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Preventative Planning: Avoiding Common Legal Pitfalls in Hotel, Convention Center, and Meeting Contracts

Small Market
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Overview

n **Hotel – New Contracts**

- Basics
- Setting the Right Rates
- Damages & the Problem of “Double Dipping”
- Force Majeure
- Warranties
- Indemnification/Insurance

n **Convention Center Contracts**

- The Letter of Intent
- Key Provisions
- Insurance

n **Other Meeting Contracts**



New Contracts

STEP 1 •

**Maximize Your Negotiation
Position**



New Contracts

Maximize Your Negotiation Position

- n Consider Markets
- n Aggregate Smaller Meetings
- n Seek Multi-Year Contracts
- n Consider Request for Proposals



New Contracts

STEP 2 •

Reaffirm the Basics



New Contracts

Basic Principles

- n Everything negotiated should be clearly written in a signed contract.
 - *“If you ask for something after a contract is signed, it’s called begging.”*
 - Come to negotiations with your own core contract provisions



New Contracts

Four Corners Rule

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



New Contracts

STEP 3 •

**Pay Attention to Specific Terms
of the Contract**



New Contracts

Basic Contractual Provisions

- n Rates
 - Room Rates
 - Commissions
 - F & B
- n Damages (penalties)
 - Attrition / Cancellation
 - Mitigation and Right to Audit
- n Liability
 - Force Majeure
 - Indemnification
 - Insurance



New Contracts Rates

- n Lowest Room Rate Available
 - Guaranteed Lowest Published Rate
 - Include Internet Sales and Monitor
 - If There Is a Lower Rate:
 - (a) Match for Entire Group
 - (b) Remove Advertisement

Remember to link to penalties!



New Contracts

Setting Future Rates

- n 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



New Contracts

Room Block Reservation

What are the organization's obligations for room nights?

- Clearly state that rooms are “...made available for reservation and payment by Group meeting attendees”
- Clearly list room block size and room rate
- Include dates/deadlines for room block adjustments and have the reduced room block flow down to attrition / cancellation penalties
 - New hotel



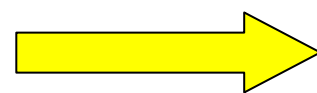
New Contracts

Avoiding Cost Creep

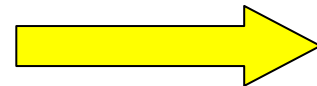
- n No Additional Signatures
 - Additional Charges: *“No additional charges will be incurred for work performed and/or services provided without written consent from an authorized representative of group.”*
 - Subcharges / Service Fees / Gratuities



New Contracts Damages / Penalties



Consider negotiating for a “no attrition/ penalties” provision



If not possible, follow steps to manage penalties



New Contracts

Damages

- n Keep in mind “**duty to make whole**”
 - Starting point for negotiations – if one side breaches a contract, then the other side is entitled to damages but not penalties.

- n **Types of Damages**
 - **Actual** – amount of loss caused as a direct result of breach
 - **Liquidated** – amount agreed to by parties at the time of contract, before any breach, to approximate damages



New Contracts Damages

What this Means for Hotel Agreements – Attrition and Cancellation

- 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.



New Contracts

Damages vs. Penalties

Five Steps to Prevent the “Double Dip”

Double Dipping - occurs when the hotel gets the liquidated damages, yet retains the ability to resell the canceled rooms.

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.



New Contracts

Damages vs. Penalties

Prevent the “Double Dip,” Continued

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

4. **Deduct Costs Saved:** If Group 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 Target** with **credits from guaranteed no-shows, cancellations, and early departure charges, if applicable.**
 - 4 Guest Rooms 70-80%
 - 4 F & B – 30-40%



New Contracts

Damages vs. Penalties

Prevent the “Double Dip,” Continued

5. Average Occupancy Rate – Not Last Sell: Group 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 Sold: 45

Last Sell: 0 Credit (55 Rooms Remain Unsold)

Average Occupancy: Pay for 5 Rooms



New Contracts Damages

Attrition/Cancellation Special Issues

- n **Negotiate Attrition Based on Cumulative Room Nights Rather Than Each Night.**
- n **Consider Clause Giving Credit For Rescheduled Meetings**
- n **How do You Establish “Average Occupancy”?**
 - **Hotel ledgers** – have formula such as average for last three years



New Contracts

Damages

Attrition/Cancellation Special Issues

n 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.



