

A blue ribbon graphic that folds over itself, creating a 3D effect. The ribbon is a medium blue color, and the underside of the fold is a darker blue. It is positioned on the left side of the slide, with the main text area being the top surface of the ribbon.

HelmsBriscoe AAGT Events

Navigating Contracts During a Pandemic

Objectives

- Understanding Attrition vs Cancellation
 - What is the meaning
 - Underperformance
- Force Majeure
- Change in Ownership
- Indemnification
- Miscellaneous: Concessions, Prevailing Rate vs Group Rate, Protecting the Block

Sleeping Room Attrition

- What's the difference between **Attrition** and **Cancellation**?
 - **Attrition** – Group shows up at hotel but underperforms with what has been agreed to within the contract.
 - **Cancellation** – Group cancels meeting or event before group's date of arrival.
- What's the difference between **Daily Attrition** and **Cumulative Attrition**?
 - **Daily Attrition** – Hotel is holding Group to the daily room counts and F&B contracted daily.
 - **Cumulative Attrition** – Hotel is agreeing to take all the sleeping room counts into consideration before assessing attrition charges.

Sleeping Room Attrition - Example

	Day 1	Day 2	Day 3	Total
Sleeping Room Commitment	100 Contracted	100 Contracted	100 Contracted	300 Total Sleeping Rooms Contracted with 80% pick up commitment/20% slippage
Contract with Cumulative Attrition	50 Pick up	175 Pick up	80 Pick up	305 Total Pick up
Contract with Daily Attrition	50 Pick up 50 Rooms short, factor in your 20% slippage, Group is financially responsible for 30 sleeping rooms on Day 1	175 Pick up Exceeded	80 Pick up Met	Total number of sleeping rooms picked up are the same at 305 but with Daily Attrition, Group will be responsible for 30 sleeping rooms due to underperformance on Day 1.

Sleeping Room Attrition – Continued

- Receive credit for any reservations regardless of the source (rooming list, individual call-in, did any attendees book outside of the Group's room block?)
- Room block audits
 - It is always good practice to request a sleeping room pickup each day and compare it against your rooming list as well as your attendee list. This helps in distinguishing who might have booked outside of the room block or stayed at another hotel.
- Rebook in lieu of paying attrition
 - Example: If you have \$10,000 in attrition charges, negotiate with Hotel to rebook a future program in lieu of paying attrition.

Cancellation

Sliding Scale

- Based on Net Room Revenue only
- F&B and Net Room Revenue if less than 30 days from event

EXAMPLE: Sliding Scale Cancellation Policy

Should the Group wish to cancel the executed contract between the Group and the Hotel, (for any reasons other than acts of God, government authority, disaster, civil disorders, or other emergencies, any of which may make it illegal, impossible or **commercially impractical** to provide the facilities and/or services for your meeting) a cancellation fee of total contracted guest room revenue and estimated food and beverage revenue will be assessed as outlined on the following schedule:

- Time of signing agreement to 13 months out from the start date of the conference = 0% of room & food and beverage revenue
- 12 months to 9 months out from the start date of the conference = 40% = (\$) of room & 0% food and beverage revenue
- 8 months to 5 months out from the start date of the conference = 60% (\$) of room & 20% (\$) food and beverage revenue

Cancellation - Continued

- If Group cancels and rebooks within one year, any cancellation fee (and deposits) collected will be applied towards the Master Account for the next year's program. (Don't give your money away.)
- Add "**Cancellation by Hotel Clause**". They can't cancel if you can't cancel.
- **Right to Cancel** due to 1) change in ownership 2) diminished quality in hotel product.
- "**Commercial Impracticability**" should be placed in both the Cancellation Policy and the Force Majeure.

Force Majeure

- Use **communicable disease outbreak** instead of COVID-19 or pandemic.
- “**Commercial Impracticability**” should be placed in both the **Cancellation Policy** and the **Force Majeure**.

Force Majeure – Example

EXAMPLE: Force Majeure Clause

The performance of the Agreement is subject to termination without liability (including liquidated damages) upon the occurrence of any circumstance beyond the control of one or both parties that make performance of the Agreement impossible, illegal or commercially impractical, including a frustration of purpose. Those circumstances may include, but are not limited to, acts of God; declared or undeclared war or a threat of war or other hostilities, acts of terrorism, coups or civil disorder, regulations or acts of government; hazardous weather (forecasted or actual); disaster, strikes, labor disputes, picketing or work stoppages (except those involving the employees or agents of the party seeking the protection of this paragraph); business crisis; curtailment of transportation facilities (to the city or in the city where the Hotel is located); damage or harm to the city or region where the Hotel is located that materially affects basic city services or city's reputation; communicable disease outbreak; or if less than eighty percent (80%) of anticipated attendees were able to attend the meeting due to any of the above circumstances or any other unforeseen and uncontrollable emergencies. The ability to terminate the Agreement without liability pursuant to this paragraph is conditioned upon delivery of written notice to the other party setting forth the basis for such termination as soon as reasonably practical, but in no event longer than ten (10) days after learning of such basis. The phrase, "without liability", wherever used in this Agreement or any attachments to the Agreement includes a refund by Hotel of all deposits and prepayments made by Group or any attendee within thirty (30) days of the date that affected party provides notice of termination as required.

