|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Customer Name | (“Customer”) | | | | | |
| Address |  | | | | | |
| City |  | State |  | | Zip | |  | | |
| Phone |  | Email |  | | | | | | |
| Start Date |  |  |  |  | |  | | | |
|  | | | | | | | | **Term in months: 48** | | | | |
| **Description of Services** | | | | | | | | **# of Units** | | | **Unit Price** | **Amount** |
|  | | | | | | | |  | | |  |  |
|  | | | | | | | |  | | |  |  |
|  | | | | | | | |  | | |  |  |
| PLEASE READ TERMS & CONDITIONS CAREFULLY | | | | | | | | | Monthly Total | | |  |

**Terms & Conditions (See Reverse Side for Support Plan Details):**

Customer and ABC (“Company”) may be referred to hereinafter as the "Parties".

**PURPOSE:** Customer desires to have Company maintain Customer's computer network in accordance with the Statement of Work described herein below.

**STATEMENT OF WORK:** The Statement of Work is available at **http://www.ABC.us/statementofwork** and is included as though fully set forth herein. Company shall maintain and service the equipment identified by Customer and quantified on the second page hereto. Customer understands that Company is providing a service only and is not responsible for defects or warranties by the manufacturers of the Covered Systems purchased by Customer and serviced by Company as described in the Statement of Work. Said services are listed therein. Hourly Rates are also set forth in the Comparison Chart as applicable Company is not engaged in any "Work for Hire" and Company owns all Company’s inventions, concepts, designs and ideas created, developed and/or implemented arising out of this Agreement.

**TERM & TERMINATION:** This Agreement starts as of the date above ("Start Date") and is for the term listed herein. Thereafter, this Agreement shall become an annual agreement, automatically renewing for an additional 12-month term unless cancelled in writing by either party with 60 days written notice. Company may terminate this Agreement immediately if Customer's fails to pay the aforementioned monthly amount with 7 days of the payment due date or other default of the Agreement. Cancellation of this agreement prior to term will result in 85% fee of remaining balance and must be paid within 30 days. You will be notified in writing of any price increases, and at no time will those exceed 5% annually.

**PAYMENTS:** Company may auto-charge the credit card listed below starting on the 1st date of the term and one each month of the Term on that date thereafter.

**INDEPENDENT CONTRACTOR; USE OF SUBCONTRACTORS:** Company is not an employee of Customer. Company is an Independent Contractor. Company may, at Company’s sole discretion, use subcontractors to fulfill Company’s obligations herein.

**EXPENSES:** Customer is responsible to reimburse expenses actually incurred by Company on Customer's behalf for materials, software, licenses and other items necessary to fulfill the purpose of this Agreement unless specifically included in the "Statement of Work" agreement mentioned above.

**INDEMNIFICATION:** Customer agree to indemnify, defend, save and hold harmless Company, and its officers, directors, shareholders, employees, agents, and representatives, against all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, accounting fees, and expert witness fees) incurred by Company (“Losses”), known or unknown, contingent or otherwise, directly or indirectly arising from or related to Company’s performance of the Statement of Work under this Agreement.

**WARRANTY:** Other than as specifically set forth herein and in the "Statement of Work", Company makes no warranties, express or implied, including but not limited to implied warranty of merchantability or implied warranty of fitness for particular purpose.

**LIMITATION OF LIABILITY:** Company shall not be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits. Customer’s sole remedy for any alleged breach of this Agreement by Company, shall be limited to refund of any compensation paid to Company, and in no event shall such refund exceed the total compensation received by the Company under this Agreement. It is intended that this limitation apply to any and all form of liability or cause of action however described, alleged or arising.

**CONFIDENTIAL INFORMATION:** The Parties shall not disclose to third parties or use in any manner, directly or indirectly, any such trade secrets and other proprietary or confidential information received from the other party during the term of this Agreement or at any time thereafter. Such information includes, without limitation, operating procedures, design formulas, know-how and processes, computer programs and inventions, discoveries, and improvements of any kind.; provided, however, that nothing in this paragraph shall be construed to prohibit disclosure by Company if said disclosure is made to fulfill the purpose of this Agreement on Customer's behalf or if disclosure is compelled by operation of law.

**INTELLECTUAL PROPERTY:** Any Intellectual Property disclosed by a party to the other shall remain the property of the disclosing party unless expressly stated otherwise.

**NON-CIRCUMVENTION:** Customer Agrees not to circumvent any business relationships of Company including any employees or contractors of Company. Under no circumstances will Customer attempt to induce employees of Company to leave said employment.