New Contracts Damages

Additional Money-Saving Tools

- n **Room Block Release**
 - Specify a date
 - Reduce the room block for attrition/cancellation purposes

- n **Occupancy Reports for Additional Pick-Up**
 - 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.

- n **Right to Audit**
 - Include confidentiality language



New Contracts

Liability

- Force Majeure
- Indemnification
- Insurance



New Contracts

Liability

Five Key Components - Force Majeure

1. Emergency or non-emergency beyond the party's control
2. Delineated Risks – such as terrorism, threat of terrorism, government travel advisories
3. Preventing or delaying at least 25% of Attendees and guests from appearing at the event



New Contracts

Liability

Five Key Components - Force Majeure

4. Making it illegal, impossible, or commercially impractical to hold the event or perform the services
5. 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



New Contracts Liability

Warranty of Services

*Hotel represents and warrants that the Hotel and Hotel's facilities, including services to be provided by Hotel to Group and its attendees pursuant to this Agreement, and the area surrounding the hotel **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***



New Contracts

Liability

Indemnification

GOOD

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



New Contracts

Liability

Indemnification

BAD

- n **“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.
- n **Coverage of third party negligence**
 - Meeting attendees (expect perhaps board members, etc.)



New Contracts

Liability

Managing the Liability You Assume

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



New Contracts

Final Hotel Thought - Commissions

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



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nConvention Center Agreements



Convention Center Agreements

Key Issues and Pitfalls - Letters of Intent

- n Generally, Letters of Intent **ARE Binding** – treat as a contract
- n 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

Is this just a waste of time?

- § Convention center authorities are sometimes viewed as being intractable on key terms.
- § Still, persistence and attention to detail usually pays off.
- § Consider RFP as first step toward getting more favorable terms.



Convention Center Agreements

What about situations when the convention center is limited by state or municipal restrictions on matters related to indemnification and liability?

- § Don't take their word for it; review the code.
- § Consider a catch-all statement obligating the center to indemnify "to the fullest extent permitted by applicable law."
- § Disclaim for defects in premises or equipment furnished by the facility.
- § In Center is privately owned, push for mutual indemnification



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.
- § Have the center warrant that it will provide replacement workers if a strike occurs.



Convention Center Agreements

General Provisions for Convention Center Agreements

- ∅ 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.



Convention Center Agreements

Convention Center General Provisions, (Continued)

- ∅ 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.



n **Other Meeting Agreements**



Other Meeting Contracts

- n ***What should I look out for when dealing with other agreements related to my meeting?***
 - Watch for subcontractors — destination management companies and transportation companies are notorious for using subcontractors and seeking not to be liable for their negligence.

 - Seek contractors with a track record; take due diligence steps to confirm long-term viability



Other Meeting Contracts

Exhibitor Contracts

- n Eligibility to exhibit
- n Cost/payment schedule
- n Cancellation
- n Exhibit requirements and restrictions
- n Disputes among exhibitors
- n Hospitality functions
- n Objectionable displays
- n Responsibility for exhibitor property



Other Meeting Contracts

Exhibitor Contracts (continued)

- n Compliance with laws/Americans with Disabilities Act
- n Use of Intellectual Property/Music Licensing
- n Insurance
- n Indemnification
- n Exhibitor appointed contractors (EAC)
- n Access to attendee list
- n Violation of rules



Other Meeting Contracts

Speaker Agreements

- n Policy/procedure
- n Program description
- n Compliance with deadlines
- n Program review
- n Sample Contract
- n No promotion or sales
- n Cancellation
- n License of presentation



Other Meeting Contracts

Speaker Agreements (continued)

- n Use a template
- n No infringement or defamation
- n Ownership of recording
- n Travel
- n Other provisions
- n Indemnification
- n Insurance



Other Meeting Contracts

Catering Contracts

- n Time to Adjust Menus
- n Indemnification
- n Define Extra Charges
- n Cancellation – incorporate costs saved
 - From “90% of estimated charges including to food and beverage minimum and room rental charge” to “expenses already incurred not legally cancellable without breach at the time of Group’s cancellation and 100% of Lost Profits for the event”
 - Lost profits = F&B minimum minus Caterer’s total expenses attributable to event (including, but not limited to the costs of food, beverage, all taxes thereon, labor) had the event not been canceled and had Client met but not exceeded the food and beverage minimum.



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n Questions?



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