



Top Ten "Must Have" Provisions for Nonprofit Meeting Contracts

Thursday, August 6, 2015, 12:30 – 2:00 pm ET
Venable LLP, Washington, DC

Moderator

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Speakers

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Upcoming Venable Nonprofit Events

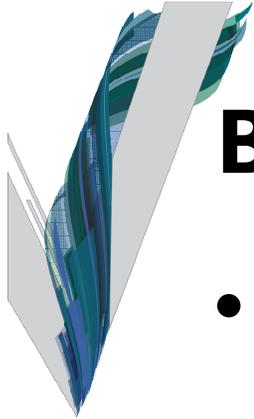
Register Now

- **September 10, 2015** – [Somebody's Watching Us: Considerations for Nonprofits Operating under Increased Government Scrutiny](#)
- **October 15, 2015** – Thriving Amidst Turmoil and Change: What All Nonprofits Can Learn from Nonprofit Turnarounds (*details and registration available soon*)
- **November 17, 2015** – [The DOL's Proposed Changes to the FLSA White-Collar Exemption Criteria: What Nonprofits Need to Know about the Current Rules, Where Things Are Heading, and How to Avoid Employee Classification Traps and Pitfalls](#)



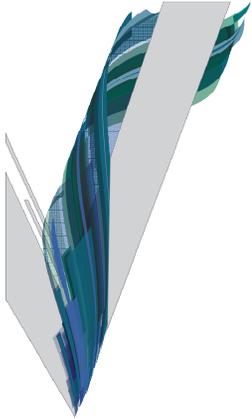
Four Broad Categories of Provisions

1. Credit for Room Block/Pricing
2. Extraordinary Events: Warranties and Force Majeure
3. Cancellation/Underperformance
4. Liability



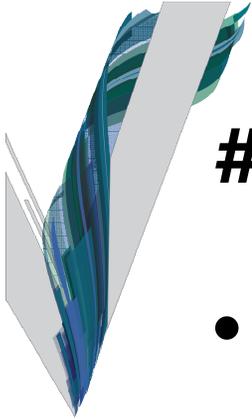
Background

- **Fundamental Principle:** Negotiation posture is everything
- Your negotiation posture will determine your ability to address the points we will discuss today
 - Maximize position by leading with your own contract or addendum draft
 - Know which contract points are central for your organization
 - Competition reaps savings – consider RFPs



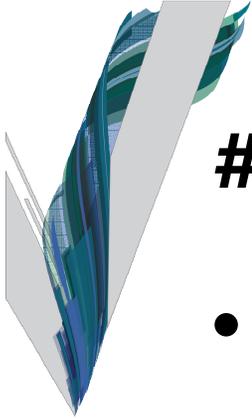
Provision #10

Credit for Rooms, Room Rates



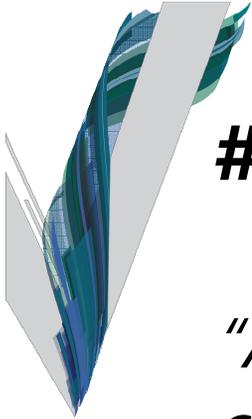
#10: Credit for Rooms, Room Rates

- **Rates**
 - Lowest rate available
- **Additional Fees**
 - Corkage, package receipt, service charges
- **Clearly list room block size and room rate**
- **Include dates/deadlines for room block adjustment** – flow down to attrition



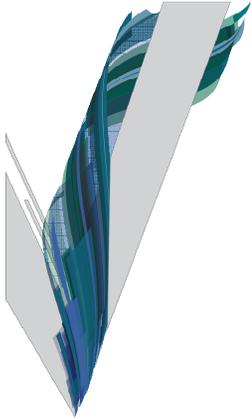
#10: Credit for Rooms, Room Rates

- Guarantee the Most Favorable Future Rates
 - State that Lowest Room Rate Available
 - *Guaranteed Lowest Published Rate*
 - Include internet sales and monitor
 - If there is a *lower rate*:
 - Match for entire group
 - Remove advertisement
 - Remember to *link to penalties!*



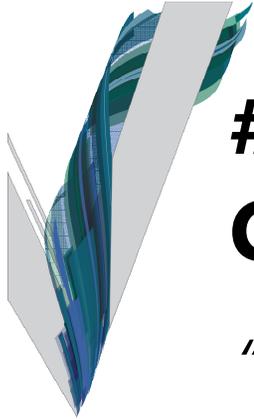
#10: Credit for Rooms, Room Rates

“Association will have the opportunity to compare the Association Program “Registered Participants List” against the Hotels in-house guest list during the Program. Any guest listed on the Association “Registered Participants List” that is in-house, regardless of room rate paid, will be credited to the Association Room Block.”