**FORCE MAJEURE:** If any Company cannot reasonably perform its obligations under this Agreement because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control Company, then Company’s performance shall be excused.

**VENUE**: This Agreement is entered into under the laws of the State of California. Venue shall rest in San Diego County, California.

**MEDIATION:** This Agreement is subject to mediation. If a dispute should arise, Customer and Company shall confer in good faith to resolve the dispute and engage the services of JAMS or similar mediation service prior to resorting to litigation or other dispute process. Such mediation shall occur within 90 days of either Customer or Company asserting this provision. If either party commences an action without first participating in mediation, or refuses a request to mediate, that party shall not be entitled to any award of attorney fees, even if that party would otherwise be entitled to such an award.

**ATTORNEY’S FEES AND COSTS**: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

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| --- |
| **BANDWIDTH:** Client commits to, and will be billed for the use of 1Mbps of Premium Bandwidth per month. The cost of this bandwidth will be $40 per month and is already bundled into your proposal. If the bandwidth usage exceeds the 95th percentile of the committed amount, additional bandwidth will be billed at $60 per Mbps per month. At any time Client may increase the monthly bandwidth commitment to avoid the bandwidth overage charge. Client understands that usage in excess of the committed amounts of cloud resources and bandwidth will be billed at the end of each month. Client also agrees that they are responsible for monitoring their own usage of cloud resources and bandwidth, and they are liable for all usage fees for these services, regardless of whether or not they are currently in a contract for ABC Cloud Services.  **DEFAULT**: Customer agrees that in the event Customer does not pay Company in accordance with the terms of this Agreement, whether by way of credit card debit or other form of payment within 15 days of the date due, the balance owed by Customer under this Agreement shall be subject to a 1.5% fee for each 30 days of late payment. Should it become necessary for the creditor to retain an attorney to make demand upon or collect any past due invoices or statements, the applicant agrees to pay all costs of demand or collection including attorney fees, recording fees and court costs, incurred by creditor, through all appeals, and bankruptcy proceedings, if any.  **INDIVIDUAL GUARANTY**: Should Customer be a corporation, LLC, or other business entity or association, in order to induce ABC to extend credit to Customer, the undersigned (“Guarantor”) hereby guarantees to ABC the prompt payment of all indebtedness or liability of Customer to ABC pursuant to this Agreement and hereby agrees that by execution hereof, he, she or they shall be personally liable, jointly and severally, with the Applicant as guarantor for the payment of all indebtedness or liabilities of Applicant pursuant to this Agreement. This is a continuing guaranty and will remain in force until revoked by Guarantor by giving notice in writing to ABC. Revocation will be effective only as to transactions entered into after receipt of notice of revocation by ABC. This guaranty covers any renewal of any debt incurred by Customer under this Agreement or extensions of time for payment thereof. Guarantor agrees to pay on demand all sums due or to become due by Applicant to ABC as well as all reasonable attorney's fees and expenses incurred by ABC, and/or or its assigns, by reason of Applicant's default of this Agreement. Demand for payment and notice on indebtedness and default by Guarantor are expressly waived.  Customer’s authorized representative signing this Agreement certifies that all information provided herein and in any and all additional documents, financial statements or other information furnished by the applicant to ABC is true and correct to the best of applicant’s knowledge.  The person(s) signing this Agreement on behalf of Customer have the power to enter into and perform this Agreement; and this Agreement’s execution has been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding obligation on each party, enforceable in accordance with its terms.  THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES. There are no other Agreements, expressed or implied, between the Customer and Company. All Agreements shall be made in writing. If a portion of this Agreement is held to be invalid, the remaining portions shall remain in effect.    **\_\_\_\_\_\_\_\_ Client Initials** |

AUTOMATIC CREDIT CARD OR ELECTRONIC CHECK PAYMENT PROCESSING (ACH)

\*Credit Card

AMEX  Discover \*Card Number:

VISA  MasterCard \*Expiration Date:

\*Name on the card:                          (Please Print)

\*Credit Card Billing Address:                           Same as Above

\*Billing Phone Number:            Same as Above

Bank name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Branch Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone #:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Routing Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Checking Account number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I authorize ABC to debit the above account on the first of each month for the listed charges per this agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*Signature \* Date

**ADDENDUM ( PRICING )**

The following fees would apply to overage or additional resources as needed and billed per month.

Additional Help Desk Users $ 45

Additional Server $ 175

Additional Switch $ 49

Additional Firewall $ 75

Hourly Rate for labor: $ 145

**SUPPORT COMPARISON CHART**

Outline of services they will receive from the quote