



VCU Procurement Services

VCU ADDENDUM TO HOTEL/EVENT CONTRACT

Virginia Commonwealth University (VCU) and the Contractor are entering into a contract and, for their mutual convenience; the parties are using the standard form agreement provided by the Contractor. This Addendum, attached to and hereby made a part of the agreement for VCU, contains terms and conditions that will govern the agreement and which will take precedence over any terms and conditions that conflict with VCU terms below.

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by VCU for all goods, services and other deliverables under this contract shall not exceed the purchase order amount; payments will be made only upon receipt of a proper invoice, detailing the goods/services provided. The total cumulative liability of the Commonwealth, 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 Commonwealth. The Commonwealth P.O. Terms and Conditions available at:

http://documents.procurement.vcu.edu/purchasing/pdf_docs/forms/PO_TermsandConditions.pdf

are incorporated into the contract by reference.

The Contractor's form contract is, with the exceptions noted herein, acceptable to VCU. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by VCU, 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 VCU:**

1. Requiring VCU to maintain any type of insurance either for VCU'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 VCU to indemnify or to hold harmless the Contractor for any act or omission;
5. Imposing interest charges contrary to that specified by the *Code of Virginia*, § 2.2-4347 through 2.2-4354, Prompt Payment;
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 VCU 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 VCU 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;

Note: Neither party shall be responsible for personal injury, or property damage or loss except that resulting from its own negligence or the negligence of its officers, owners, employees, or others from whom the party is legally responsible.

Nothing contained herein shall constitute a waiver of the sovereign immunity of VCU or the Commonwealth of Virginia.

12. Permitting unilateral modification of this contract by the Contractor;
13. Binding VCU to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
14. Obligating VCU to pay costs of collection or attorney’s fees;
15. Granting the Contractor a security interest in property of VCU.
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 VCU;
17. Applying a service charge or gratuity to meeting room space rental, exhibition space rental or to lodging room rental that is calculated as a percentage of the rental cost;

Note: A service charge/gratuity is allowable for food/beverage and audiovisual equipment rental.

18. Applying an attrition formula when the reduction in total room nights actually used is not greater than 20%;

Note: Formula: Attrition Fee = 80% of Total Guaranteed Guest Room Nights minus Actual Guest Room Nights Used multiplied by the Group Guest Room Rate.

19. Imposing a cancellation/performance fee schedule that:
 - a. Assesses a cancellation/performance fee for events cancelled by VCU, for which VCU provided notice of cancellation to the Contractor 180 days or more prior to the date of the event:
 - b. Is not computed as a percentage of the anticipated gross revenues, based on the date of the cancellation notice.
 - c. Establishes a cancellation/performance fee percentage for guest room accommodations that exceeds 20%.

Note:

- A cancellation/performance fee may be assessed for events cancelled by VCU, for which VCU provided the Contractor with notice less than 180 days prior to the event.
- Cancellation percentages may be different for audio-visual equipment rental, guest / meeting room rental and food and beverage.
- Cancellation/performance fee(s) shall be subject to negotiation by the contract parties. If applicable, the guest room cancellation fee shall be reduced based on the number of the cancelled guest rooms the hotel sells before the cancelled event date.
- A guest room cancellation/performance fee shall only be applied to lodging accommodations that are to be billed to VCU's "Master Account."

20. Requiring a deposit to guarantee an event reservation;

Note: A Purchase Order or a credit card shall hold a reservation.

21. Requiring payment of invoices sooner than Net 30 days after the event or after receipt of a valid invoice, whichever occurs last;

22. Requiring payment of incidental charges (to include, but not limited to: room safe fees, internet connectivity, parking, portage, other individual services, etc.,) by VCU;

Note: Unless otherwise agreed to by VCU, all incidental charges shall be billed to the individual participants and not to VCU's Master Account.

Note: Force Majeure shall apply to the Contractor and to VCU.

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.

Any subsequent event confirmation document(s) (e.g. „Banquet Event Orders) issued by the Contractor, shall be governed by the terms and conditions of the Contractor's form contract executed by VCU and this Addendum.

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.