

Agreement

This Agreement, executed this 5th day of March, 2021, by and between the Rector and Visitors of the University of Virginia (the "University") and the Omni Charlottesville Virginia Corporation (the "Hotel").

Term

The term of this Agreement will be for two years effective upon execution of this Agreement, with the ability to renew on the same or similar terms and conditions for four (4) additional two-year periods. The Hotel and the University will mutually agree at least 180 days before each renewal option whether to renew the terms of this Agreement.

Witness

The Purchasing Manual for Institutions of Higher Education and their Vendors (the "Manual") specifies those policies which govern the purchasing processes at specifically designated publicly-funded colleges and universities who are eligible to be or are governed by *Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act, § 23-38.88 et seq. of the Code of Virginia and Chapters 824 and 829, Acts of Assembly, 2008*. Section 7 of the Manual details the exceptions to competitive requirements. The University, acting in full compliance with the Manual, engaged in negotiation to establish multiple lodging and conference facility (the "goods and Services") Agreements with local Charlottesville, Virginia vendors. The University and the Hotel wish to express in this Agreement the specific basis on which the Hotel will provide the Goods and Services to the University.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

1. Contents

These documents are hereby incorporated into this Agreement:

- A. Agreement Attachment 1, Contractual Provisions;
- B. Agreement Attachment 2, Procedure for Resolution of Contractual Claims

To the extent that the terms of the various Agreement documents conflict, the terms of this Agreement, Agreement Attachment 1, and Agreement Attachment 2 will prevail over all other Agreement documentation.

2. The services provided by the Hotel will include, but not be limited to, the following:

A. General Lodging Services

- 1. The Property must be in the Charlottesville/Albemarle vicinity
- 2. Accept cancellations for room reservations until 4 p.m. on the day of arrival for no charge for all reservations involving nine or fewer rooms. If reservations are not canceled by 4 p.m., a "no show" charge may be applied for the first night's room and tax.
- 3. Accept reservations associated with any cooperative contracted pricing for which the University may qualify (for example: General Services Administration ("GSA"), Educational and Institutional Cooperative Purchasing ("E&I"), US Communities, etc.)
- 4. Provide internet access and parking for University booked business.
- 5. The Property must provide shuttle service to University of Virginia Grounds if the Property is more than one mile from Central Grounds or the Medical Center. Shuttle service may be temporarily suspended while UVA is under a domestic travel restriction.

B. Standard Hotel Rating

- 1. The Property must be rated a 3 Diamond AAA property or higher at the time of contract signing and must maintain this rating throughout the term of the Agreement.

C. Conference Services will include:

- 1. Allow for University departments to use a Virginia Higher Education Procurement Consortium (VHEPC) Audio Visual ("AV") vendor of their choosing. For a list of the VHEPC contract vendors for AV services, go to:

<https://vhpc.cobblestone.software/public/default.aspx>

2. Outside vendors must use Encore for in-house sound and meeting room internet service.
3. Maintain compliance with all local, state, and/or federal food sanitation and health requirements. Also, obtain all local permits or licenses required to conduct a catering/food operation business.

D. Customer Service will include:

1. Return phone calls and e-mails from the University within three business hours
2. Provide phone support hours (seven days a week between the hours of 7:30 a.m. and 7:00 p.m. Eastern Time)
3. Provide an account manager specifically assigned to manage the University's account. This individual will be the primary contact for all University issues beyond those typically handled by the front reservation desk. Such as, but not limited to: quality issues, payment and billing questions, and large group/conference reservation requests.
4. Notify reserving University departments, individuals, and the University Contract Administration ("UCA"), identified in section 8.A, of any expected, unexpected, planned, or unplanned changes or occurrences to the Hotel's facilities or immediate surrounding areas which may impact reservations negatively. These include construction, flooding, pest control issues, or the closure of onsite recreational amenities or restaurants for whatever reason.
5. Provide, when required by the Hotel, the University Departments with a simple University Approved Order Confirmation Document for the Hotel ("OCD") to sign (see Attachment 3). During the term of this Agreement, the Hotel agrees not to present or request for signature any other contract, Agreement, direct bill application, and/or an OCD different than the University approved OCD shown in Attachment 3. The OCD form should only be used for a group (10 or more people) and/or conference services reservations, not individual or small group reservations (9 or fewer people).

