

HOSTING SERVICES AGREEMENT

San Joaquin Delta Community College District
CONTRACT NUMBER <u>13-142</u>
<u>Sartain</u> x <u>5300</u> <u>5/5/14</u>

THIS AGREEMENT effective as of July 1, 2014 thru June 30th, 2015

BETWEEN:

San Joaquin Delta College ("SJDC")
a California Community College District under the laws of the State of California,

THE FIRST PARTY,

- and -

Antelope Valley College ("AVC" or "Client")
a Community College under the laws of the State of California,

THE SECOND PARTY,

WHEREAS SJDC is offering "hardware" hosting as set out in Schedule "B" and related services; and

Client is the operator and owner and of and all right title client provided hardware and licensed software, and

WHEREAS Client wishes to retain the services of SJDC to host the hardware in SJDC's
Datacenter facilities and provide other related services;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, mutual covenants and agreements herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Services**

(a) SJDC shall provide hosting and related services to Client in accordance with the terms of this Agreement. The hosting services to be provided by SJDC are described as set out in Schedule "A" attached hereto and incorporated into this Agreement (hereinafter referred to as the "Services").

2. **Consideration**

(a) In consideration for the Services provided, the Client agrees to compensate SJDC in accordance with the Fee Schedule as set out in Schedule "A".

(b) SJDC shall invoice the Client for the Services on a monthly basis and in accordance with Schedule "A". Any payment which is not made within thirty (30) days after the date of the invoice shall be deemed to be overdue.

(c) Invoices will be sent to:

Accounts Payable
Antelope Valley College
3041 W. Avenue K
Lancaster, CA 93536
661-722-6309 (phone)
661-755-6320 (fax)

Note: Preference is for Invoices to be sent via email to accounts_payable@avc.edu

3. Term of this Agreement

- (a) The term of this Agreement shall commence on the date of this Agreement and may continue for successive one year periods, which a renewal agreement must be executed defining the terms and conditions set forth herein and is subject to SJDC's rights of revision as described below, and unless and until either party terminates the Agreement in accordance with section 13 herein (the "Term").
- (b) SJDC reserves the right to revise the Fee at any time during the Term upon one hundred eighty days (180) days' notice to Client of such proposed revisions, of not more than 5% annual. Such revisions to take effect on the one hundred eighty first day after such notice is given ("Effective Date") as defined in section 15. If such proposed revisions are unacceptable to Client, Client may terminate this Agreement pursuant to section 13. In the event that Client continues to use the Services after the Effective Date, the Client is deemed to have accepted the revisions as proposed in the notice of revision.
- (c) Any changes in terms of this agreement will be made in writing to AVC to the following contact:

Richard Shaw, Executive Director
Information Technology Services
Antelope Valley Community College
3041 W. Avenue K
Lancaster, CA 93536
661-722-6541 (desk direct)
818-266-9177 (cell)
661-722-6565 (fax)
rshaw@avc.edu (email)

4. Support Services

- (a) During normal business hours, provide AVC equipment support for:
 - a. Basic diagnostic and resolution assistance to AVC that requires physical review or actions of AVC equipment. This assistance includes review of equipment external displays, power recycling, and resetting physical network cabling
 - b. Installation of replacement parts supplied to SJDC into AVC equipment and packaging/return of parts to vendor for warranty
- (b) Requests for these services shall be responded to
 - a. Within 4 hours of request for production equipment
 - b. Within 1 business day for non-production equipment
- (c) Costs for these services are part of Change Services Administration charges as indicated on Schedule "A"

5. Data Rates

- (a) SJDC will provide CENIC WAN network bandwidth as specified in Schedule "A"

6. Security

- (a) SJDC shall provide Client with a firewall to help prevent unauthorized access to Client's hosted services, which will consist of hardware and software designed and configured to control or limit access to SJDC's computer and network resources.

- (b) SJDC shall configure that firewall, provide intrusion testing, and upgrade and update the firewall throughout the Term. SJDC shall immediately notify Client of any breach of the firewall detected by SJDC.
- (c) SJDC shall provide appropriate network and physical protection to AVC technology equipment.
- (d) AVC shall comply with SJDC procedures for physical and remote access, change management and information security.

