

Facility/Vendor Contracts

Five requirements for a legal contract:

- An offer with definite terms
- Mutual acceptance of the same terms
- Consideration
- In writing when required
- Legally competent parties

Many times both parties are good negotiators but the parties lack the training and skill to prepare, review, or revise contracts. Contracting skills include, among other things, ensuring that

- All terms agreed to are in writing
- All terms important to your side are strategically written to cover the important points
- No written terms give your side more risk than it is willing to accept
- Understanding how legal concepts affect every term in the contract
- Understanding what legal concepts control issues not covered in the contract

Here is a three-step approach to reviewing a contract proposal.

- Identify clauses that are vague, inappropriate, one-sided, or over-burdensome and need to be deleted or revised to be more acceptable
- Identify terms that are missing and need to be added to protect your side and clarify the intent of the parties.
- Determine the best way to incorporate the revisions, additions, and deletions. The options are revising the contract proposal, preparing an addendum with new or revised terms, or preparing a new contract with all revisions and new terms included.

Contract Clauses

The following are typical contract clauses that are used in the hotel industry.

Identification of the Event and the Hotel

This specifies who takes responsibility for signing the contract and should include the name and address of both organizations and key individuals.

Guest Room Block

This ensures that the hotel holds the appropriate number of guest rooms in its inventory (called the room block) on each night of the meeting for the exclusive use of the meeting attendees at a negotiated rate.

Typically, the room block is broken down into guest room type, such as singles, doubles, or suites. Ensure that the room block is adequate to cover anticipated needs, but not so large as to trigger attrition damages if the group's attendees do not reserve and use all of the guest rooms.

Consider whether all participants will stay the entire time of the event, how many local attendees will not need guest rooms, and whether attendees may stay at other hotels. Using the actual room block pick up

from a previous meeting is a good tool to use when estimating these room nights.

Room Rates

This establishes the definite room rates that will be offered to attendees. Guaranteed room rates should be provided if the contract is signed within one to two years of the event. Ask that all room rates be confirmed for the year of the event.

Reservations and Individual Guest Deposits

This specifies how reservations will be made by the attendees (e.g. individual reservations, housing bureau or third-party housing company, rooming list) and individual deposit requirements. Typically room reservations are made on an individual basis with that person responsible for any deposits. A rooming list is typically used by the planner for any VIP rooms that need to be blocked and that will be placed on the master account. You can also include someone on the rooming list that is responsible for paying on their own, that just needs to be indicated on the list.

Early Departure Fees

Some hotels charge an early departure fee to guests who check-out earlier than the original departure date indicated on the reservation. The contract should state the amount of the fee and that the guest will be given the opportunity to change their departure date at check-in. It should provide that all early departure fees collected by the hotel will be applied as a credit to reduce any guest room attrition damages.

Walk Clause – Dishonored Reservations

The purpose of this is to establish the hotel's duty to honor all reservations guaranteed by attendees and specify what concessions the hotel will make to the attendee if this duty is not met. Concessions include finding the attendee a room at a comparable hotel and providing transportation to and from that location.

Overbooked Hotel Prior to Cut-Off Date

An overbooking clause protects the group from the hotel selling into its room block before the cut-off date. The clause typically requires the hotel to pay liquidated damages to the group when attendees cannot make reservations at the hotel before the cut-off date and the room block is not filled. The clause should state that the group will be credited with the number of room nights not accepted for purposes of calculating attrition, meeting room rental, or any other calculation dependent on the number of room nights used.

Cut-Off Date

This establishes the last date the hotel will hold out of inventory the group's room block for exclusive sale to the attendees. Any rooms that remain in the block after the cut-off date that are not reserved are released to the hotel for sale to attendees or the general public on a first-come, first-served basis.

State whether the hotel will accept reservations from the attendees after the cut-off date at the negotiated group rate. If the contract contains a guest room attrition clause, consider negotiating language saying that the hotel will accept late reservations after the cut-off date at the negotiated group rate on a space available basis. Space available basis should be defined as up to the last room available in the hotel.

Guest Room Attrition

Attrition is defined as the difference between the actual number of guest rooms picked up (or food and beverage covers or revenue) and the number of guest rooms guaranteed in the contract.

Concessions

This specifies what concessions the group will receive for bringing its business to the facility over and above the standard contract clauses. Typical concessions include complimentary rooms (usually stated as a ratio 1:50, 1:40), room upgrades, concierge privileges, VIP amenities, preferred location for guest rooms, discount staff rates, late check-outs, etc.

Pre and Post Pick-Up Reports

This requires the facility to provide pick-up reports to the meeting planner and should be included in every hotel contract. Pre-meeting pick-up reports should be furnished two to three months prior to the meeting and should indicate how many rooms the hotel is blocking per night for the group, how many rooms have been reserved, and how many rooms are available to be sold.

Post-meeting pick-up reports should be sent with the group's final invoice indicating the total number of rooms and suites occupied per night, total room revenue, catering revenue, A/V revenue, and revenue from recreational activities, if applicable.