E. Technology will:

1. Allow for the University to make lodging reservations via a third-party booking tool that operates using information pulled from the Global Distribution System ("GDS"). This will ensure that the GDS tool functions correctly, with up-to-date accurate reservation information, the Hotel will ensure all availability is in the GDS with live content and pricing.

3. Fees

A. Federal and State per diem rates

1. The Hotel will extend Federal and State per diem rates for lodging and catering/conference services with the following restrictions:
 - a. Individuals must present a personal issued federal / state identification upon check-in. For additional clarification, the University of Virginia Faculty / Staff identification cards will be recognized as acceptable state identification.
 - b. These rates do not have last room availability and may not be applied to groups of 10 or more.

B. Lodging Rates

1. 20% off Best Available Rate ("BAR"). BAR rates can be seen on the Hotel's website and made available until the last room is sold.
2. There are no blackout dates for the University rates except for UVA Graduation dates.
3. At the time of booking, the Hotel will do a price analysis. If 20% off the BAR being offered on the day of check-in is lower than the room rate booked at the time of reservation, the Hotel will charge the University the lower rate of the two. If the Hotel is offering a room at a lower rate, the Hotel will complete the reservation at this lower rate. The Hotel guarantees that the 20% University discount is the highest discount being offered and equates to the lower room rate. This will be known as the "UVA Lowest Rate Guarantee."
4. Group Lodging (defined as groups of 10 rooms or more) will be negotiated per reservation, but the University will receive at least the 20% off BAR.
 - a. The UVA Lowest Rate Guarantee does not apply to groups of 10 or more.

C. Taxes on long-term transient lodging

- Per Virginia Taxation Statutes, when a transient has occupied a room for 90 days or more, the dealer who furnished the room or other accommodations can refund any sales tax collected and then deduct from gross sales on their return the amount of charges for which they refunded the tax. For blocks of rooms rented under rental contracts, the exemption applies to the least number of rooms rented on a given day during a continuous 90-day period; each day is the start of a new 90-day period for purposes of this calculation. Additionally, meals included in a stay as part of a package are taxable and must be separately stated from room or accommodations charges to maintain the room exemption. If the charges are lumped into a single charge, the entire transaction will be subject to tax. Va. Dept. of Tax., [Ruling of the Tax Comr. No. 20-177](#) (Oct. 6, 2020).

D. Conference Room Rates & Fees

Conference Room Pricing		
Banquet Room	Standard Room Rental	UVA Discounted Room Rental
Jefferson Ballroom	\$18,000	\$15,300
2/3 of Ballroom	\$12,000	\$10,200
½ of Ballroom	\$9,000	\$7,650
1/3 of Ballroom	\$6,000	\$5,100
James Monroe	\$550	\$467.50
Ashlawn/Highlands	\$400	\$340
Ashlawn	\$200	\$170
Highlands	\$200	\$170
Lewis/Clark	\$350	\$297.50
Clark	\$200	\$170
Lewis	\$200	\$170
Montpelier	\$250	\$212.50
Madison	\$250	\$212.50
Wilson	\$250	\$212.50
Preston	\$800	\$680
Monticello	\$200	\$170
Atrium	\$3,000	\$2,550

Conference Room Discounts	
Total actualized room nights associated with conference	Minimum Percentage off total conference room rental
25	25%
50	50%
75	75%

