

## OLD DOMINION UNIVERSITY

### CONTRACT FORM ADDENDUM TO CONTRACTOR'S FORM

#### *Hosted Technology Services – Regulated ODU Data*

CONTRACTOR NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

The University and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form agreement provided by the Contractor, Open Text Corporation. This addendum, duly executed by the parties, is attached to, and hereby made a part of the contract.

The Contractor represents and warrants that it is a(n) ☐ individual proprietorship ☐ association ☐ partnership ☐ corporation ☐ governmental agency or authority authorized to do in Virginia the business provided for in this contract. (Check the appropriate box.)

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the University for all goods, services and other deliverables under this contract shall not exceed fee schedule provide by Contractor and mutually agreed upon by the University and Contractor. Payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to **Old Dominion University, Finance Office, Rollins Hall Room 202, Norfolk, Virginia 23529 (or to invoice@odu.edu)**. The total cumulative liability of the University, its officers, employees, and agents in connection with this contract or in connection with any goods, services, actions, or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the University.

#### 1. Definitions:

- a. "End User" means the individuals authorized by the University to access and use the Services provided by the Selected Firm/Vendor under this agreement.
- b. The "Agreement" includes the contract, this addendum and any additional addendums and attachments to the contract.
- c. "University" or "the University" means Old Dominion University, its trustees, officers and employees. The point of contact for the University is the contract administrator for this Agreement.
- d. "Vendor" or "the Vendor" means the contractor, firm or organization that is selected to fulfill this Agreement, including any subcontractor selected by the Vendor to fulfill any portion of this Agreement.
- e. "University Data" includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student and personnel data.
- f. "Personally Identifiable Information" includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as defined in Virginia Code section 18.2-186.6 and/or any successor laws of the Commonwealth of Virginia; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and

Privacy Act, 20 USC 1232g; “medical information” as defined in Virginia Code Section 32.1-127.1:05; “protected health information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver’s license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.

- g. “Security Breach” means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
- h. “Service” or “Services” means any goods or services acquired by the University from the Vendor.
- i. “Securely Destroy” means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security.

2. The Contractor’s form contract is, with the exceptions noted herein, acceptable to the University. Nonetheless, because certain standard clauses that may appear in the Contractor’s form agreement cannot be accepted by the University, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor’s form contract, none of the following provisions a. through s. shall have any effect or be enforceable against the University:

- a. Requiring or stating that the terms of the attached Contractor’s form agreement shall prevail over the terms of this addendum in the event of conflict;
- b. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of the University before the contract is considered in effect;
- c. Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;
- d. Requiring the University to indemnify or to hold harmless the Contractor for any act or omission;
- e. Requiring transportation terms other than ‘FOB Destination,’ with potential risk loss passing to University at delivery by Contractor to ‘FOB Origin/Point.’
- f. Requiring or stating that during term of agreement the Contractor shall be the sole and exclusive provider of the associated goods and/or services.
- g. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;
- h. Requiring the University to maintain any type of insurance either for the University’s benefit or for the contractor’s benefit;

- i. Binding the University to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
  - j. Obligating the University to pay costs of collection or attorney's fees;
  - k. Granting the Contractor a security interest in property of the University.
  - l. Requiring any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University, i.e., the University shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement, etc.;
  - m. Imposing interest charges contrary to that specified by the *Code of Virginia*, § [23-38.90](#), Specifically, §46 of the *Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia*;
  - n. Delaying the acceptance of this contract or its effective date beyond the date of execution;
  - o. Limiting or adding to the time period within which claims can be made or actions can be brought;
  - p. Limiting the liability of the Contractor for property damage or personal injury;
  - q. Permitting unilateral modification of this contract by the Contractor;
  - r. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of the University.
  - s. Requiring the 'confidentiality' of the agreement, in whole or part, without exclusion to allow for the disclosure and/or release of specified confidential information in accordance with applicable law.
3. This Addendum and the Contract, including maintenance and support Services, may be renewed annually by University after the expiration of the initial term under the terms and conditions of the original Contract except as noted herein. If the University elects to exercise the option to renew the contract for an additional renewal period, the contract price(s) for the succeeding renewal period shall not exceed the contract prices(s) of the previous contract term increased/decreased by no more than the lesser of (1) the percentage increase/decrease of the "Other Services" category of the CPI-W of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available or (2) 5%.
  4. No less than sixty (60) days prior to the expiration of the then current term, Contractor shall provide the University with a new contract agreement/price quote/proposal that must include (i) the new term dates, (ii) associated services and deliverables, (iii) new term pricing structure, and (iv) all associated terms and conditions and/or other documentation for University review, approval, and execution.
  5. Upon University's decision to renew and/or extend any agreement, no less than thirty (30) days prior to the expiration of the then current term, the Contractor shall provide a valid invoice to the University.
  6. Contractor certifies that the software does not contain any locks, worms, counters, CPU references, virus, or any other device capable of halting the operations of the software and/or altering the data or the program(s).

