

## Contract Review: The Definitive Checklist

Reviewing a hotel contract can be time-consuming, confusing and frustrating. As a representative of NEWH and your chapter, you are seeking a fair arrangement. Yet the contract you receive from the hotel may be one-sided in favor of the hotel, vague in many places, and missing essential language.

The next time a hotel contract lands on your desk, read it twice. First, read what is there and identify the terms that need to be rewritten, changed or deleted. Then, read it for what is not there and needs to be added. The following checklist will help you determine what to look for and what is missing.

(Note: This information is not intended to be "legal advice." Programming and Fundraising Directors should consult a qualified attorney to review all questionable contract issues.)

### **Americans with Disabilities Act**

- Hotel should warrant its compliance.
- Specify the group's obligations.
- State mutual cooperation in identifying needs.
- Each party should indemnify the other for violations by the indemnifying party.
- Beware of vague language and one-sided obligation for the group.

### **Cancellation**

- By the group. There should be a sliding scale of charges as well as mitigation.
- By the hotel. The group should be made whole for its losses.
- The same clause should not include both the hotel and the group; issues affecting the group and the hotel are too different to have the same charges owed.
- Cancellation clause. Be sure to include one for your group or total revenue could be owed.
- Watch out for cancellation clauses that seek to recoup all revenue that the hotel would have lost; damages owed should be in terms of lost room revenue only.

### **Closing Issues**

- Can the contract be assigned to other parties?
- How are notices to be given?
- Itemize all attachments.
- Merger clause. State that this contract constitutes the entire agreement and supersedes previous agreements.
- Changes can be only in writing.
- Severability. Is the contract enforceable if any provision is ruled unenforceable?
- Is a faxed document valid? It should be if the original is received within 72 hours of the receipt of the fax.
- What is the authority of the signatories?
- Signature information - name, title, group name, and date.

### **Complimentary and Other Negotiated Concessions**

- One complimentary room per 50 revenue-producing rooms actually utilized. Spell out how the comps are calculated (on a cumulative or per-night basis) and whether they can be credited to the master account.
- Additional concessions. Include specifics such as the duration of each concession, i.e., comp rooms are for five nights each.
- If concessions are based on 80 percent of the room pickup, specify what happens if the pickup is less than 80 percent.
- State if a concession is complimentary.

### **Dispute Resolution**

- What method will be used - arbitration, litigation, or other?
- Which side pays attorney fees?
- In the event the hotel sues the group for collection of funds the group owes, and the hotel wants to be reimbursed for its attorney fees, the hotel should be reimbursed only for attorney fees the hotel incurred to collect charges that the group does not dispute that it owes.
- Any dispute resolution should be at a neutral site.

### **Exhibit Space**

- Exact dates. Include beginning and ending times, setup and move-in, tear-down, and move-out.
- Costs. What is the rental fee? Does it include daily maintenance and vacuuming of the aisles? Be sure the charges are by net, not gross, square feet.
- Booths. List type, size, and number.
- Box delivery. What are the charges? When shipping boxes to the hotel prior to the meeting, where and by when should they be shipped?
- Security guards. Are they required?
- Release of space. What are the terms?
- Exhibitor responsibility clause. Make sure it absolves both the hotel and your organization of liability.

### **Food and Beverage**

- Menu prices. Firm prices should be established no later than six months out.
- Guarantees. Most guarantees should be given 48 or 72 hours prior to the function. Specify how weekends affect this deadline.
- Taxes and gratuities. State whether the service charge is taxable.
- Hotel's alcohol service policy, adherence to laws, and intoxication policy.
- Food and beverage cancellation or reduction/mitigation clause.

### **Function Space and Meeting Arrangements**

- Agenda. Is it tentative or finalized? What are the due dates for the program? When will the hotel provide room names?
- Exact days, dates, setups, and functions.
- Specific room names or minimum square feet required; start/end times for 24-hour hold on space.
- Ancillary charges. Are there charges for meeting room rental and/or setup? Is there a fee for "extensive" meeting room setups and how is that defined? Is there a charge for using outside suppliers or contractors? If there is no charge for any of these services, be sure to state that.
- Release of space. What are the terms?
- Security guards. Hotel should "request", not "require," security guards.
- No changes to function space assignments or requirements should be allowed without written group consent.