E. AV Equipment Rental Fees

Rental Equipment	Standard Price	Description	Contract Price
Projector 3-5K	\$275		\$220
Projector 5-6K	\$425		\$340
Projector 7.5K	\$625		\$500
8x8 Tripod Screen	\$125		\$100
10Ft. HD Screen	\$125		\$100
8 Ch. Mixer	\$120		\$96
Wired Microphone	\$45	Standard Wired	\$36
Pwr. Strip	\$4		\$3.20
25' Extension Cord	\$15		\$12
Wireless Microphone	\$125	Digital Wireless mic	\$100
Powered Speaker	\$150	Stand-alone speaker on stand	\$120
Presentation Remote	\$25	Wireless Remote Presenter	\$20
LCD Projection Pkg	\$495	4K Projector/Screen and Cables	\$396
Projection Support Pkg	\$175	Screen/Cables/Set up	\$140
60" Monitor Pkg.	\$350	60" LCD Monitor and Stand	\$280
Laptop	\$125	Standard Laptop	\$100
Basic Wireless Internet	\$9.95	Per user/per day if Encore Services are used	\$5
Set up Tech	\$50	per hour	\$40

F. Additional service charge fees:

1. 22% gratuity/service fee for catering, room rental, and AV rental. Special promotions may be sold as inclusive and will not have a separate tax and gratuity fee added.
2. Current local tax

4. Attrition and Cancellation Terms

A. For transient lodging (defined as being a reservation with nine or fewer rooms), please see Section 2.A.2

B. For group lodging:

1. The minimum number of rooms associated with a reservation before attrition or cancellation fees may apply is **ten rooms**.

2. All rooms that are proven to be used by persons attending the Event shall be counted in the Room Block. These include, but are not limited to: all persons who, for whatever reason, do not receive the Group rate – late reservations, corporate rates, government rates, etc.
3. Any pre and/or post nights rooms proven to be used by persons attending the Event shall be counted in the Room Block. These include, but are not limited to: all persons who, for whatever reason, do not receive the group rate – late reservations, corporate rates, government rates, etc.
4. The attrition and cancellation fees will only apply if the Hotel is unable to resell the rooms
5. Attrition or cancellation invoices will be sent after the date of the Event
6. Calculations and percentages used for lodging attrition fees are as follows:

Days before Check-in	Allowable % Attrition	% Charge beyond allowable amount
Time of reservation – 60 days	100%	0%
59 – 15 days	50%	50%
14 – 0 days	20%	70% of the quoted room price

7. Calculations and percentages used for lodging cancellation fees are as follows. Cancellation calculations are made after allowable attrition allowances have been applied. Allowable attrition must be requested by the Client in writing, and this policy will be clearly stated on the OCD. If such notice is not given, the attrition percentages do not compound.
 - a. Cancellation must be received in writing.

Days before Check-in	% Charged for cancellation of group reservation
Time of reservation – 60 days	No charge
59 – 15 days	50%
14 – 0 days	100%

C. For Catering and Conference Services:

1. The cancellation fees will only apply if the Hotel cannot book another event of at least 75% of the canceled event's anticipated revenue.
2. Attrition or cancellation invoices will be sent after the date of the scheduled event.
3. Calculations for catering cancellation and attrition fees will be based upon the food and beverage minimum agreed upon in the OCD.
4. No catering or cancellation penalty will be applied if a function is re-booked and actualized within six months of the original event date.
5. Catering and Conference Services attrition and cancellation fees are as follows:

Days before Event	Allowable Attrition / % Charge beyond allowable amount	Cancellation Percentage Amount Due
Time of Reservation – 60 days	100% / no charge	No charge
59 – 7 days	30% / 100%	50%
6 – 0 days	10%/ 100%*	100%*

*Cancellation percentages on food and beverage are calculated based on projected net profit

Force Majeure:

Neither Party will be deemed in default or otherwise liable hereunder due to its inability to perform because of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order, including orders from any governing body (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the Party's control. Any delay in performance will be no greater than the event of force majeure, causing the delay. If an event of force majeure continues uninterrupted for a period exceeding six calendar months, either Party may elect to terminate this Agreement upon notice to the other, but such right of termination, if not exercised, will expire immediately upon the discontinuance of the Event of force majeure.