7. Notification

(a) SJDC shall notify Client of the following:

- (i) at least ten (10) business days before any potentially service-impacting scheduled maintenance performed by Delta College and notify AVC immediately of any required unscheduled maintenance.
- (ii) any problems detected during monitoring of shared network environment
- (iii) of any security breaches that could affect the availability, integrity and confidentiality of AVC

(b) AVC shall notify SJDC of the following:

- (i) of any security breaches that could affect the availability, integrity and confidentiality of SJDC or shared resources.
- (ii) Provide SJDC with up-to-date inventory of AVC equipment located at SJDC's Datacenter, as set out in Schedule "B".

(c) SJDC will provide AVC with resource utilization reports on a quarterly basis to assess against contracted resource levels. Additionally, Delta College will report on service request performance for any change and/or problem resolution requests made during the period.

(d) A standing customer communication meeting will be held on a quarterly basis between the named party contacts to discuss the reports and any other changes in services needed.

8. Client Access

(a) SJDC shall provide Client the ability for remote access to AVC equipment for purposes of management and power cycling.

(b) SJDC shall provide AVC authorized campus staff and vendor personnel physical access to AVC equipment upon request during normal data center hours of operations and procedures for emergency off-hours access.

(c) Client's connection will be secured by the firewall referred to in section 6.

9. Confidentiality

- (a) SJDC shall not disclose to any third party or use any financial, statistical, personal, technical or other data or information relating to AVC's operation which are designated confidential by the AVC and not otherwise subject to disclosure under the California Public Records Act, and made available to SJDC in order to carry out this Contract, or which become available to SJDC in carrying out this Contract, shall be protected by SJDC using the same level of care in preventing unauthorized disclosure or use of the confidential information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. SJDC shall not be required under the provisions of this clause to keep confidential any data or information that is or becomes publicly available, is already rightfully in SJDC's possession, is independently developed by SJDC outside the scope of this Contract, or is rightfully obtained from third parties.

10. Client Content

- (a) AVC acknowledges that responsibility for maintaining all AVC equipment with operating systems, operating system patches, applications, network services, and other IT services in accordance with all AVC information security policies and standards and in accordance with SJDC's policies and procedures.
- (b) The Client agrees to indemnify and save harmless SJDC from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or out of any such Client Material provided by the Client.

11. Compliance with the Law

- (a) The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California.

12. Representations, Warranties and Indemnifications

- (a) SJDC represents and warrants to the Client that:
 - (i) It has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder;
 - (ii) it shall use commercially reasonable efforts to perform the Services as described in Schedule "A" attached hereto (except to the extent the Services modified by the parties from time to time by mutual written agreement) and shall provide such Services in a professional manner consistent with industry standards.
 - (iii) OTHER THAN THE EXPRESS WARRANTIES STATED ABOVE, SJDC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES HEREUNDER OF ANY KIND, EITHER EXPRESS OR IMPLIED, IN RELATION TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL SJDC BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL OR CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, LOSS OF REVENUE OR LOSS OF DATA, OR AS A RESULT OF ANY INTERRUPTION OF SERVICE.

- (b) Client Represents and warrants to SJDC that:
- (i) It has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder;
 - (ii) All Client Content provided hereunder shall be wholly original to the Client or the Client has acquired the necessary rights from third parties to contribute such Client Content and include it in the Website, and Client Content shall not violate any laws of any country and shall not infringe any other party's copyright, patent, trademark or other intellectual property right.
 - (iii) Client shall not, nor shall it allow, authorize or assist any third party to, use the Website for any illegal purpose whatsoever.
- (c) Each of the Parties hereto agree to indemnify and save harmless the other, and any of its respective successors, licensees and assigns, from any and all losses, costs, liabilities, damages and expenses (including reasonable lawyer's fees) resulting any breach of any representation, warranty and/or covenant under this Agreement.