7. This agreement is subject to the Vendor related provisions of the Purchasing Manual for Institutions of Higher Education and their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. This manual can be found at: [VASCUPP Higher Ed Manual](#)
8. Payment terms shall be 30 days from the latter of the receipt of a valid invoice or the goods and services.
9. The University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
10. The Contract, and any future modification/addendums thereto, shall survive the assignment or change in control by the Contractor and as such shall remain in full force and apply to the successor, assignee, or acquirer as if no assignment or change in contract had occurred.
11. The cost of annual maintenance services of the hardware or software specified in any resulting Contract shall not exceed the lesser of the fair market price for like maintenance services or 15% of the quoted contract price.
12. Upon expiration of the specified warranty period and at the University's option, the contractor shall provide additional one-year periods of maintenance (including labor, parts, and travel). Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed.
13. Any software product(s) provided under the contract shall be the latest version available to the general public.
14. The University shall be entitled to all upgraded versions of the software covered in the contract that becomes available from the contractor if the software is covered under a maintenance/support agreement with the contractor. If the software is not continually covered under a maintenance/support agreement, then the maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
15. Unless otherwise stated, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However, the University reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all its functions are transferred.
16. By submitting a proposal, the Contractor represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this agreement, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
17. All necessary software, to include any required client licenses, is provided as part of the offering from the Contractor at no additional charge to the University.

18. **Rights and License in and to University Data:** The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and the Vendor has a limited, nonexclusive license to use these data as provided in this Agreement solely for the purpose of performing its obligations hereunder. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.
19. **Disclosure:** Unless expressly agreeing to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by the Vendor (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University.
20. **Data Privacy:**
- a. The Vendor will use University Data only for the purpose of fulfilling its duties under this Agreement and will not share such data with or disclose it to any third party without the prior written consent of the University, except as required by this Agreement or as otherwise required by law.
  - b. University Data will not be stored outside the United States without prior written consent from the University.
  - c. The Vendor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under this Agreement. The Vendor will ensure that the Vendor's employees who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Agreement.
  - d. If the Vendor will have access to the University's Education records as defined under the Family Educational Rights and Privacy Act (FERPA), the Vendor acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the University Education records, as those terms have been defined under FERPA and its implementing regulations, and the Vendor agrees to abide by the limitations and requirements imposed on school officials. The Vendor will use the Education records only for the purpose of fulfilling its duties under this Agreement for University's and its End User's benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the University.
21. **Data Security:**
- a. The Vendor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure the Vendor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
  - b. Without limiting the foregoing, Selected Firm/Vendor warrants that all electronic University Data will be encrypted in transmission (including via web interface) in accordance with latest version of National Institute of Standards and Technology Special Publication 800- 53.
  - c. If the Selected Firm/Vendor stores Personally Identifiable Information as part of this agreement, the Selected Firm/Vendor warrants that the information will be stored in accordance with latest version of National Institute of Standards and Technology Special Publication 800-53.

- d. Selected Firm/Vendor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this agreement.
- e. The University may inspect the data center used to store and process University Data at any time upon request.

**22. Data Authenticity, Integrity and Availability:**

- a. The Vendor shall maintain a formal security program in accordance with industry standards that is designed to: (i) ensure the security and integrity of University Data; (ii) protect against threats or hazards to the security or integrity of University Data; and (iii) prevent unauthorized access to University Data.
- b. The Vendor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, “is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.”
- c. The Vendor will ensure backups are successfully completed daily or more frequently and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.
- d. The Vendor will maintain an uptime of 99.99% or greater, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations.