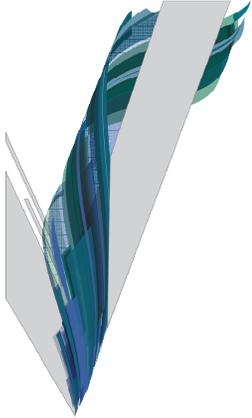
Provision #9

Failure to Enter Into Convention Center Agreement



#9: Failure to Enter Into Convention Center Agreement

“The Hotel agrees that the performance of all terms and conditions of this Agreement by Association are contingent upon the successful negotiations with and the availability of function and exhibit space at the _____ Convention Center for Association’s Program. The Hotel also agrees that Failure or inability to contract for Convention Center space, or the termination of the Convention Center contract, shall excuse Association’s performance of all terms and conditions under this agreement by Association are contingent upon the Agreement.”



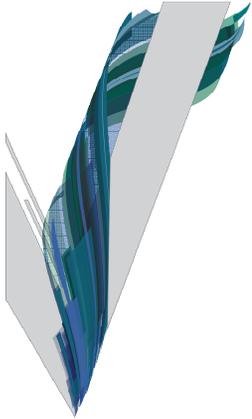
Provision #8

Warranty of Condition



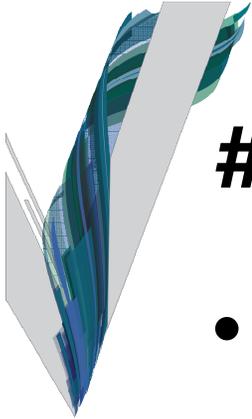
#8: Warranty of Condition

“Should the Hotel or its surrounding area suffer a substantial deterioration in the quality of its facilities or services, Association shall notify the General Manager of its concerns in writing. Should the General Manager be unable to correct the deficiencies of the facilities or services to Association's expectations, Association may cancel this Agreement without liability upon written notice to the Hotel and seek appropriate penalties from the Hotel.”



Provision #7

Force Majeure



#7: Force Majeure

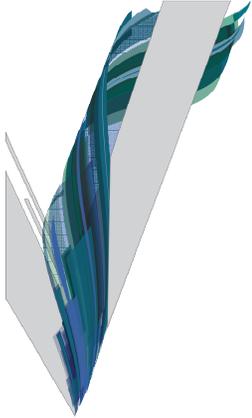
- Force Majeure Considerations
 - Standard force majeure clauses usually aren't enough
 - Need to tie force majeure to occurrences preventing a substantial number of attendees from participating and/or getting to the meeting site
 - Prefer capturing this in the contract rather than leaving to chance



#7: Force Majeure

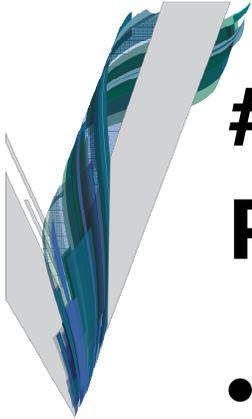
“The performance of this Agreement by either party is subject to acts of God, war, government regulation, acts of terrorism, disaster, fire, strikes, civil disorder, curtailment of transportation facilities preventing or unreasonably delaying at least 25% of Event attendees and guests from appearing at ABC’s Event, or other similar cause beyond the control of the parties making it inadvisable, illegal, impossible, or commercially impracticable to hold the Event or provide the facility.

The contract may be terminated or performance excused by either party without penalty for any one or more reasons by written notice from one party to the other.”



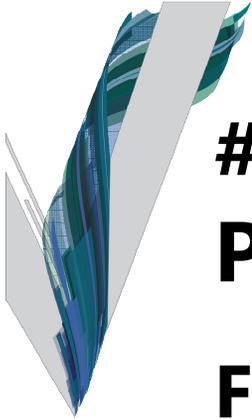
Provision #6

Cancellation – Calculation of Penalties



#6: Cancellation – Calculation of Penalties

- Tiered cancellation tied to notice date
- Beware: Know exactly what's included in calculating lost revenues
- If possible, base on "room revenue profit," not ancillary revenue



#6: Cancellation – Calculation of Penalties

Formula: *“Room Revenue Profit: 75% of Group's single room rate, excluding service charges, surcharges, commissions, rebates, as well as state and local taxes unless required by law, less rooms resold and less rooms unavailable for sale.”*

