

Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts

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A Note About Existing Contracts



- All planners should be reviewing the terms of existing contracts and conducting a “viability audit.”
- Consider having a legal review of the contract terms so you are aware of liabilities, but don’t involve an attorney in discussions with the hotel.
- What you can renegotiate depends on what the contract contains.
- Make it a win-win.

Renegotiating Existing Agreements



- Reduce Room Block or Attrition
- Reduce Room Rate Based on Competitors (least favored by hotels)
- Eliminate Cut-Off Date
- Cut Meeting by A Day
- Move Meeting to Another Day/Year
- If Possible, Assign Guest Rooms
- Renegotiate F&B Minimums, Prices

New Contracts

Maximize Your Negotiation Posture



- Consider Markets and Hotels Waiving Attrition
- Aggregate Smaller Meetings
- Consider Multi-Year Contracts
- Consider Requests for Proposals

Basic Tenet of Contracting asae

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- Come to the negotiations with your own core contract provisions
- Everything negotiated should be clearly written in a signed contract
- If you ask for something after a contract is signed, its called begging.

Four Corners Rule



- Clear & Unambiguous – Contract Speaks for Itself
- Most Litigation Arises Because Contracts Are Unclear
- Otherwise, Most Disputes Are Settled

Contract Terms

Basic Contractual Elements



1. Rates:

- Rooms Rates
- Commissions
- F & B

2. Penalties:

- Attrition/Cancellation
- Mitigation & Right to Audit

3. Liability:

- Force Majeure
- Indemnification
- Insurance

Setting the Rate – Making it Stick

Lowest Room Rate Available



- **Guarantee Lowest Published Rate**
- **Include Internet Sales**
 - **MONITOR THIS**
- **If Lower Rate, Must Match for Entire Group or Remove**
 - **Link to Penalties**

Setting Future Rates



- Provide a formula in the contract for setting future rates
 - Lesser of the Following:
 1. Rack Rates quoted one-year prior to meeting
 2. The quoted rate plus X per year (2-3% cap)
 3. X% off the lowest published rack rate for the dates of the meeting
- Negotiate catering and other significant costs, as well.

Room Block Reservation asae

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What are the organization's obligations for room nights?

- Clearly indicate that rooms are “...made available for reservation and payment by Group meeting attendees”
- Clearly state the room block size & room rate
- If room blocks can be adjusted, state deadlines and have the reduced block flow down to attrition/cancellation penalties

Now, the rates are set. How do
you avoid cost creep?

No Additional Charges Authorized Signatures Clause



- Additional Charges: No additional charges will be incurred for work performed and/or services provided without written consent from an authorized representative of the Group.
- Surcharges/Service Fees/Gratuities

Managing Penalties Attrition/Cancellation



Consider Negotiating Without Penalties

If Damage Provision Required, Follow These
Steps

Goal of Contract Damages

Benefit of the Bargain – Make “Whole”

- If one side breaches a contract, the other side is entitled to damages but not penalties

Types of Damages

- **Actual** – Amount of loss caused as a direct result of the breach.
- **Liquidated Damages** – Amounts agreed to by the parties at the time of the contract, and before any breach occurs, to approximate damages.

Attrition and Cancellation

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What this Means for Hotel Agreements

- Hotel has an obligation, as a matter of law, to resell unused rooms
- Hotel may not, as a matter of law, end up in a better financial position because you cancelled/under performed than it would have if the contract was fully performed.
 - Can result if Hotel has the right to “double sell”

Five Steps

Prevent the “Double Dip”



Double Dipping: Occurs when the hotel gets the liquidated damages, yet retains the ability to resell the canceled rooms and keep that income, too.

1. Mitigation Clause: Hotel shall undertake all reasonable efforts to resell canceled rooms, and will credit those revenues against the liquidated damages in an amount not to exceed the full amount of such damages.
2. Timing of Payment: Damages, if any, shall be due and payable X days after [original meeting date] provided the Hotel provides proof of its efforts to mitigate damages and proof that rooms being held for Group's attendees were unsold.

Prevent the “Double Dip,” Continued



3. Exclude Fees/Commissions/Taxes: Fees, penalties, or liquidated damages, if any, shall exclude service charges, surcharges, commissions, and rebates as well as state and local sales taxes, unless required by law .

4. Deduct Overhead/Profit Margin: If Association is required to pay an attrition fee, the fee shall be calculated by multiplying X% of the Single Room Rate by the difference between the number of actually used rooms and the Room Block with credits from guaranteed no-shows, cancellations, and early departure charges, if applicable.
 - ▶ Guest Rooms 75 - 85%
 - ▶ F & B – 20-40%
 - ▶ Alcohol Beverage Functions – 80-85%

Prevent the “Double Dip,” Continued



5. Average Occupancy Rate – Not Last Sell: Association shall not owe any fees, penalties, or liquidated damages if Hotel meets or exceeds its average occupancy level for that particular period of the year.

Example: Hotel has 100 rooms, but only sells 50 on an average night.

