

**OLD DOMINION UNIVERSITY  
STANDARD CONTRACT**

This contract entered into this 25 day of July 2012 by StarRez, Incorporated hereinafter called the "CONTRACTOR", and Old Dominion University, hereinafter called the "University".

WHEREAS the University seeks to implement a comprehensive Residential Housing Management Solution ("RMHS"), and facilitated the selection process via Request for Proposal (RFP) #12-221-0013-KMH; and

WHEREAS the CONTRACTOR responded to the University's RFP in good-faith; and

WHEREAS through the competitive negotiation process the University determined that the proposal submitted by the CONTRACTOR was the most advantageous to the University in all aspects, including but not limited to, proposed system solution and related functionality, enterprise integration, implementation time line, training and associated costs; and

WHEREAS the CONTRACTOR was selected by the University to enter into an agreement FOR THE SPECIFIED SOLUTION AND SERVICES.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein contained, the CONTRACTOR and University agree as follows:

**1. PERIOD OF PERFORMANCE:**

- a. The contract shall commence upon final acceptance and execution, and will be in effect through June 30, 2015;
- b. Upon mutual consent, Contractor and University shall reserve the right to renew this agreement annually up to ten (10) additional one-year periods; and
- c. Any necessary amendments or modifications to the terms and conditions of said agreement shall be in writing as a modification to this agreement, and enforceable as though written herein.

**2. ENTIRE CONTRACT AGREEMENT AND AMENDMENTS:**

The following documents, by inclusive and/or reference, shall constitute the *Contract Documents* for this Agreement, as follows:

- a. This fully executed agreement;
- b. The Request for Proposals #12-221-0013-KMH dated January 4, 2012;
- c. Addenda #1 January 24, 2012;
- d. The Contractor's Proposal Response dated January 24, 2012, specifically response to Section III., Statement of Needs, attached and incorporated herein as ATTACHMENT C;
- e. The agreed to changes to terms and conditions and Hosting Addendum, as described herein;

- f. CONTRACTOR's License Agreement, included herein as ATTACHMENT A;
- g. University's *Addendum to Contractor's Form*, included herein as ATTACHMENT B; and
- h. Contractor's Service Level Agreement, included herein as ATTACHMENT D.

**3. PRICING:**

- a. Pricing specified herein shall be 'firm-fixed' and valid through June 30, 2017;
- b. Should the University agree to renew for any remaining period commencing July 1, 2017, subsequent pricing shall not increase by more than allowable increase as specified herein;

**c. Services Purchased:**

**i. Licensed Products Subscription:**

Including modules, integration, implementation and concurrent licenses:

1) Year 1: \$149,800

**ii. Hosting Subscription:**

1) Year 1: \$23,400;

2) Year 2: \$23,400;

3) Years 3 through 13 – to be determined

**iii. Maintenance for Licensed Products:**

1) Year 1: \$0 (included software license);

2) Years 2 – 5: \$26,964;

3) Years 6 – 13: TBD based on 18% of software cost; need to negotiate cost at time of purchase and not current market value.

**iv. Test Environment:**

1) Year 1: \$12,000;

2) Year 2: \$12,000 (optional)

**v. Professional Services:**

1) On-site training & Consulting: \$1,500 per day;

2) Remote Training & Consulting: \$200 per hour;

3) Additional data uploads & conversions: \$200 per hour;

4) Custom development: \$200 per hour; and

5) Additional user Licenses: \$2,500 per 10 users

**vi. Travel and Expenses:**

1) Approved travel expenses will be reimbursed by University on a 'monthly' basis, and at cost;

2) In order to qualify for University travel reimbursement the Contractor must obtain proper advance review and University approval prior to incurring the cost;

3) University will appoint a contract manager for expense approvals;



- 4) The allowable reimbursement for 'Daily' per diem shall be in accordance with Commonwealth of Virginia's most recently dated and published State Travel Regulations, CAPP Manual Topic No. 20335, specifically "Lodging/M&IE" guidelines.