First Sale: *“Hotel agrees to sell rooms released by Association before any others.”*



#6: Cancellation – Calculation of Penalties

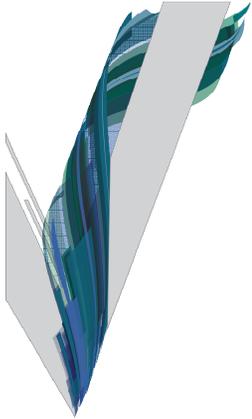
1. Determine the **Maximum Cancellation Charge** by multiplying the number of rooms blocked per night by the applicable percentage in the scale.
2. Determine the number of **Unsold Rooms Available For Sale** in the Hotel by subtracting complimentary, out of order rooms, and total occupancy from Hotel's total inventory.
3. For each night, Group will pay the sum of the amount equal to the lost profit on the rooms revenue: 75% of Group's single rate times either the **Maximum Cancellation Charge** or **Unsold Rooms Available for Sale** for the night, whichever is lower.



#6: Cancellation – Calculation of Penalties

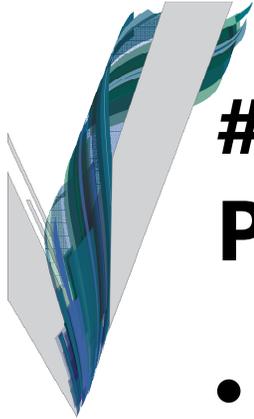
Timing of Payment/Basis of Damages:

"Damages will be payable thirty (30) days after the final date of the Program, after receipt of an undisputed written verification of occupancy levels achieved and rooms resold, provided that rooms and space being held for Group's program or its Attendees remain unsold, as measured against the Hotel's average occupancy for that particular period of year, based on Hotel's prior three-year average occupancy rates for that period."



Provision #5

Cancellation – Mitigation of Penalties



#5: Cancellation – Mitigation of Penalties

- Cancellation Clause Tips
 - Include duty to mitigate
 - Tie timing of payment to proof of mitigation
 - Consider clause giving credit for rescheduled meeting



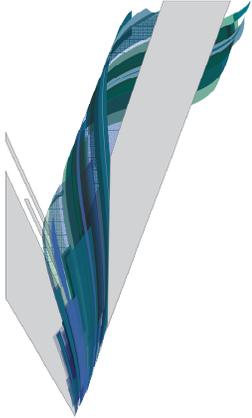
#5: Cancellation – Mitigation of Penalties

“The Hotel shall attempt to mitigate its losses by reselling Association’s canceled rooms. If the Hotel is able to replace this canceled business, the collected amount will be credited to Association. If only a percentage of the lost revenue is recovered, the difference between this figure and the fee will be credited to Association. The Association shall be credited for all rooms resold over the Program Dates.”



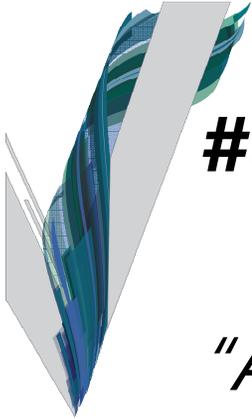
#5: Cancellation – Mitigation of Penalties

“Association will not owe any damages if the Hotel meets or exceeds its average occupancy level for that particular period of the year.”



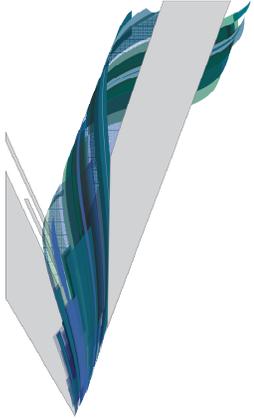
Provision #4

Cancellation – Credit for Rebook



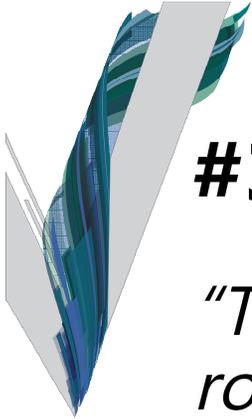
#4: Cancellation – Credit for Rebook

“Association will not owe any damages if the Association reschedules another meeting of equal or greater value for the Hotel within eighteen (18) months from the date of the Program.”



