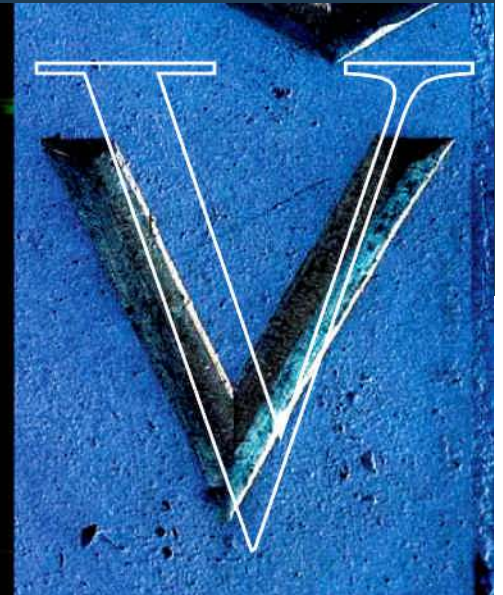
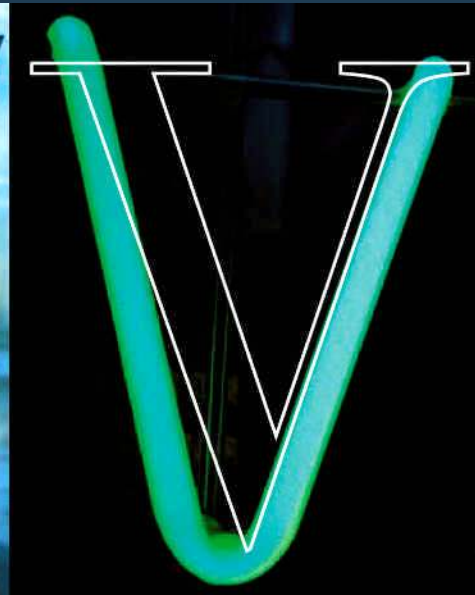
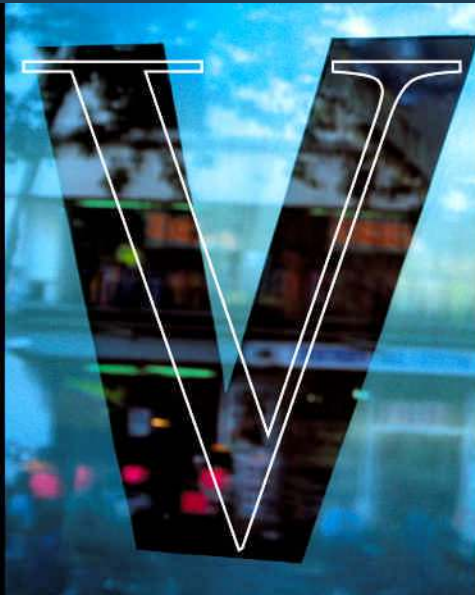
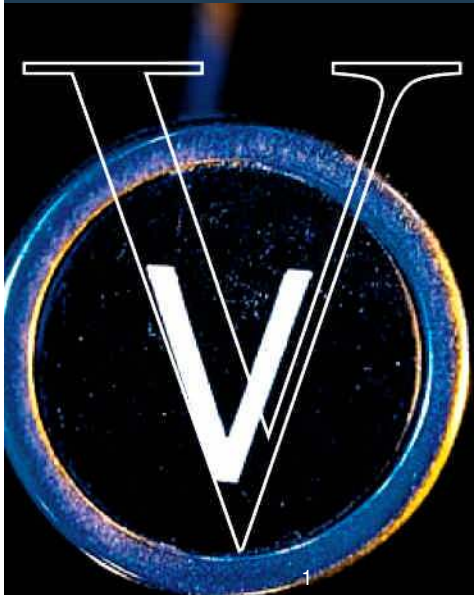


# Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts

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## A Note About Existing Contracts

- All planners should be reviewing the terms of existing contracts and conducting a “viability audit.”
  - Historical rates of occupancy, current projection
- 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



## Renegotiating Existing Agreements

- 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



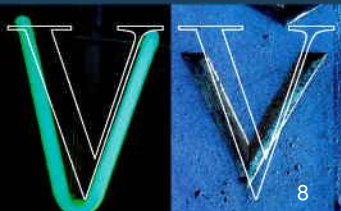
# Requests for Proposals

- Room Block & Rate
- Food and Beverage
- Meeting Rooms
- Standard Legal Terms
  - Attrition, Cancellation, Force Majeure
  - Language on Commissions to Third Parties



## Basic Tenet of Contracting

- 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



# Core 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



## 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

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.
- Clearly state room rate.
- If room blocks can be adjusted, state deadlines and have the reduced block flow down to attrition/cancellation penalties.