Room Block: 40 Rooms – Cancelled

Rooms Unoccupied in Hotel: 55

Rooms Sold: 45

Last Sell: 0 Credit (55 Rooms Remain Unsold, Attrition is 45)

Average Occupancy: Pay for 5 Rooms) b/c Average is 50)

Attrition/Cancellation Special Issues

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- Negotiate Attrition Based on Cumulative Room Nights Rather Than Each Night.
- Consider Clause Giving Credit For Rescheduled Meetings
- How do You Establish “Average Occupancy?”
 - Hotel ledgers
 - Have a formula, such as last 3 years

Attrition/Cancellation Special Issues

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- What About Food & Beverage?
 - Yes! Attrition/Re-Sell Can Apply Here, as well
 - Get Credit for Re-Booking or Alternate Business
- Reverse Attrition/ Cancellation
 - Hotel must pay damages, equal to room rate, for relocation
 - Specify at point, such as 25% of room block, which triggers cancellation/cancellation damages.
 - In the event of forced cancellation, must pay costs of relocation

Additional Money-Saving Tools

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- Room Block Release
 - Specify a date
 - Reduce the room block for attrition/cancellation purposes
- Occupancy Reports
 - Total number and types of rooms in Group's room block picked up during each day.
 - If Group desires an individualized breakdown including guest names, arrival and departure dates, etc., be sure to specify.
- Right to Audit
 - Include confidentiality language
 - Your representative, not hotel

Managing the Unexpected

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Force Majeure Indemnification

Five Key Components Force Majeure



1. Emergencies and non-emergencies beyond the control of the parties including
2. Delineated Risks (terrorism, threats of terrorism, government travel advisory, etc.) – tailor to meeting location.
3. Preventing or delaying at least 25% of Attendees and guests from appearing at the event

Five Key Components Force Majeure



4. Making it illegal, impossible, or commercially impractical to hold the event or perform the services.
5. This contract may be terminated or performance excused by either party without penalty for any one or more of such reasons by written notice from one party to the other

Warranty of Services asae

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Hotel represents and warrants that the Hotel and Hotel's facilities, including services to be provided by Hotel to Association and its attendees pursuant to this Agreement at the dates herein set forth shall be of substantially the same condition and quality as currently exists as of the date of this Agreement

Indemnification Key Provisions



YES

- **Reciprocal** - A reciprocal clause is desirable where each party indemnifies the other for (is responsible for) its own negligence (mutual indemnification).
- **Limited to Control** - What each party is being asked to be responsible for is within its control.
- **Includes Defense Costs**
- **Limit Scope to Insurance Coverage** (employees? volunteers? third parties?)

Indemnification



NO

- **“Sole,” “Gross,” or “As determined by a court”**
 - This restriction would limit liability and make it harder for indemnification to kick in. Only one party would have be at fault, whereas removing "sole" distributes liability among the parties according to percentage of fault.
- **Coverage of third party negligence**
 - Meeting attendees (expect perhaps board members, etc.)

Managing the Liability You Assume



- “Flow down” to third parties, contractors
 - Caterers
 - Transportation
 - Independent Contractors
- Waivers
 - Golf tournaments, etc.
- Insurance
 - Flow this down, too

Note About Commissions

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- Consider out-year consequences
- No post-termination commissions (or reduced commissions)
- Have ability to revise relevant agreements without agent approval

Letters of Intent



Key Issues and Pitfalls

- Generally, letters of Intent ARE Binding – treat as a contract
- Every letter of intent should provide that the eventual contract is “subject to”:
 - Successful negotiation of the terms and conditions in the final Convention Center Agreement
 - Successful negotiation of hotel contracts for attendee guest rooms.

Convention Center Agreements

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What should I do about terms related to the organization's insurance coverage?

- Waiver of subrogation, duties to provide certificates of insurance and to name the center as additional insureds have significant consequences
- Consult with broker if necessary and determine additional premiums or other costs that may need to be paid in order to comply.

Convention Center Agreements



What can I do to manage risks related to strikes and labor disputes?

- Include a provision that your organization can terminate without liability if a strike/threat of a strike occurs within 6 months of the event
- Require prompt advance notice, disclosure of contract renewal dates.
- Have the center warrant that it will provide replacement workers if a strike occurs

General Provisions



- **Notice of Requirements Prior to Default/Opportunity to Cure**
 - One-Sided Cancellation - (nonpayment, failure to abide by License terms, etc).
 - Notice of all requirements.
- **No Reassignment without Notice**
 - No changes shall be made to the agreed premises assignment without the prior written approval of Lessee.
- **Condition of Facilities**
 - In substantially the same condition as the time of contract
- **Use of Outside Contractors**
 - Only if prices/reputation for service is comparable or better

General Provisions, Cont.

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- **Condition and Inspection of Returned Premises**
 - Agree to joint inspection, so that all deficiencies are identified in the presence of your representative.
- **Other Facility Events**
 - Obligation to notify of other events.
- **Contract Interpretation Clauses**
 - Don't agree to interpretation by the Convention Center's attorney

Questions?

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