5. Rebates and Certificates

- A. The Hotel will rebate the University with two complimentary room night certificates each year. The room rebate will be given in the form of room certificates that are good for one night's stay at the Hotel and will be valid for one year from the date of issue. The certificates are transferable and can be used by anyone the University assigns them to.
- B. The certificates may be sent via e-mail directly to the UCA (see section 8.A), or the certificates can be mailed to the University no later than the 30th of each January, with the expiration date reading 1 February of the subsequent year (if the certificates are sent on 30 January 2021, the expiration date should read 1 February 2022). The certificates will be sent to:

Attention: Danae Polemi
 1001 North Emmet St.
 PO Box 400202
 Charlottesville, VA 22904
Dap2h@virginia.edu

If the certificates are not sent or postmarked by the date specified above (30 January), the Hotel agrees to give one additional certificate per week of delinquency. Additional certificates should be received at the above address no later than one week after the due date. The first week of oversight will be applied on 7 February and in increments of seven days after that.

- C. The Hotel will pay the University a 5% rebate (the "University rebate"). The rebate will be paid quarterly. The 5% rebate is based upon all University business paid via the Travel & Expense card ("T&E Card") to the Hotel. If the Property is SWaM certified, a 3% rebate will be paid quarterly. Proof of certification must be provided to the University and maintained throughout the term of the Agreement.
- D. The Hotel will register and participate in the annual Travel Expo. The Hotel will commit to providing a door prize with a minimum of USD \$100.00 value.

6. Ordering and Payment Processes

- A. No prepayments or deposits will be required
- B. The Hotel will accept the University T&E Card as the payment method for the Hotel's Goods and Services. At the time of reservation, the Hotel will
1. Provide the University with a lodging rate as detailed in Section 3.
 2. Collect needed guest information
 3. Collect T&E Card information to be used for payment
 4. If applicable, the Hotel may also request for the University department to sign the Hotel's OCD.
- C. At the time of guest check-in, the Hotel may collect a form of payment for non-allowable charges from the guest.
- D. If there is a problem with the University's T&E Card on file to be used for payment, the Hotel will not let that disrupt the check-in process. After check-in has been completed, the Hotel will contact the University department T&E Cardholder and/or the appropriate University's T&E Card Administrator(s) (identified in section 8.A).
- E. For clarification, the University T&E Card being used for payment will:
1. Not match that of the name of the guest checking in
 2. Will not be present at the time of check-in.

3. A third-party credit card authorization form will not be required

F. At check out, the Hotel will charge University allowed charges to the T&E Card and send an itemized billing summary to the T&E Cardholder.

7. Auditing and Quality Control Services

A. The Hotel may not charge fees higher than those listed in Section 3. A monthly audit of hotel rates loaded in Concur will be conducted. If during the term of this Agreement it is discovered that the Hotel is publishing/loading higher fees than those detailed in this Agreement, then the Hotel will send a check to the University for the amount of:

a. A University contract compliance audit fee of \$200 per instance. A first time one-month grace period will be permitted for the first time incorrect rates are published, but any subsequent times will be subject to the audit fee.

B. The Hotel agrees to submit a report of all University T&E Card spend with a rebate quarterly. These reports can be mailed to the address above (Section 5.B) or electronically to:

Danae Polemi, Travel Administrator, dap2h@virginia.edu, 434-924-4214

C. The Hotel will ensure that only allowable charges are charged to a University T&E Card. Allowable charges are: room and tax only unless otherwise specified by the cardholder. Any non-business charges (personal nature) such as movies, laundry, spa services, etc., would be classified as non-authorized. The Hotel must provide the T&E cardholder an invoice at the time of checkout detailing all charges to their T&E Card.