[http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335-2011.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335-2011.pdf)

**vii. Payment Schedule:**

**1) Year 1:**

- a) Fifty percent (50%) of \$149,800 upon contract acceptance and final execution;
- b) Twenty-five percent (25%) of \$74,900 due upon initial installation of applicable 'software product' test system; and
- c) Twenty-five percent (25%) balance due upon initial 'go-live' for agreed to applicable Software Product components.
- d) First year hosting fee is due upon contract acceptance, final contract execution and initial installation of the software program test.

**2) Years 2 through 12 (if all renewal periods are exercised):**

- a) Annual maintenance and support due on or before July 1<sup>st</sup> of each subsequent contract year; and
- b) Hosting fees for year 2 and subsequent years is due at the anniversary date of contract acceptance, final contract execution and initial installation of the software program in test.

**4. SCOPE OF SERVICES:**

*Contractor shall work in close collaboration with University representatives to develop Implementation and integration requirements, and as necessary appropriate business and operational processes to ensure the successful and hosting and use of Contractor's proposed Residential Housing Management Solution, and shall be specifically responsible for:*

**a. Contractor Responsibilities:**

- i. Developing the Client's 'roadmap' to ensure Client maximizes the benefits provided by the proposed solution;
- ii. Through use of the developed 'road map', guide Client through the various stages of preparation and deployment:
  - 1) Assessment (Project Environment Maturity Modeling);
  - 2) Rollout Preparation;
  - 3) Management Review;
  - 4) Solution Rollout; and
  - 5) Review and Evolution Planning
- iii. Deliverables, which shall include, but not be limited to:
- iv. Assessment:

- 1) Assess current environment and business operations and processes;
- 2) Develop a prioritized timeline for various configurations, implementations and integrations;
- 3) Align solution to determine appropriate solution configurations to support functional, operational, process and reporting requirements;
- 4) Rollout – Contractor will:
  - 1) Implement and test solution;
  - 2) Develop system configuration;
  - 3) Train Client technical resources;
  - 4) As applicable, assist with 'mapping' processes into Client templates;
  - 5) Assist with development and documentation of a tailored training program; and
  - 6) Management Review – In collaboration with Client, fully review and finalize completed work.

**b. Client Responsibilities:**

a. Client shall be responsible for providing resources capable to assist the Contractor's analyst with the discovery, data collection, process analysis, configuration, roll out planning and roll out. Client resources will assist in assuring that questions are answered in a timely fashion and that project tasks for which Client resources are responsible, are completed in a timely and quality manner.

b. Client resource requirements are providing the appropriate staffing:

- i. to manage the project from the Client's side;
- ii. that can manage expectations and scope;
- iii. that can approve scope changes, risk mitigation plans, and time line changes;
- iv. to answer or resolve key questions;
- v. who have a complete understanding of Client's environment, business processes, and future vision for recommended and chosen solution; and
- vi. develop a test plan and test the software thoroughly.

c. Client will work collaboratively with Contractor and provide timely, confidential feedback about product value and performance.

**c. Software Product Solution and Related Components:**

Implementing and integrating as required, the fully expandable *StarRez-Portal platform*, a completely integrated real-time online system with the main University housing database, which shall include:

**i. Core Housing Management System consisting of:**

- Main Resident Directory;
- Built-in Reporting, Charting, Occupancy Graph, & Analysis Tools;
- User Defined Dashboard;
- Email / Mail Merge Tools & Correspondence Tracking;

- Billing, Accounts, and Financial Reporting;
- Auto Room Allocations / Assignments;
- System Administration - Audit Trails, Backup Scheduling, and Security Access;
- Online Web Directory;
- Single Sign On for Staff;
- Test Database;
- Pro-Rate Billing

