

Your Nonprofit's Next Big Event: Spotting and Solving the Most Common Meeting Contract Pitfalls

June 26, 2014

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Topics for Today

- 1. General Negotiation Overview**
- 2. Hotel Contract Issues**
- 3. Convention Center Contract Issues**
- 4. Other Meeting Contracts**
- 5. Questions**

Negotiation Overview – A Few Tips

- Your negotiation posture will determine your ability to address the points we will discuss today
 - Maximize position by **leading with your own contract draft**
 - Know which contract points are central for your organization
 - Consider putting hotel on notice of organizational policies
 - Competition reaps savings – **consider RFPs**
 - Consider markets, particularly with meeting contracts

Negotiation Overview – Everything Is Negotiable

- The big lie – “It’s a standard provision.”
- Read everything in the document
- Consider using your organization’s form agreement as the starting point
- Be ready to walk away
- Typically dealing with frontline salespeople on smaller agreements
- “If you ask for something after a contract is signed, it’s called *begging*.”

Practical Negotiation Considerations

- Hotels willing to give on “freebies” – internet, gym, parking
- Allow for a true-up for any reservations on any web-bookings for attrition numbers
- Match lowest room rate available on web if possible

Negotiation Overview – Contracting Basics

Remember the “*Four Corners Rule*”

- Clear and unambiguous – contract speaks for itself
- Most litigation arises because contracts are unclear
- Otherwise, most disputes are settled

Hotel Contracts – Provisions to Note

- Rates / Room Block
- Attrition / Cancellation
- Force Majeure
- Warranties
- ADA
- Indemnification / Insurance

Hotel Contracts – Room Block

Who Has the Obligation for Room Nights?

- Often the parties will understand the relationship to be one in which the organization is not reserving all the rooms set aside, but the plain language of the agreement is contrary to that understanding.
- “...make available for reservation by Group meeting attendees.”
- Clearly list room block size and room rate
- Include dates/deadlines for room block adjustment – flow down to attrition

Hotel Contracts – 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!

Hotel Contracts – Room Rates

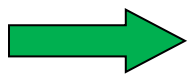
Setting Future Rates

- Use a formula with several options. State lesser of:
 - Rack rates quoted one year before meeting date
 - Quoted rate plus X% increase per year (2-3% maximum)
 - X% off the lowest published rack rate for the date of the meeting

Hotel Contracts – Attrition

Tips for Attrition

- Attrition
 - The difference between the actual number of rooms picked up and the number agreed to in contract
 - Damages assessed based after allowable shortfall (i.e. 80%)
 - Applies to F&B too
- Many hotels will insist upon attrition language, but moving toward more flexibility



Consider negotiating a “no attrition/penalties” provision



If not possible, follow steps to mitigate

Hotel Contracts – Damages

Lessening the Impact of Attrition

- Keep in mind “duty to make whole”
 - Applies especially to F/B – hotel not out money months out
- Starting point for negotiations – if one side breaches a contract, then the other side is entitled to damages but not penalties
- Implement steps to prevent the “Double Dip”

Hotel Contracts – Damages

5 Steps to Prevent “Double Dip”

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.

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.

Hotel Contracts – Damages

5 Steps to Prevent “Double Dip” – cont’d

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.

- ▶ Guest Rooms 70-80%
- ▶ F & B – 30-40%

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.

Tips on Attrition

- Push for 75% if you cannot get removed from contract
- New Orleans/Toronto
- Hold back any payment until you can negotiate another meeting

Hotel Contracts – Damages

Cancellation Clause Tips

- Include duty to mitigate
- Tie timing of payment to proof of mitigation
- Consider clause giving credit for rescheduled meeting
- Include “Reverse Cancellation”
 - Hotel must pay damages, equal to room rate, for relocation
 - Specify at point, such as 25% of room block, which triggers reverse cancellation damages

Hotel Contracts – Liability

- Force majeure
- Indemnification
- Insurance

Hotel Contracts – Force Majeure

Force Majeure Considerations

- Standard **force majeure clauses** usually aren't enough
- Need to tie force majeure to occurrences preventing a substantial amount of attendees to participate and/or get to the meeting site
- Prefer capturing this in the contract rather than leaving to chance

Hotel Contracts – 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.”

Practical Considerations

- Remove “Notify hotel within 10 days of the occurrence of the FM event”
- They cannot cancel for their strike (even if your people won’t come because they won’t cross the line)
- Construction?
- New Orleans
- Toronto
- APA/ABA Meeting

Hotel Contracts – Liability

Indemnification

Include:

- 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

Hotel Contracts – Liability

Indemnification

Remove:

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

Hotel Contracts – Liability

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

Hotel Contracts – Liability

Warranty

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. Breach of this warranty can be grounds for cancelling this Agreement.

Hotel Contracts – Liability

General Liability Disclaimers

- Not so great for associations
- *“Neither party shall be liable to the other for any special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages.”*

Hotel Contracts – Commissions

- Consider **out-year** consequences
- No **post-termination commissions** (or reduced)
- Have ability to revise relevant agreements **without agent approval**
 - Agents try to walk with their commission after cancelling

Convention Center Agreements

Key Points

- Convention center authorities are notorious for being **intractable on key terms**
 - Get your insurance brokers involved
- Still, **persistence and attention** to detail usually pay off
- Consider an **RFP** as a first step toward getting more favorable terms
- Work with the convention bureau

Convention Center Agreements

Are convention centers 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"
- If center is privately owned, push for mutual indemnification

Convention Center Agreements

Managing 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 six months of the event
 - Unions are pushing this for with nonprofits
- Require prompt **advance notice**
- Have the Center warrant that it will provide **replacement workers** if a strike occurs

Other Meeting Contracts – Exhibitor Contracts

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

Other Meeting Contracts – Exhibitor Contracts

- Compliance with laws/Americans with Disabilities Act
- Use of intellectual property/music licensing
- Insurance
- [Indemnification](#)
- Exhibitor appointed contractors (EAC)
- Access to attendee list
- Violation of rules

Other Meeting Contracts – Speaker Agreements

- Policy/procedure
- Program description
- [Compliance with deadlines](#)
- Program review
- Sample contract
- No promotion or sales
- Cancellation
- [License of presentation](#)

Other Meeting Contracts – Speaker Agreements

- Use a template
- No infringement or defamation
- Ownership of recording/IP rights
- Travel
- Government-funded NFP provisions
- Indemnification
- Insurance

Other Meeting Contracts – Catering Contracts

- Time to adjust menus
- Indemnification
- Define extra charges
- Cancellation – incorporate costs saved
 - From “90% of estimated charges including 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 cancelled and had Client met but not exceeded the food and beverage minimum.

Final Points

- Read everything
- Be willing to walk away

Questions?

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