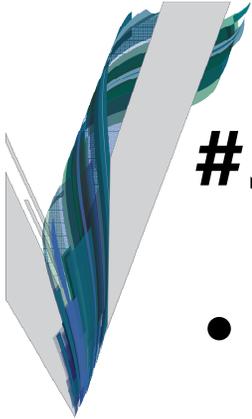
Provision #3

Reverse Penalty for Cancellation



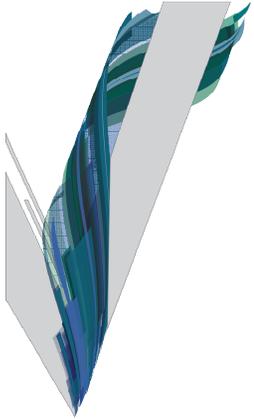
#3: Reverse Penalty for Cancellation

“The Hotel cannot cancel, terminate, or reduce the room block for this agreement for the sole purpose of making the facilities available to a larger group/entity willing to pay more than the amounts agreed upon herein or to engage in elective construction on or about the premises leased to Association. Failure by the Hotel to provide the space and/or services as agreed, or breach of any representation or warranty by the Hotel, shall render the Hotel liable to Association for all direct and indirect damages, expenses, attorneys' fees, and costs incurred by Association on account of such breach. ”



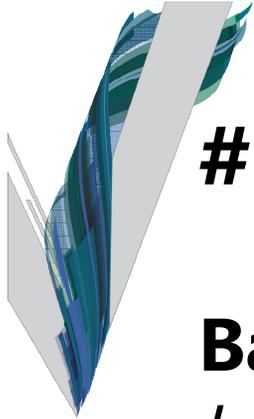
#3: Reverse Penalty for Cancellation

- Include "Reverse Cancellation"
 - Hotel must pay damages, equal to room rate, for relocation
 - Specify the point, such as 25% of room block, which triggers reverse cancellation damages



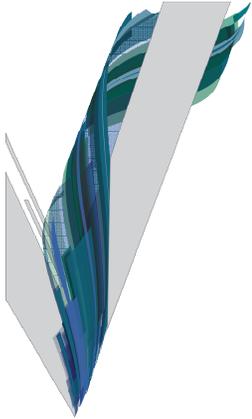
Provision #2

Attrition



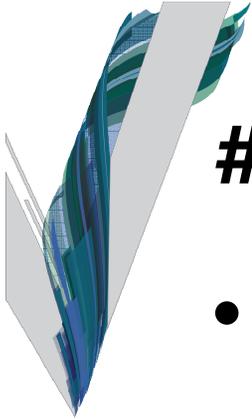
#2: Attrition

Basis of Calculation: *“Damages, if any, will be based on the cumulative Room Block in effect at the time (cancellation damages will not be calculated per night, but on cumulative Room Block performance, as measured against the applicable cancellation fee set forth above), reflecting any reductions made.”*



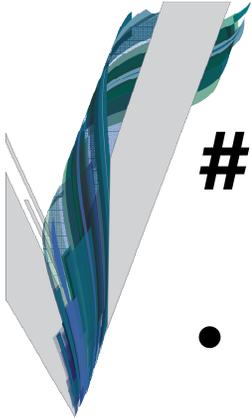
Provision #1

Indemnification



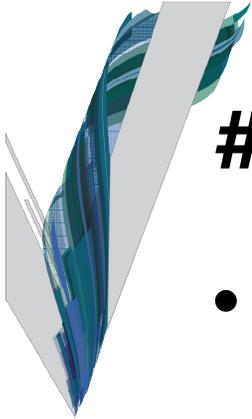
#1: Indemnification

- Indemnification
 - Reciprocal – each party indemnifies the other for (is responsible for) its own negligence (mutual)
 - Limited to control – what each party is asked to cover is within its control
 - Limit scope to insurance coverage
 - Include defense costs
 - Consider alcohol indemnity



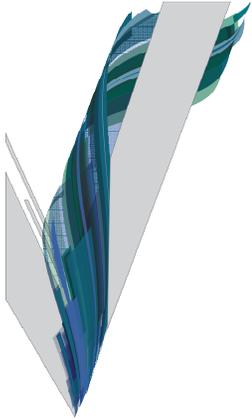
#1: Indemnification

- Indemnification
 - “Sole,” “Gross,” or “As Determined by a Court”
 - Coverage of third-party negligence
 - Meeting attendees (except perhaps board members, etc.)



#1: Indemnification

- How to Manage Liability Assumed
 - Flow down to third parties
 - Caterers
 - Transportation
 - Independent Contractors
 - Waivers
 - Golf tournament, etc.
 - Insurance
 - Flow this down, too
 - Consider cancellation insurance



Questions?

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