D. Hotel will accept bookings through Concur and will also accept T&E card information over the phone and not ask for T&E Card numbers to be faxed or e-mailed. A third-party credit card authorization form will not be required for T & E card use. Cardholders may permit the Hotel to keep their T&E card information on file for future reservations. If permission is granted, Hotel will store the University T&E Card information in a secure environment in compliance with PCI requirements. If the T&E cardholder does not grant permission, Hotel will use card information exclusively for the single transaction and then delete the information in a secure manner.

8. Contract Administrators

A. The individuals named below will serve as the identified Contract Administrators for their respective areas:

University Contract Administrator

("UCA") Danae Polemi

Travel Administrator

Department of Procurement and Supplier Diversity Services

University of Virginia

Office: 434-924-4214

dap2h@virginia.edu

Travel and Expense Card Administrator

Jenny Godden

Travel and Expense Card Administrator

Department of Procurement and Supplier Diversity Services

University of Virginia

Office: 434-924-4212

jmg6dj@virginia.edu

The Hotel will not make any commitments or comments or take any actions on behalf of the University without the Contract Administrator's explicit direction. The University reserves the right to change its Contract Administrator upon notice to the Hotel.

Acceptance

For the Rector and Visitors of the University of Virginia

Signature: 
B11A6A7E62AE4A5...

Jennifer Glassman
Director, Procurement and Supplier Diversity Services

2/26/2021

Date

Hotel: Ompi-Charlottesville Virginia Corporation

Signature: 
FA8CB64000494AE...

General Manager

2/26/2021

Date

Name of Account Manager (Point of Contact)

Jennifer Mayo

Phone Number

434-817-6628

E-mail Address

jmayo@omnihotels.com

Tracking #2322737

Attachment 1
Contractual
Provisions

A. Nondiscrimination

During this Agreement's performance, the Hotel will comply with the contract provisions contained in Section 2.2-4311(1) and (2) of the Code of Virginia or any successor provisions that may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests

The Hotel represents to the University that it's entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq*) or any other applicable law or regulation.

C. Assignment

Neither Party to this Agreement will have the right to assign this Agreement in whole or in part without the other's prior written consent.

D. Amendments

No amendment of this Agreement will be effective unless reduced to writing and executed by the University's Director of Procurement and Supplier Diversity Services and by the individual signing the Hotel's proposal or by other individuals named by either Party specified in Section E, Notices below. If the Hotel deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

E. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt; or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or a non-business day. All such notices will be addressed to a party at such Party's address or facsimile number as shown below.

Contact information for the University:

Jennifer Glassman
Director, Procurement and Supplier Diversity Services
University of Virginia
Carruthers Hall
1001 N. Emmet Street
PO Box 400202
Charlottesville, Virginia 22904-4202
Fax: (434) 924-6154

If to the Hotel:

F. Independent Contractor

The Hotel is not an employee of the University but is engaged as an independent contractor. The Hotel will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, concerning all withholding, Social Security, unemployment compensation, and all other taxes or amounts of any kind relating to the Hotel's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Hotel to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

G. Workers' Compensation and Employers' Liability

The Hotel will (i) maintain Employers Liability coverage of at least \$100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. Drug-Free Workplace

The Hotel, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, the Hotel agrees to 1) provide a drug-free workplace for the Hotel's employees; 2) 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 Hotel's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of the Hotel that it maintains a drug-free workplace; and 4) include the provisions of the preceding clauses in every subcontract or purchase order of over \$ 10,000 so that the provisions will be binding upon each subcontractor or vendor.

For this Section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to the Hotel, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this Agreement.

I. Information Technology Access

All electronic and information technology procured through this Agreement must meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973 (29 USC 794d) as amended and is viewable at <http://www.section508.gov>.

Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

NON-VISUAL ACCESS TO TECHNOLOGY: All information technology (the "Technology") that is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- Technology equipped for non-visual access will be compatible with the information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- Non-visual access technology will be integrated into any networks used to share communications among employees, program participants, or the public; and
- Technology for non-visual access will have the capability of providing equal access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement and Supplier Diversity Services, University of Virginia determines that 1) the Technology is not available with non-visual access because the essential elements of the Technology are visual and 2) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems

(including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.

If requested, this Agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

J. eVA Business To Government Registration

The eVA Internet electronic procurement solution, web site portal www.eva.virginia.gov, is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal is the gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA. All firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. The Hotel is required to register in the eVA Internet e-procurement solution before an award being made.

K. eVA Transaction Fee

The Hotel agrees that it is a registered eVA vendor and subject to an eVA transaction fee. The Hotel will be invoiced by the Commonwealth of Virginia, Department of General Services. Additional information is available at www.eva.virginia.gov.

L. Contractor License Requirements

State statutes and regulatory agencies require that some firms be appropriately registered and licensed, or hold a permit, before performing specific types of services. If firms provide removal, repair, improvement, renovation, or construction-type services they, or a qualified individual employed by the firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of this Agreement. The Hotel's responsibility is to comply with the rules and regulations issued by the appropriate State regulatory agencies.

License# _____ Type. _____

A copy of the license must be furnished upon request to the University or VASCUPP member institution.

M. Goods and Services

During the term of this Agreement, the Hotel will provide for the University the goods and services offered to the University in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected the Hotel.

N. Waiver

No waiver of any right hereunder will be deemed a continuing waiver. No failure on the part of either Party to exercise wholly or in part any right hereunder will prevent a later exercise of such or any other right.

O. Indemnification

The Hotel will indemnify and hold harmless The Commonwealth of Virginia, The Rector, and Visitors of the University of Virginia, and their agents, employees, and officials from any and all costs, damage or loss, claims, liability, damages, expenses (including, without limitation, attorneys' fees and expenses) caused by or arising out of the performance or nonperformance of this Agreement by the Hotel or its agents or subcontractors, including the provision of any services or products. The Hotel warrants that the products, goods, and services provided the University may be used by the University without violating any copyright, patent, or similar Property right or claim by others and will defend, indemnify and hold harmless the University (its employees and agents) from and against any such claim.

P. Governing Law

This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

Q. Termination

If the Hotel fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency, to the University's satisfaction within a reasonable period of time,

not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to the Hotel.

R. Non-Appropriation

Funding for any Agreement between the University and the Hotel is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. If funding to support this Agreement is not appropriated, whether in whole or in part, this Agreement may be terminated by the University effective the last day for which appropriated funding is available.

S. Right of Audit

The University reserves the right to audit or cause to be audited the Hotel's books and accounts regarding the University's account at any time during the term of this Agreement and for three years thereafter. The Hotel will make available to the University all books and records relating to this Agreement's performance as may be requested during said period. This specifically includes but is not limited to the University's right to require that the Hotel perform self-audits within reasonable parameters established by the University.

T. Contractual Claims

This Agreement is subject to the University's policy on Contractual Claims, which is provided as Attachment 2: Procedure for Resolution of Contractual Claims.

U. Insurance

The Hotel must maintain the following insurance requirements. In no event should the Hotel construe these minimum required limits to be their limit of liability to the University. The Hotel will maintain insurance that meets or exceeds the University's requirement with insurance companies that hold at least an A- financial rating with A.M. Best Company. Upon request, the Hotel will provide to the University a valid Certificate of Insurance. The University reserves the right to approve any insurance proposed by the Hotel.

- i. Commercial General Liability Insurance provides coverage for bodily injury and property damage with a minimum combined single limit of \$1,000,000 per occurrence, including coverage for premises/operations,

products/completed operations, contractual and personal injury. *See additional insured requirement at the end of this Section.