**ii. StarRez-Portal- Online Student Self-Service:**

- Two Online Application Processes for: a) New Students, and b) Returning Online Contract with Electronic Signature;
- Standard Roommate Management (known roommates can select each other);
- Online Room Selection & Lottery Management; and
- Advanced Roommate Management (Roommate Search, Messaging & Selection)

**iii. Electronic Check-in | Check-out**

**iv. Interfaces & Integration:**

- Online Payment Interface with TouchNet (for one merchant account);
- BANNER- Demographic & Academic Import (Student data);
- BANNER - Room Assignment Export;
- BANNER - Financial Export;
- Single Sign-on for Web Portal (Students);
- Meal Plan POS Export; and
- REST API Web Services Package

**v. Concurrent User Licenses:** Up to 100 concurrent users will be enabled.

**vi. Summary of included Services:**

**1) Initial Software Purchase:**

- Assigned Project Leader & Subject Matter Consulting;
- Remote set-up and installation;
- Data conversion;
- Data upload of the room configuration data;
- Comprehensive on-site training days for the team;
- On-site go-live support days to ensure your success;
- Full set up, configuration, and implementation of the system including the Portal;
- Interface Development Support; and
- Set-up of Test Database



**2) Initial Installation:**

- Remote setup and installation of 'infrastructure';
- Data conversion of current residents;
- Data upload of room configuration;
- Comprehensive on-site training and RFI review;
- On-site 'go-live' support and refresher training;
- Project management consulting;
- Subject matter consultation;
- Post installation phase support; and
- Documentation

d. **Software Solution Requirements:** As specified in Contractor's response to the University's RFP, Section III., Statement of Needs, included herein as ***Attachment C***, specifically as follows:

- i. **Functionality:** 1.1 through 1.32;
- ii. **Technology:** 2.1 through 2.13;
- iii. **Reporting:** 3.1. through 3.8
- iv. **General:** 4.1 through 4.10;
- v. **Technical:** 5.1 through 5.23;
- vi. **Security:** 6.1 through 6.12;
- vii. **Hosted Applications:** 7.1 through 7.13;
- viii. **Privacy:** 8.1 through 8.12;
- ix. **Maintenance and Support:** 9.1 through 9.12;
- x. **Services:** 10.1 through 10.4

e. **Hosting Requirements:**

- i. While the University accepts the Contractor's responses, the Contractor further agrees that their provided technical responses to the RFP for the following requirements (i.-vi.) apply to all proposed product solutions:
  - 1) All hardware and software required for the solutions must be housed in a secure site;
  - 2) Solution must include services required for installation, integration, testing, and maintenance;
  - 3) Solution must support Secure Socket Layer (SSL), data encryption during transmission, and security protection features that prevent unauthorized access to University data;

- 4) Solution must provide at minimum daily backups of data with restoration capability to point-in-time or current as required by the University;
  - 5) Solution must run on redundant servers with failover capability; and
  - 6) Solution must be monitored by the Contractor 24x7 with any outages reported to the University upon discovery;
- ii. Contractor agrees at all times to maintain security systems and practices that include at a minimum: regularly scan its systems internally and externally using industry standard tools. Contractor also gets select products tested by third parties. Some products may be in queue to be externally tested. Contractor is in the process of making its host systems compliant with NIST recommendations;
  - iii. Contactor agrees that "University data" is defined as any data or information that Contractor creates, collects, obtains, accesses (via records, systems, or otherwise), receives (from University or on behalf of the University), or uses in the course of is performance of the contact. University Data is owned by Old Dominion University.
  - iv. Unless expressly permitted by the express advance written consent of an University official authorized to give such consent, Contractor and its employees, agents, and other persons associated with Contractor (collectively, the "Contractor Users") are only permitted to use, reuse, distribute, transmit, manipulate, copy, modify, access, or disclose the University Data to the extent necessary for Contractor to implement and maintain the System as set forth in this Agreement. Contractor and the Contractor 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 Contractor protects its own data, but in no case in a lesser manner than a reasonable degree of care under the circumstances;
  - v. It is the responsibility of the Contractor 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 sub-Contractors used by the Contractor;