### **General Contract Issues**

- Date of contract initiation.
- Accurate and complete legal names of parties, addresses, and contact information as well as the name of the meeting. Be sure the contracting party is not listed as the name of the meeting; they are often not the same.
- Actual date of the meeting, not the dates of the room block.
- Statement of whether the contract is a first or second option. A first option should specify the date by which the contract must be signed and returned to the hotel, after which date the option will expire and the contract may have to be negotiated. A *second option* should include the above as well as the date by which the hotel must reply to you after receiving the signed contract (typically three business days) and notify you of its decision.

### **Miscellaneous Issues**

- Indemnification should be reciprocal and each party should be responsible for its own negligence.

- Insurance should be a mutual clause.
- The hotel should warrant the condition of the facility. It should be the same or better than at the time of the on-site visit or contract signing.
- The hotel should state its adherence to laws regarding fire, safety, and health codes.
- The hotel will usually ask that the laws of the state where the hotel is located will apply in the event of a dispute, as will venue and jurisdiction, but that may unnecessarily lock the group into traveling if there is litigation.
- The laws of which state govern the contract?

### **Payment**

- Rooms. Will individuals or the organization be responsible for payment?
- Deposits. For the group's master account, how much is due and when? For individuals, a credit card guarantee or one night's deposit is usually required.
- Early departure charge. Specify the amount (it should be less than one night's room rate) and that guests will be informed of this potential charge upon check-in.
- Master account. Typically, the credit application is due 90 days prior to arrival. Stipulate items that are to be included on the master account, as well as authorized signatories and payment terms.

### **Reports/Printouts to Request**

- A per-night room pickup report.
- Individual cancellations and no-shows.
- Statistics for food and beverage revenue.

### **Reservations**

- Procedure. Is the group, hotel, or a third party handling housing? Will individuals call in, use reservation cards, be identified on a rooming list, or be serviced by a housing bureau? Will you use your own reservation form or the hotel's?
- Cutoff date. Identify the exact cutoff date - usually 30 days prior to the major arrival day. Indicate whether reservations received after the cutoff date will be honored at the group rate or a rate at the hotel's discretion.
- Confirmations. Specify if/when they are to be sent by the hotel.
- Check-in/check-out times.
- Dishonored reservations. Spell out what will happen if individuals with guaranteed reservations are turned away or "walked." Consider reimbursement of replacement accommodations or transportation to and from the new hotel.

### **Rights of Termination for Cause**

- Force majeure for termination in the event of an emergency over which neither party has control (also known as impossibility") should be mutual and state that termination will be without a cancellation charge.
- Termination should be allowed for construction, change in Management Company or ownership, bankruptcy, conflicting booking/competitor, and unavailability of convention center or other facility.
- "Without liability" is often missing in these clauses.

### **Room Block Control and Pickup**

- Provisions for attrition and mitigation.
- Meeting room rental/facilities service fees. Does the rental fee apply per day for a certain number of days (if so, it should apply only to the major days) or is it all-inclusive? The rental scale should be based on sleeping room revenue.
- Include room block review dates and allowed adjustment/attrition.
- If there are no room block performance charges, that should be stated.
- Any nonrefundable individual cancellation or early departure fees that are collected should be applied to any group performance or cancellation charges due.
- Do not allow more than one room block performance charge.

### **Room Rates**

- Year quoted. If rates are quoted for any year other than the current year, that year should be specified.
- Future rates. If rates are not definite yet, indicate the formula to be used and when final

rates will be established (usually 12 months out). Use at least two factors in the formula, such as percentage off rack rate, maximum percentage increase per year, or the Consumer Price Index, and state that final rates will be the lesser of the two formulas.

- Breakdown of rates by type of room/suite, single/double, deluxe, and government rate. State the percentage blocked in each rate category.
- Applicable taxes (sales, occupancy), service charges, and gratuities.
- Applicable charges for extra person in room.
- Currency. If the contract was initiated in another country, the rates are usually quoted in that country's currency.
- Ensure that final rates are not subject to change.

**Sleeping Room Block**

- Table format showing the year, days of the week, and dates of the room block.
- Specific breakdown by type(s) of rooms/suites and number(s) per night.
- Beware of language that locks you into payment for the entire contracted block.