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## 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





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. All applicable surcharge, service fees and gratuities are set forth in Exhibit A.



# 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

## *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.



## Five Steps Prevent the “Double Dip”

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.





## Prevent the “Double Dip,” Continued

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%



## 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.
  - How do You Establish “Average Occupancy?”
    - Hotel ledgers
      - Have a formula, such as last 3 years



## How This Works Average Occupancy

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

Room Block: **40** Rooms – Cancelled

Rooms Occupied That Night: **45** (**55** unoccupied)



## The Difference

Total Sellout: **0** Credit (55 Rooms Remain Unsold,  
Room Block Was 40)

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



## Attrition/Cancellation Special Issues

- Negotiate Attrition Based on Cumulative Room Nights Rather Than Each Night
  - Ex: 500 Total Room Nights, 100 over 5 Days
  - Occupancy:
    - Monday: 100
    - Tuesday: 150
    - Wednesday: 80
    - Thursday: 70
    - Friday: 105

No Attrition (55 over) vs. 50 Rooms



# Attrition/Cancellation Special Issues

- Get Credit for 3 Days Before/After
- Consider Clause Giving Credit For Rescheduled Meetings
  - Within 18 Months



## Attrition/Cancellation Special Issues

- What About Food & Beverage?
  - Yes! Attrition/Re-Sell Can Apply Here, as well
  - Get Credit for Re-Booking or Alternate Business
    - ▶ F & B – 20-40%
    - ▶ Alcohol Beverage Functions – 80-85%



## Attrition/Cancellation Special Issues

- 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

- 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



# Force Majeure



# Five Key Components Force Majeure

1. Emergencies and non-emergencies beyond the control of the parties including



## Five Key Components Force Majeure

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



# Special Issues



## Bed Bugs ...

- Infestations – The Hotel represents and warrants that there have been no confirmed reports of bed bugs, mice, cockroaches, or other pests or infestations in the Hotel, its function space, guest rooms, and public areas within the twelve (12) months prior to the date of execution of this Addendum.



## Warranty of Services

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.)



# Alcohol

- Indemnification - Notwithstanding any other provision of this Agreement, the Hotel shall defend, indemnify and hold harmless Association, its directors, officers, employees, agents and members, and each of them, from and against any and all losses, damages, claims, expenses and liabilities of any kind, including costs of defense thereof, caused by, arising from or related to the Hotel's sale or service of alcoholic beverages.



# Warranties and Representations

- Safety Policies and Adequate Security
- Alcohol Service Policies
- Fire Safety

***Tie to Indemnification***



# Managing the Liability You Assume

- “Flow down” to third parties, contractors
  - Caterers
  - Transportation
  - Independent Contractors
  
- Insurance
  - Flow this down, too



# Managing The Liability You Assume

- Waivers
  - Golf tournaments, etc.
  - Fun Runs



# Third Party Housing Companies



# Core Issues





## Note About Commissions

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



# Convention Center Agreements



# 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

*Is this just a waste of time?*

- Convention center authorities are notorious for 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 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.



# Convention Center Agreements General Provisions

- **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...

- 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



# 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

*How much attention should I pay to strictly  
“business” terms?*

- Need to work closely with meeting and event planners
- Convention center agreements frequently include confusing cross-references and schedules on items that are key to a meeting’s success (such as, move in and move out times, specific room reservations, etc.).



# Convention Center Agreements

## *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



# Other Meeting Agreements



## Other Meeting Agreements

- **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



# Imposters



# Imposters

- Early Notice to Attendees
- Cease and Desist



# Exhibitor Contracts

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





## 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



# Speaker Contracts

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



# Speaker Contracts

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



# Questions?

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