- vi. 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.  
Contractor agrees that University data will be stored on servers and systems located in the United States.
- vii. The Contractor agrees to handle University data, where applicable, in compliance to the Family Educational Rights and Privacy Act, as set forth in 20 U.S.C. §1232g ("FERPA"), and Contractor will make commercially reasonable efforts to be in compliance with any other applicable federal or Commonwealth of Virginia law or regulation, provided that the University informs CONTRACTOR of such law or regulation in writing.
- viii. Contractor agrees that all University data exchanged shall be used expressly and solely for the purposes enumerated in the contract with the University and this Addendum. The University 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.
- ix. Contractor agrees to comply with any University request to preserve and provide access to University data, system logs and account access logs. The Contractor shall make itself, and any employees, sub-contractors or agents assisting the Contractor in the performance of its obligations under the Agreement, available to University, at University's 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.



- x. 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. Such notification shall be commercially reasonable by industry standards and agree to by both parties. In addition, subject to the Limitations of Liability in the Contractor's Master Services Agreement, 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.
- xi. 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).

- xii. The Contractor agrees, upon termination, cancellation, expiration, or other conclusion of this Agreement, within 30 days to return the data 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 at no cost to the University.

- f. **Service Level Agreement:** Contractor shall provide for and deliver any and all associated maintenance and support functions to Client for all software products licensed from the Contractor in accordance with the Contractor's Service Level Agreement ("SLA") dated January 5, 2012, and or then most as amended and modified, attached and incorporated herein as Attachment D.

#### **5. OWNERSHIP OF INTELLECTUAL PROPOERTY:**

Any and all copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract by the Contractor remains the sole property of the Contractor. Any and all copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract by the University remains the sole property of the University.

#### **6. ASSIGNMENT:**

This contract shall not be assignable by Contractor in whole or in part without the written consent of the University. Notwithstanding the foregoing, no consent shall be required for an assignment to any entity controlled, controlling or under common control with Contractor, or to the purchaser of substantially all of its assets.

#### **7. AUTHORIZED CONTRACT PARTICIPATION:**

In accordance with the *University's Rules Governing Procurement of Goods, Services, Insurance and Construction ("Rules Document")*, specifically §6, Cooperative Procurement, it is the intent of this contract to allow any public body, public or private health or educational institutions, or *Old Dominion University's* affiliated agencies and/or corporations, access and use, as authorized by the Contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor, this contract may be extended to the entities as indicated above to purchase at contract prices in accordance with contract terms and conditions. Each entity will require its own pricing and Statement of Work in collaboration directly with the Contractor. The Contractor shall notify *Old*



*Dominion University* in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor will provide semi-annual usage reports for all entities accessing the contract. Participating entities shall place their own orders directly with the Contractor, and shall fully and independently administer their use of the contract, including contractual disputes, invoicing and payments, without direct administration from *Old Dominion University*. *Old Dominion University* shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend participation and use of the contract. It is understood and agreed that *Old Dominion University* is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

#### **8. TERMS AND CONDITIONS:**

All terms and conditions associated with this Contract Agreement, both *general* and *special*, shall be those terms and conditions specified in Client's original solicitation document, RFP #12-221-0013-KMH, unless modified herein, as follows:

##### **GENERAL TERMS AND CONDITIONS:**

- A. **LAW:** This contract is subject to the provisions of the Commonwealth of Virginia, specifically § [23-38.90](#) of the Code of Virginia and its associated *Rules Governing the Procurement of Goods, Services, Insurance and Construction ("the Rules")* and 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. A copy of the manual is accessible on the Internet at [www.odu.edu/procurement](http://www.odu.edu/procurement) under "Information for Vendors".
- B. **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 10 of the Rules. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant



to the contract on the basis of the recipients religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*the Rules §36.E.*)

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
    - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
    - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

