

## ATTACHMENT B

### OLD DOMINION UNIVERSITY

#### Technology Related Goods & Services

#### CONTRACT FORM ADDENDUM TO CONTRACTOR'S FORM

CONTRACTOR NAME: StarRez, Inc.

DATE: June 27, 2012

The University and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form license agreement provided by the Contractor, **ATTACHMENT A**. 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 the one time Software License fee of \$149,800, the first year Hosting fees of \$23,400 for the system and \$12,000 for a separately hosted test environment. Annual maintenance is provided free for the first year and will require payments in years two and subsequent years as shown in Exhibit A of this Contract.

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.

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 shall have any effect or be enforceable against the University:

1. Requiring the University to maintain any type of insurance either for the University's benefit or for the contractor's benefit;
2. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;
3. 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;
4. Requiring the University to indemnify or to hold harmless the Contractor for any act or omission;

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5. 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*.
6. 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;
7. Requiring any total or partial compensation or payment for lost profit or liquidated damages by the University if the contract is terminated before its ordinary period;
8. 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;
9. Delaying the acceptance of this contract or its effective date beyond the date of execution;
10. Limiting or adding to the time period within which claims can be made or actions can be brought;
11. Limiting the liability of the Contractor for property damage or personal injury;
12. Permitting unilateral modification of this contract by the Contractor;
13. Binding the University to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
14. Obliging the University to pay costs of collection or attorney's fees;
15. Granting the Contractor a security interest in property of the University.
16. 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.
17. Requiring transportation terms other than 'FOB Destination', with potential risk loss passing to University at delivery by Contractor to 'FOB Origin/Point'.
18. 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.
19. Network Security:  
Contractor agrees at all times to maintain network security that includes at a minimum: network firewall provisioning, intrusion detection, and regular third party penetration testing. In addition the Contractor agrees to maintain network security that conforms to one of the following:
  - a. Those standards that Old Dominion University applies to its own network which can be found at <http://occs.odu.edu/policies/index.php> and elsewhere;
  - b. Current standards set forth and maintained by the National Institute of Standards and Technology, including those at:  
<http://checklists.nist.gov/repository/1023.html> and  
<http://checklists.nist.gov/repository/>; or
  - c. Any generally recognized comparable standard that Vendor then applies to its own network.
20. Data Definition:

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The contractor agrees that “confidential University data” or “University data” is defined as any data or information that contractor creates, obtains, accesses (via records, systems, or otherwise), receives (from University or on behalf of the University), or uses in the course of its performance of the contract which include, but not limited to: social security numbers, credit card numbers, any data protection or made confidential or sensitive by the Family Educational Rights and Privacy Act, as set forth in 20 U.S.C. §1232g (“FERPA”), the Health Insurance Portability and Accountability Act of 1996 and the federal regulations adopted to implement that Act (45 CFR Parts 160 & 164 “the HIPAA Privacy Rule”), collectively referred to as “HIPAA”, the Gramm-Leach-Bliley Act, Public Law No: 106-102, or any other applicable federal or Commonwealth of Virginia law or regulation.

**21. Use of Data:**

Unless expressly permitted by the express advance written consent of an University official authorized to give such consent, Vendor and its employees, agents, contractors, and other persons associated with Vendor (collectively, the "Vendor Users") are only permitted to use, reuse, distribute, transmit, manipulate, copy, modify, access, or disclose the University Data to the extent necessary for Vendor to implement and maintain the System as set forth in this Agreement. Vendor and the Vendor Users shall hold the University Data in confidence and protect the University Data to the same extent and in at least the same manner as Vendor protects its own data, but in no case in a lesser manner than a reasonable degree of care under the circumstances.

**22. Data Security:**

It is the responsibility of the vendor to implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted University Data received from, or on behalf of University, or its faculty, staff, or students. These measures will be extended by contract to all subcontractors used by the Vendor.

**23. Data Transmission:**

Contractor agrees that all transmission or exchange of system application data with Old Dominion University and any other parties designated by the University in writing – shall be in accordance with Section 26 below and shall take place via secure means, e.g. HTTPS or FTPS.

**24. Data Storage:**

Contractor agrees that the University’s data will be stored, processed, and maintained solely on the designated target servers and that the data shall be at no time processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Vendor's designated backup and recovery processes.

**25. Data Encryption:**

Contractor agrees to backup and store all the University’s data as part of the its designated backup and recovery processes in encrypted form, using no less than 128 bit key.

**26. Data Re-Use:**

Contractor agrees that all data exchanged shall be used expressly and solely for the purposes enumerated in the contract with the University and this Addendum. The Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. Contractor further agrees that no University data or information of any kind shall be transmitted, exchanged or otherwise disclosed or passed to other vendors or interested parties unless specifically approved in writing by the University’s Project Manager and/or Contract Administrator.

