demands or other communications required or permitted hereunder shall be deemed given when hand delivered or transmitted by confirmed facsimile, on the next business day after being sent by overnight express courier (charges prepaid), or three (3) days after being deposited in the United States mail, postage prepaid.

17.2. *Force Majeure:* If any cause or circumstance beyond a party's reasonable control prevents that party from performing its obligations, in whole or in part, pursuant to this Agreement, such party shall not be held responsible for the part-performance or non-performance of such obligation(s) during the continuance of such cause or circumstance; provided, however, that the part-performing or non-performing party provides the other with prompt detailed notice of the cause and circumstance hindering or preventing performance. Upon receiving such notice, the other party may defer or suspend its performance until it receives additional written notice that the part-performing or non-performing party is ready and able to continue performance.

17.3. *Severability:* If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

17.4. *Section Headings:* The section headings herein are provided for convenience only and

have no substantive effect on the construction of this Agreement.

17.5. *Waiver:* The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

17.6. *Dispute Resolution:* If a dispute regarding the interpretation or enforcement of this Agreement arises, the senior executive officers of the parties will promptly meet to seek to resolve the dispute. In the event that the dispute is not then resolved, the parties shall have recourse to all available legal and equitable remedies.

**IN THE EVENT THIS AGREEMENT IS INCORPORATED INTO A GOVERNMENTAL CONTRACT AWARD, EXECUTION BY THE PARTIES IS NOT NECESSARY.**

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Agreement, effective as of the date first written above.

**SUBSCRIBER**

By: \_\_\_\_\_  
Name:  
Title:

**AVUE TECHNOLOGIES CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**Attachment 1  
Subscription**

**Name of the Subscriber:**

**Subscriber's COTR:**

**Type of Subscription (Annual/Monthly):**

**Modules Subscribed:**

**Covered User Community (number of Subscriber FTE):**

**Initial Subscription Period:** Effective Date through .

**Supplemental or Incidental Services:** None

**Fees:**

See attached spreadsheet.

**[Insert Price Grid]**