- E. **DEBARMENT STATUS:** Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- F. **ANTITRUST:** By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- G. **PAYMENT:**
1. **To Prime Contractor:**
    - a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
    - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
    - c. Each payment shall be accompanied by a detailed statement of its computation and the Contractor shall furnish supporting documentation to the Client upon request;
    - d. All goods or services provided under any subsequent contract or purchase order(s), that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
    - e. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
    - f. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be

accurately determined at the time orders are placed. In such cases, Contractor will be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the Client of its prompt payment obligations with respect to those charges which are not in dispute (§ 42. of the Rules).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Client for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the Client and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Client, except for amounts withheld as stated in (2) above.
- c. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Client.



H. **PRECEDENCE OF TERMS:** Paragraphs A-G of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

I. **TESTING AND INSPECTION:** The Client reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

J. **CHANGES TO THE CONTRACT:**

Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Client may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Client a credit for any savings. Said compensation shall be determined by one of the following methods:
  - (1) By mutual agreement between the parties in writing; or
  - (2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Client's right to audit the Contractors' records and/or to determine the correct number of units independently; or
  - (3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Client with all vouchers and records of expenses incurred and savings realized. The Client shall have the right to

audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Client within thirty (30) days from the date of receipt of the written order from the Client. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the *Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Client or with the performance of the contract generally.

- K. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Client, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- L. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes
- M. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractors workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitation or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every



subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section a *drug-free workplace* means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**SPECIAL TERMS AND CONDITIONS:**

- A. **ADVERTISING:** The Contractor shall not state in any of its advertising or product literature that the Client has purchased or uses its products or services.
- B. **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Client, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Client shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- D. **CANCELLATION OF CONTRACT:** The Client 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. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. 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. Cancellation does not entitle Client to a refund of funds received by the Contractor prior to the date of cancellation.
- E. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the Client or to



failure of the Client to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

F. **UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN**

**AND MINORITIES:** The following reports shall be submitted as indicated, if applicable:

1. **Periodic Progress Reports/Invoices:** The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract.
2. **Final Actual Involvement Report:** The Contractor(s) shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value.

H. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of the original solicitation.

I. **MAINTENANCE COSTS:** The cost of maintenance services of SaaS specified in the any resulting contract shall not exceed the lesser of the fair market price for like maintenance services or 15% of the quoted contract price.

J. **MAINTENANCE:** Upon expiration of the specified warranty period and at the Client'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.

L. **RENEWAL OF CONTRACT:** This contract may be renewed by the Client for up to ten (10) successive one-year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time

of renewal. Written notice of the Client's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Client elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease 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%.
2. If during any subsequent renewal periods, the Client elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increase/decrease 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%.

- M. **SOFTWARE UPGRADES:** The Client shall be entitled to any and 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.
- N. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated, the software license(s) identified in the pricing schedule shall be purchased on an annual basis as software as a service (SaaS) as defined in this . However the Client 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 the number of users commensurate with the quantity and type of licenses purchased, 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 of its functions are transferred.
- O. **TITLE TO SOFTWARE:** 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 solicitation, 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.

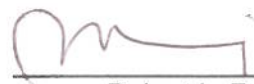
- P. **WARRANTY AGAINST SHUTDOWN DEVICES:** The Contractor warrants that any equipment, services or software provided under this contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment, services or software.
- Q. **WARRANTY OF SOFTWARE:** Contractor warrants the operation of all software products for a period of 60 months from the date of acceptance. During the warranty period, the Contractor shall provide support as outlined in section K and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation
- R. **WARRANTY (COMMERCIAL):** The Contractor warrants that the goods or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Client by any other clause of this solicitation. A copy of this warranty shall be provided to Client after contract execution.

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

CONTRACTOR:  
StarRez, Inc.

UNIVERSITY:  
Old Dominion University

By:   
David Meale

By:   
Robert L. Fenning

Title: President

Title: VP, Administration & Finance

Date: June 27, 2012

Date: 7/2/12