Master Account Procedures/Method of Payment

This specifies what charges individuals are responsible for and what charges the group will pay, what documents the hotel is required to submit to substantiate the charges posted to the master account, due dates for the hotel's submission of the final bill, the time allowed for the group to identify disputed items, and a procedure handling disputed items on the bill.

Typically, individuals pay their own deposits, guest room rates, and incidentals. The group is responsible for staff, guest and VIP rooms, tax, catering functions, and for all other items or services requested and authorized by the group.

This section should state whether the group is requesting credit and direct-billing privileges; if so, include which procedures and deadlines apply. If the group's credit is accepted, requirements for group deposits should not apply.

Food and Beverage Requirements

This should establish the group's obligations with regard to food and beverage functions. They are usually stated as a guaranteed minimum amount of revenue. This paragraph will also state what the hotel is owed if the group does not meet its guaranteed minimum. Not meeting the minimum stated may also affect room rental owed.

This paragraph should also outline the dates that the guaranteed numbers are due for each catered function. It should also outline gratuities, service charges, etc.

Meeting and Function Space Requirements

This should specify the exact function space required for the event. If a detailed program is available at the time of signing the contract this should be included. This may also specify room rental and set up charges, what services and equipment are available within the hotel.

It is also a good idea to specify that all space be on a 24-hour hold. From set-up until dismantle.

If exhibit space is required this would also include details on the storage of equipment and set up and dismantle times, along with hours of operation.

Condition of Facility

This states that the facility will be in the same or better condition over the meeting dates as it was when the contract was signed. Generally this is only used if the meeting is 12 months or more from the contract date.

Renovation and Construction/Noise Control

This acknowledges the hotel's obligation to disclose any current or future plans for construction and renovation. It usually requires the facility to control other groups so they do not cause undue noise or other disturbances that would materially affect the group's attendees. It is always best to find out what other groups are in the facility at the same time as your event.

Exclusive Services

This should specifically outline a facility's exclusive services. Exclusive services can include food and beverage, audiovisual and decorator services.

Indemnification/Responsible for Property Damage

The purpose of an indemnification clause is for one party to agree to pay damages or compensate the other party for legal claims asserted against that party under certain circumstances. Indemnification (hold harmless) clauses pertain to claims made by third parties (e.g., attendees, contractors, and so on). In contracts between meeting sponsors and private facilities (e.g., hotels and conference centers), the best practice is

for the parties to agree to mutual indemnification. Mutual indemnification clauses provide that both parties agree to defend and/or compensate the other party for asserted claims against, or liability damages incurred by, the other party due to the acts or omissions of the first party.

Americans with Disabilities Act (ADA) Compliance

This allocates what requirements the group and the facility will be responsible for under the Americans with Disabilities Act (ADA). The ADA requires a public accommodation to:

- Remove physical barriers (if readily achievable) to make facilities accessible
- Reasonably modify its policies, practice, or procedures to avoid discrimination
- Provide auxiliary aids and services that are necessary to provide equal access to goods, services, facilities, privileges, or accommodations that it offers unless an undue burden or a fundamental alteration would result.

The practice is for groups and hotels to specify in the contract that the facility is responsible for meeting the requirements that affect the physical structure, including the public areas and guest rooms, and the group is responsible for adherence inside the rented space, including the furnishing of auxiliary aids.

Termination and Excuse of Performance

This is sometimes referred to as a *force majeure* or act of God and allows either party to terminate their obligations and excuse their performance *without liability* if that party's performance is made illegal, impossible, or commercially impracticable by acts or occurrences outside that party's control.

This is not the same as the cancellation clause. If it is terminated neither party has any continuing obligation to the other. Circumstances triggering a right of termination should be clearly specified. Consider adding "specific threat of terrorism" and "reasonable fear of personal safety" and references to the Homeland Security Advisory System.

Cancellation by the Group

If the group cancels the meeting for reasons other than a *force majeure* event, it has breached the contract and potentially owes the hotel damages. It is usually stated as liquidated damages. Its purpose is to specify a fixed fee or a formula for determine the amount the group will pay to the hotel.

Cancellation by Facility

This is used to protect the group if the hotel cancels by providing for payment of damages to the group. Cancellations by facilities usually occur in a growing economy when the facility has the opportunity to book

another group at a higher rate. This should include how damages will be calculated to compensate the group as liquidated damages.

Dispute Resolution

This will specify in advance how any disputes will be resolved. The commonly used methods for resolving contract disputes are mediation, arbitration, and litigation. This will also specify which state's laws will govern the interpretation of the contract, and the city and state where the mediation, arbitration hearings, or the litigation will take place.

Miscellaneous Items

- If hotel provides airport transportation –include hours and frequency
- Promotional support available for event. Hotel signage?
- Research city or location to assist with negotiations (i.e. occupancy levels, average rates)
- Program or preferred dates flexibility

In successful negotiations everyone wins!

Legal Disclaimer

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