- ii. Automobile Liability Insurance provides coverage for bodily injury, and property damage with a minimum combined single limit of \$500,000 per accident.
- iii. Workers Compensation Insurance to provide coverage according to the Workers Compensation Act of Virginia, including Employers Liability coverage with minimum limits of \$500,000.
- iv. Property Insurance provides coverage for all property owned by the University that will be in the firm's care, custody, and control.

***Additional Insured:**

The University will be named an Additional Insured. The proper name is: "The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents."

V. **Use of Agreement by Third Parties**

It is the intent of this Agreement to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University-related foundation may access this Agreement if authorized by the Hotel. Participation in this cooperative procurement is strictly voluntary. If authorized by the Hotel, this Agreement may be extended to the entities indicated above to purchase at fees in accordance with this Agreement. The Hotel will notify the University in writing of any such entities accessing this Agreement. No modification of this Agreement or execution of a separate agreement is required to participate. The Hotel will provide semi-annual usage reports for all entities accessing this Agreement. Participating entities will place their own orders directly with the Hotel. They will fully and independently administer this Agreement's use to include contractual disputes, invoicing, and payments without direct administration from the University. The University will not be held liable for any costs or damages incurred by any other participating entity due to any authorization by the Hotel to extend this

Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of this Agreement no matter the circumstances.

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

w. Favored Nations

The Hotel represents that the prices, terms, warranties, and benefits specified in its proposal are comparable to or better than the Hotel's equivalent terms to any present customer.

X. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to the Hotel by the University's Director of Procurement and Supplier Diversity Services.

Y. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available on Procurement and Supplier Diversity Service's web site at: [hem.pdf \(vascupp.org\)](http://hem.pdf(vascupp.org))

Z. Small, Disadvantaged, Women-owned and Minority (SWAM) Business

Reporting The Hotel will identify and fairly consider small, disadvantaged, woman-owned, and/or minority firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under this Agreement.

The Hotel will submit semi-annual SWAM business reports to the University by 8 January and July. The Hotel will submit the quarterly SWAM business reports to:

Lorie Strother
SWAM Contract Administrator
Procurement and Supplier Diversity
Services E-mail: ljs8n@virginia.edu

The quarterly SWAM business reports will contain this information:

- SWAM firms' name, address, and phone number with which the Hotel has contracted over the specified quarterly period.
- Contact person at the SWAM firm who knows the specified information.
- Type of goods and/or services provided over the specified period of time.
- The total amount paid to the SWAM firm as it relates to the University's account.

AA. Intellectual Property Rights/Disclosure

Unless expressly agreed 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 Hotel (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. The Hotel warrants to the University that the University will own all rights, title, and interest in any and all intellectual property rights created in the performance or otherwise arising from this Agreement, and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims. The Hotel or contractor will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

BB. Unauthorized Alien Use.

The Hotel warrants that it does not knowingly employ an "unauthorized alien," as such term is defined in the federal immigration Reform and Control Act of 1986. The Hotel

furthermore agrees that, during the term of this Agreement, it will not knowingly employ an unauthorized alien.

CC. Marketing

The University encourages the Hotel to appropriately and specifically market itself to applicable end-using University departments interested in the Hotel's Goods and Services. However, the Hotel will not use non-specific mass marketing formats, such as but not limited to spam, e-mails, and junk mail. If the Hotel engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.

DD. Future Goods and Services

The University reserves the right to have Hotel provide additional goods and/or services under the same pricing, terms, and conditions to make modifications or enhancements. Such additional Goods and Services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement. Such recently introduced additional Goods and Services will be provided to the University at favored nations pricing, terms, and conditions.