Force Majeure – Commercial Impracticability

What is the difference between **Commercial Impracticability** and **Impossibility**?

- **Impossibility** – excuses performance where the contractual duty cannot be physically performed
- **Commercial Impracticability** – performance is still physically possible, but is triggered when something happens that makes performance of a contractual duty excessively burdensome, unbearably difficult, or extremely expensive, for the party committed to such performance.

Force Majeure – Purpose and Reason Statement

When pushing for a “**Commercial Impracticability**” cancellation, it is important to include in your contract the **Purpose** and **Reason** for your meeting.

EXAMPLE: Purpose and Reason for “XXXXX” Meeting:

The “XXXX” conference provides training to government employees who conduct investigations of “XXXXXX” in other government agencies. Therefore, the majority of “XXXX” attendees (95%) work for government agencies or agencies funded by government contracts. If state governments have instituted travel restrictions and/or have reduced their program budgets to the point where employees have been laid off or furloughed, we reserve the right to cancel without liability due to Commercial Impracticability as it will no longer be Economically Feasible to hold the conference.

Commercial Impracticability will be understood should one of the following happen and “XXXXX” can provide the hotel the documentation to support it:

- 30% of the states are unable to attend
- Host State is unable to send delegates to the conference due to budget restrictions.

Force Majeure – COVID Specific Clause

The Group and Hotel acknowledge that at the time of signing this Agreement, outbreak of COVID-19 - Coronavirus disease existed in various parts of the world. Group is signing this Agreement in good faith, conditioned upon assumption that the COVID-19 outbreak will subside and not be a risk factor by the Program Dates. In the event the COVID-19 outbreak continues to exist and/or becomes worse, with Government regulations and limits on travel that will affect the ability of the Group to successfully host the event. Group reserves the right to exercise the Force Majeure provision which will entitle Group to **cancel** this Agreement in its entirety and receive a full refund of any deposits made.

You can replace the word **cancel** with **rebook** and all deposits made will be credited towards the new booking.

Change of Ownership or Management

- Due to the pandemic, the hotel industry will see changes in ownership and/or flagship. (Ex: Marriott becomes a Hyatt)
- Hotel must notify Group in writing.
- Hotel must honor contract in place.
- Group has the option to cancel without obligation.

Change of Ownership or Management - Example

EXAMPLE: Change of Ownership or Management Clause

In the event that Hotel undergoes a change in management company, ownership, or has filed for bankruptcy, or if foreclosure occurs, the Hotel is obligated to inform Group of this action within thirty (30) days of receipt of notice of the aforementioned change or filing, and the Group may then, within sixty (60) days of receipt of such notice, terminate this Contract without liability.

In the event of a sale, transfer or conveyance of the Hotel stock or assets, Hotel's owner shall assign all of its rights and liabilities and delegate the performance of all its duties under this contract to the purchaser(s)/transferee(s). Hotel shall notify Group and provide to Group of the assignment and delegation within thirty (30) days of any sale, transfer or conveyance.

Group shall have the right to terminate this contract without liability upon written notice to The Hotel. If Group terminates this contract under the provisions of this section, The Hotel shall immediately refund to Group any and all sums or deposits paid by Group to The Hotel under this contract.

Indemnification

- What does it really mean?
 - To “**indemnify**” means to compensate someone for his/her harm or loss. In most **contracts**, an **indemnification** clause serves to compensate a party for harm or loss arising in connection with the other party's actions or failure to act.
 - Make sure the indemnification is mutual. Hotel should not just indemnify the Group.

Indemnification - Example

EXAMPLE: Mutual Indemnification Clause

Hotel and Group (each, an “Indemnitor” “Co-Signer” as the context requires) each shall reimburse, indemnify and hold harmless the other party, its officers, directors, employees, agents and attendees from and against losses, damages, liabilities, suits and causes of action (and costs and expenses in connection there with including reasonable attorney’s fees and other investigation and defense costs) claimed to have resulted, directly or indirectly, from or in connection with (i) any breach or nonperformance of any provision of this agreement (including without limitation a breach of any representation or warranty) by the Indemnitor, and (ii) the negligence or willful misconduct of Indemnitor, its employees, agents, or subcontractors.

Miscellaneous

- Concessions:
 - **1 per 40 Comp** – Are you using this concession? It is often overlooked when group is onsite.
- Know the difference between **Group Rate** and **Prevailing Rate**. Group Rate should replace Prevailing Rate anywhere within the contract.
- Protecting the Block:
 - Staff Rate: Make sure this is listed in the Sleeping Room Commitment as well as in the Concessions Clause.
 - Whenever possible strike resort fees and ask what are the “mandatory” fees...get those fees spelled out in the contract.
 - If booking a few years out, clearly state what the sleeping room rate is over the dates of the program (do not agree to a % increase per year scenario).
 - Cutoff: Hotel cannot release sleeping rooms prior to cutoff date. Group rate shall be honored after cutoff.
 - Have a “no walk” clause to protect the VIPs.

Questions

HelmsBriscoe – Hotel Site Selection AAGT Events – Onsite Event Management

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