**27. End of Agreement Data Handling:**

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The Vendor agrees, upon termination, cancellation, expiration, or other conclusion of this Agreement, within 30 days to return to the University in an electronic format as requested by the University and destroy and not retain any copies (and furnish the University with an appropriate Certificate of Destruction) of any and all University Data that is in its possession.

### **28. Security Breaches:**

- a. Contractor agrees to comply with all applicable federal and state laws regarding the actions that must be taken in the case of any unauthorized release of personally-identifiable information. In the event of a breach of any of Contractor's security obligations or other events described in applicable laws ("Notification Event"), the Contractor agrees to perform all actions required under the laws to include notification to the individuals whose information was disclosed. The requirement of notification shall be required even if this action is not specifically required under the applicable Federal and state(s) laws. In addition, the Contractor agrees to indemnify, hold harmless and defend the University and its trustees, officers, and employees from and against any and all claims, damages, or other harm related to such disclosure. The Contractor shall allow the University and/or its designated representative(s) to participate in the investigation of incidents and to exercise control over decisions regarding external reporting and legal actions if so requested by the University.
- b. The Contractor, to include any of their associated third parties or sub-contractors, shall report in writing to the University any use or disclosure of the University's Data not authorized by this Agreement, including any reasonable belief that an unauthorized individual has accessed, captured by electronic breach or copied any of the University's Data. The Contractor shall immediately notify the University's Contract Administrator upon discovery of the unauthorized disclosure or access, but in no event more than two (2) business days after the contractor reasonably believes and/or suspects that there may have been an unauthorized access, breach, use or disclosure. The Contractor's report shall identify: (i) the nature of the unauthorized access, breach, use or disclosure, (ii) the University Data accessed, breached, used or disclosed, (iii) any information regarding who made the unauthorized access, breach, use or received the unauthorized disclosure, (iv) what actions have been or will be taken to mitigate any deleterious effect of the unauthorized access, breach, use or disclosure, and (v) what corrective actions have been or will be taken to prevent future similar actions. In addition the Contractor shall provide any such other information verbally and in writing as reasonably requested by University and/or its designee(s).

### **29. Retention and Examination of Records:**

The Contractor shall retain all project records, documents, and information, including electronic communications, related to the performance of their duties under the contract with the University for a period of five years from the date of final payment on the contract. The University, and if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records or communications of the Contractor involving transactions and work related to the contract until the expiration of the required retention period.

### **30. Payment Card Industry Data Security Standards (PCI DSS) and PABP Compliance:**

The section shall apply if the Contractor has access to Old Dominion University customers' credit cardholder data or sensitive authentication data as defined by the Payment Card Industry Data Security Standard (PCI DSS). The Contractor must be currently certified in compliance with the Payment Card Industry Data Security Standard, including PCI DSS Version 1.1 Requirement 12.10 and any future revisions thereto for processors and service providers, and Appendix A for Hosting Providers, by a qualified security assessor (QSA) and approved scanning vendor (ASV), as applicable. Any changes in Contractor's certification

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shall be promptly communicated via written notification to the University. The Contractor agrees to continue to meet all PCI DSS requirements and to validate their compliance annually according to the credit card industry rules, which include but are not limited to the PCI Security Standards Council's PCI Data Security Standard. The Contractor shall also provide written evidence of this compliance to the University annually. If applicable, the Contractor agrees that their electronic check processing functionality will comply with the appropriate NACHA-The Electronic Payment Association provisions. Applications purchased from a third party that will be used by a Contractor, to include its subcontractors, to store, process or transmit sensitive cardholder data must be Payment Application Best Practices (PABP) certified. This certification ensures that the application is compatible with PCI requirements. Information about PABP validation is available from Visa at ([http://usa.visa.com/merchants/risk\\_management/cisp\\_payment\\_applications.html](http://usa.visa.com/merchants/risk_management/cisp_payment_applications.html))

**31. Assistance in Litigation or Administrative Proceedings:**

The Contractor shall make itself, and any employees, subcontractors or agents assisting the Contractor in the performance of its obligations under the Agreement, available to University at no cost to University to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against University, its directors, officers, agents or employees based upon claimed violation of any laws relating to security and/or privacy of the data that arises out of this agreement. This shall include any data preservation or e-discovery requirements required by the University.

**32. Family Educational Rights and Privacy Act (FERPA):**

The Contractor certifies that they understand that the University's students personally identifiable information is protected from disclosure under FERPA. The Contractor agrees that no person shall have access to personally identifiable student information unless a request is made to the University to allow access and the University approves the access.

This Agency contract consisting of this Agency addendum and the attached Contractor's form contract constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract 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. This 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: Harry R. Smithson, Jr., CPPO

CONTRACTOR by: David A. Meale

Signed: *Harry R. Smithson, Jr.*

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

Title: Procurement Services Manager

Title: President