EE. PCI DSS Compliance

The Hotel may accept credit card payments from the University and third parties (i.e., students, parents, etc.) for the Services described in this Agreement. The Hotel acknowledges and agrees that it is responsible for the security of any cardholder data that it processes, transmits, or stores, and warrants that the Hotel is, and will remain at all times during the term of this Agreement (and any subsequent renewal periods), in compliance with the PCI DSS [Payment Card Industry (PCI) Data Security Standard (DSS)], a copy of which is available at:

https://www.pcisecuritystandards.org/pdfs/pci_dss_saq_navigating_dss.pdf. The Hotel will take all necessary steps to ensure such compliance; such as but not limited to, no cardholder or magnetic stripe information will be stored in a database or internet storage device or space; only truncated card information will be provided on the sales slip provided to the cardholder; all merchant sales slip copies will be physically protected against unauthorized access; any media device storing cardholder

information (e.g., wireless terminal) will be physically protected against loss, theft or unauthorized access; and hardcopy cardholder data will be destroyed before physically disposed of. The Hotel will maintain appropriate documentation of: (1) their processing level (Level 1-4) including certification of compliance and certification of compliance for all point-of-sale software or internal processing systems that they may employ; and (2) completed Quarterly Network Scans of all outwardly facing IP addresses (as defined in PCI DSS) for those firms required to perform such scans. The Hotel further agrees to use only credit card service providers that are PCI DSS compliant for credit card processing. The Hotel will indemnify, defend and hold harmless the University and its employees, trustees, officers, and agents, from and against all damages, judgments, losses, and reasonable costs or expenses (including reasonable attorney's fee) ("Damages") arising from lawsuits, actions, claims or demands by the ("Claims") seeking compensation for personal injury or property damages caused by or attributable to any data security compromise occurring as a result of Hotel's negligence or the breach of any of Hotel's obligations herein.

FF. Red Flags Rule

In accordance with the Red Flags Rule at 16 CFR §681, under the Fair and Accurate Credit Transactions Act of 2003, if Hotel's activities under this Agreement make it a "service provider" under the Red Flags Rule, Hotel agrees to implement policies and procedures to detect relevant "red flags" of possible identity theft that may arise during Hotel's performance of its obligations under this Agreement and to provide notice to the University any red flags of which it becomes aware.

Attachment 2

Procedure for Resolution of Contractual Claims

The Virginia Acts of Assembly of 2006, Chapter 943, Chapter 3, Exhibit P and its attachments requires contractors with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the contractor's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

- A. The Hotel must provide the written claim to:
Assistant Director of Procurement and Supplier Diversity Services
University of Virginia
100I N. Emmet Street
P. O. Box 400202
Charlottesville, Virginia 22904-4202
- B. Although the Hotel may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section A above, the Hotel must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement and Supplier Diversity Services if it wishes to pursue its claim.
- C. Upon receiving the written claim, the Assistant Director of Procurement and Supplier Diversity Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Hotel. If such a discussion is to be held, the Assistant Director of Procurement and Supplier Diversity Services will contact the Hotel and arrange such a discussion. The manner of conducting such discussion will be as the Assistant Director, and the Hotel mutually agrees.
- D. The Assistant Director of Procurement and Supplier Diversity Services will mail his or her decision to the Hotel within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

E. The Hotel may appeal the decision to:

Director of Procurement and Supplier Diversity Services
University of Virginia
Carruthers Hall
100I N. Emmet Street
PO Box 400202
Charlottesville, Virginia 22904-4202

By providing a written statement explaining the appeal's basis within 15 days after the Hotel's receipt of the decision.

F. Upon receiving the written appeal, the Director of Procurement and Supplier Diversity Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Hotel. If such a discussion is to be held, the Director of Procurement and Supplier Diversity Services will contact the Hotel and arrange such a discussion. The manner of conducting such discussion will be the Director of Procurement and Supplier Diversity Services, and the Hotel mutually agree.

G. The Director of Procurement and Supplier Diversity Services will mail his or her decision to the Hotel within 60 days after the Director of Procurement and Supplier Diversity Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.