**23. Employee Background Checks and Qualifications:**

- a. The Vendor shall ensure that its employees who will have potential access to University Data have passed appropriate, industry standard, background screening and possess the qualifications and training to comply with the terms of this agreement.

**24. Security Breach:**

- a. Response. Upon becoming aware of a Security Breach, or of circumstances that are reasonably understood to suggest a likely Security Breach, the Vendor will notify the University within 72 hours, fully investigate the incident, and cooperate fully with the University’s investigation of and response to the incident. Except as otherwise required by law, the Vendor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
- b. Liability. In addition to any other remedies available to the University under law or equity, the Vendor will pay for or reimburse the University in full for all costs incurred by the University in investigation and remediation of such Security Breach caused by the Vendor, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year’s credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach. The Vendor agrees to indemnify, hold harmless and defend the University from and against any and all claims, damages, or other harm related to such Security Breach.

**25. Requests for Data, Response to Legal Orders or Demands for Data:**

- a. Except as otherwise expressly prohibited by law, the Vendor will:
  - i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by the Vendor seeking University Data;
  - ii. consult with the University regarding its response;
  - iii. cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - iv. upon the University's request, provide the University with a copy of its response.
- b. If the University receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Virginia Freedom of Information Act) or request seeking University Data maintained by the Vendor, the University will promptly provide a copy to the Vendor. The Vendor will promptly supply the University with copies of data required for the University to respond, and will cooperate with the University's reasonable requests in connection with its response
- c. The University may request and obtain access to University Data and related logs at any time for any reason.

**26. Data Transfer Upon Termination or Expiration:**

- a. The Vendor's obligations shall survive termination of this Agreement until all University Data has been returned or Securely Destroyed
- b. Upon termination or expiration of this Agreement, the Vendor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service within a reasonable time. The Vendor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.
- c. In the event that the University requests destruction of its data, the Vendor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which the Vendor might have transferred University data. The Vendor agrees to provide documentation of data destruction to the University and to complete any required Commonwealth of Virginia documentation regarding the destruction of University Data.
- d. The Vendor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to the Vendor's facilities to remove and destroy University-owned assets and data. The Vendor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. The Vendor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. The Vendor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

**27. Audits:**

- a. The University reserves the right in its sole discretion to perform audits of the Vendor at the University's expense to ensure compliance with the terms of this Agreement. The Vendor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Vendor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If the Vendor must under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, protected health information, or financial or business data that is considered restricted data such as transaction data, the Vendor will at its expense conduct or have conducted at least annually a(n):
  - i. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests the Vendor's security policies, procedures and controls;
  - ii. Vulnerability scan, performed by a scanner approved by the University, of the Vendor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement; and
  - iii. Formal penetration test, performed by a process and qualified personnel approved by the University, of the Vendor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement.
- c. Additionally, the Vendor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this Agreement. The University may require, at University expense, the Vendor to perform additional audits and tests, the results of which will be provided promptly to the University.

**28. Compliance:**

- a. The Vendor will comply with all applicable laws and industry standards in performing services under this Agreement. Any Vendor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to the Vendor upon request.
- b. The Vendor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or the Vendor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Section 508 of the Rehabilitation Act via a Voluntary Product Accessibility Template (VPAT), Federal Export Administration Regulations, Defense Federal Acquisition Regulation, and NIST 800-171 for Controlled Unclassified Information. Vendor is required to monitor all subservice providers and inform the University of any changes to subservice providers.
- c. If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to the Vendor's service provided to the University, the Vendor will furnish proof of compliance with PCI-DSS.



29. **No End User Agreements:** This Addendum and the Vendor's Contract are the entire agreement between the University (including University employees and other End Users) and the Vendor. If the Vendor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Addendum and the Vendor's Contract shall apply.

This Addendum has been reviewed by staff of the agency. Its substantive terms are appropriate to the needs of the agency and sufficient funds have been allocated for its performance by the agency. Any resulting contract is subject to appropriations by the Virginia General Assembly.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed, intending thereby to be legally bound.

AGENCY by: \_\_\_\_\_ CONTRACTOR by \_\_\_\_\_

Signed: \_\_\_\_\_ Signed: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_