13. Termination/Reduced Services

- (a) Either party may terminate this Agreement at any time on one hundred and eighty (180) days written notice to the other. SJDC will provide reasonable assistance to AVC in migration of services to another location including data center configuration documentation and diagrams.
- (b) Failure to meet service levels defined in this agreement will result in reduced charges for the invoicing period.
- (c) Either party may terminate this Agreement in the event the other party is in material breach of any provision of this Agreement upon ten (10) business days' prior written notice, unless the party receiving notice corrects the default within such ten business (10) day period.
- (d) Notwithstanding the forgoing, pursuant to sections 10 and 11, SJDC can immediately terminate this Agreement and withdraw the Services in the event that in the sole discretion of SJDC, it determines that:
 - (i) the Client is using or allowing, authorizing or assisting the hosting services to be used for illegal purposes; or
 - (ii) the Client Content is in breach of any law or any right of any third party, including but not limited to any right of copyright, trademark, or other property right of any person or entity.

14. Notice

- (a) Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given (i) when delivered personally to any officer of the party being notified; or (ii) on the third business day after being sent by registered or certified mail, postage prepaid, facsimile, addressed as follows:

To the Client: Richard Shaw, Executive Director
Information Technology Services
Antelope Valley Community College
3041 W. Avenue K
Lancaster, CA 93536

661-722-6541 (desk direct)
818-266-9177 (cell)
661-722-6565 (fax)
rshaw@avc.edu (email)

To SJDC: Dave Sartain, Director of IT and Data Center Services
SAN JOAQUIN DELTA COLLEGE
5151 Pacific Avenue
Phone 209.954.5300

15. Independent Contractors

- (b) SJDC and Client are independent contractors and neither shall act as the other's agent, or be deemed an agent or employee of the other, nor shall this Agreement be interpreted as creating a partnership or joint venture or otherwise.

16. Cancellation by Client or Consultant/Service Provided in the Event of Force Majeure

- (a) Neither party shall be liable under this agreement and may cancel this agreement at any time in the event of a Force Majeure, defined as follows: (a) Acts of God (excepting rain, cold, excessive wind or snow); (b) Acts of public enemy; (c) Acts of the United States or the District of Columbia, any State or Territory of the United States, or any of their political subdivisions; (d) Fire; (e) Flood; (f) Epidemic; (g) Quarantine restrictions; (h) Strikes, civil commotions, or revolutions; (i) Freight embargoes; or (j) Unusually severe weather conditions; (k) or any other cause beyond the reasonable control of the said party.

17. Severability

- (a) In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

18. Assignment

- (a) Neither party may assign or otherwise transfer this Agreement without the written consent of the other party. This Agreement shall ensure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

19. Governing Law

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

20. Entire Agreement

- (a) This Agreement, including the recitals and Schedules, sets forth the entire agreement between the parties with respect to the subject matter hereof and, subject to SJDC's rights of revision as set out in subsection 3(b) herein, the Agreement shall be amended only by a writing signed by the parties.

21. Counterparts

(a) This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective this 6 day of May, 2014

SAN JOAQUIN DELTA COLLEGE

Per: 
Authorized Signatory

Antelope Valley College

Per: 
Authorized Signatory

Schedule A – to the Hosting Services Agreement dated the 1 day of June 2014. Between San Joaquin Delta College (“SJDC”) and Antelope Valley College (“AVC”)

Services

1. Hosting of Secured rack space hosting at SJDC's Datacenter
2. 10MB at all times and an average through put of 10MB each month
3. Firewall protection
4. Redundant power
5. UPS power and backup generator
6. Reports, resource utilization
7. Service request personnel

Rate Schedule

	Service	Quantity	Cost Per Month
1	Data Center Facilities		
	Rack Space	8u	\$100
	Power – 30A 208, PDU	2	\$750
2	Network Bandwidth	10mb	\$50
3	Change Services Administration	1hr	\$100
	Includes remote service requests		

Schedule B – to the Hosting Services Agreement dated the 1 day of June 2014. Between San Joaquin Delta College (“SJDC”) and Antelope Valley College (“AVC”)

Summary:

- Total Rack Space Needed: 8 rack units
- Total Cooling Requirements: 4600 BTUs
- Total Electrical Needed: x 1850 watts

Equipment Detail:

ID	Qty	Description
1	2	Cisco ASR 1002
2	1	NetApp FSA2240-4 (4U)
3	1	HP Proliant DL3xx (2U)
4	1	Entersys Switch (1U)
5	1	Small cpu (>1U)
6		
7		