

# Hotel or Convention Center Contract Provision Guidelines

Related Topic Area(s): Meeting, Vendor and Government Contracts

## 1. Identity of Parties:

Name the contracting parties (legal names), with acronyms in parentheses, along with their principal place of business.

## 2. Identity and Location of Meeting:

Name the meeting (e.g., *The 80th ASAE Annual Meeting & Convention*) and its location (Hotel/convention center name and address).

## 3. Meeting Dates and Dates for Room Block:

Specify all dates from first arrival to last departure (including equipment set-up and dismantling). Note that meeting dates and dates for room block may or may not be the same.

## 4. Sleeping Room Block/Reservations:

### a. Number of Rooms:

Specify the number of each type of room (regular rooms and bedroom suites) for each day covered by the contract. Avoid use of the terms "reserved" or "reservations." The association is contracting for the hotel to make certain rooms available for reservation by individual meeting attendees; there should be no express or implied statement that the association is affirmatively reserving or guaranteeing that all rooms will be occupied by meeting attendees.

### b. Types of Rooms:

In addition to specifying the number of bedroom suites and regular rooms, the contract should also specify the number of single versus double rooms, smoking versus non-smoking rooms, standard versus deluxe rooms, and handicap-accessible rooms needed in your block.

### c. Rates:

Rate calculation generally depends on how far out your meeting is booked and what you have negotiated. If you are signing a contract *within one year* of your meeting, there should be a commitment to specific room rates. If you are signing *more than one year out*, there are four basic methods frequently used to calculate room rates: i) the current-year group rate plus a negotiated percentage increase; ii) a negotiated percentage off of the published "rack" rate on a specific date; iii) the current-year group rate plus an increase based on the annual percentage change in the Consumer Price Index for Hotel's city or region; or iv) a statement that future rates will be the lesser of the three above calculations. Be sure to specify the date on which the room rates will be determined, to include a clause guaranteeing that the group will receive the lowest rates in the Hotel at the time of the meeting, and to specify current sales tax rates.

### d. Complimentary and/or Discounted Rooms:

Specify a formula for determining the number of complimentary rooms (e.g., one complimentary room night for each fifty room nights used by meeting attendees during the period covered by the contract); specify that complimentary rooms will be earned on a cumulative (not a per night) basis; specify how complimentary rooms may be earned and used for suites; specify that the dollar amount equivalent to unused complimentary room nights will be credited to the Association's master account; and specify if additional complimentary or discounted rooms will be extended to Association directors, officers, staff, and/or guest speakers.

**e. Reservations:**

Specify the number of reservation cards to be provided to Association; specify reservation method (e.g., by individuals or by the Association; to Hotel directly or to an "800" telephone number; by mail, using a Hotel-supplied reservation card or one produced by the Association; or by a housing list); require Hotel to confirm reservations with guests within specified time frame; require Hotel to provide (specify via facsimile, mail, etc.) weekly reports to Association on confirmed reservations (specify whether to be listed alphabetically, by arrival date, etc.); specify time before which reservations will be held without deposit, deposit policy for holding rooms after specified time, and refund policy on deposits if adequate notice is given; specify the compensation Hotel will provide for guests whose reservations are not honored (e.g., free sleeping room at comparable, nearby hotel, free transportation to and from substitute hotel, long distance telephone calls to office and family, etc.); and require Hotel to notify Association of guests whose reservations are not honored.

**f. Check-In/Check-Out Times and Conditions:**

Specify daily check-in and check-out times for all days covered by the contract; early check-in and/or late check-out privileges, if any, for specified VIPs; the number of registration stations to be open during each day covered by the contract; and any other negotiated special arrangements (e.g., complimentary hospitality suite on major check-in and/or check-out days to accommodate early arrivals and/or late departures).

**g. Occupancy Reports:**

Require Hotel to provide (specify via facsimile, mail, etc.) Association with a daily occupancy report during the meeting dates and a final occupancy report within a specified number of days after the meeting as to the total number and types of rooms in Association's room block picked up during each day covered by the contract, and when they were picked up (e.g., pickup as of 90 days out, 60 days out, 30 days out, and final pickup). If Association desires an individualized breakdown including guest names, arrival and departure dates, etc., be sure to specify.

**h. Room Block Release:**

Specify a date before which Hotel will not release any unreserved rooms from the room block and after which Hotel may, at its discretion, release any unreserved rooms from the room block. Be sure to specify that even after that date, Hotel will still accept reservations from meeting attenders at the rates and on the terms defined in the contract, on a space available basis.

**i. Attrition/Slippage/Performance:**

Hotels generally insist on the inclusion of clauses that assess fees to replace revenue lost when reservation projections fall short of expectations. Such clauses, commonly called attrition, slippage, or performance clauses, can result in substantial financial liabilities for an unsuspecting association, and, as such, should be given close scrutiny. Attrition refers to the gap between the room block and the number of rooms finally occupied by meeting attenders. Attrition clauses generally require the association to pay the hotel a fixed amount for each room in the block that remains unreserved by the time of the meeting. As long as such clauses state that amount in terms of estimated lost profits (damages), and not in terms of a penalty, they will be enforceable. Note that the legal enforceability of the clause does not have to be tied to *actual* damages suffered by the hotel; a reasonable, predetermined estimate of damages is enforceable. If the inclusion of an attrition clause is unavoidable, be sure to specify a date before which the size of the room block can be adjusted (either at will or within specified parameters) by Association without liability. In the alternative, the adjustment can be tied to Association's current history and a formula can be specified for determining the size of the revised block at a specified date or dates. When determining damages owed to Hotel for attrition, a formula should be specified which is premised on lost profits, not lost gross revenue (room rates). Finally, specify that Hotel has an affirmative duty to "resell" rooms not reserved by the date specified in section 4(h) above, and any damages owed to Hotel will be reduced by any rooms resold.

**5. Meeting/Function Rooms:**

**a. Number of Rooms:**

Specify the number of each type of meeting/function room required for each day covered by the contract.

**b. Types and Sizes of Rooms:**

Specify the types (e.g., banquet hall, exhibition hall, auditorium, foyer, solarium, removable wall capability, etc.) and sizes (specify general size and/or specific dimensions) of each meeting/function room required for each day covered by the contract. Identify meeting/function rooms by name wherever possible. Specify whether or not Hotel reserves the right to move Association to alternative meeting/function room(s). If yes, specify that Hotel will pay for reprinted programs and producing signage to alert meeting attendees as to room change(s).

**c. Times of Use:**

Specify the exact time(s) the room(s) will be utilized, as well as the specific periods of time before and after the meeting/function required for the set-up and dismantling of equipment. In the case of an exhibition, the set-up and dismantling times required by exhibitors may be substantial.

**d. Room Release:**

Some hotels will insist upon a clause providing for the release of unneeded meeting/function space back to the hotel at a specified date. This is common when a meeting is contracted for several years in advance. Specifically, under such a clause, the association would agree to inform the hotel at a specified date (e.g., six months out) as to its exact meeting/function space requirements. At that time, all meeting/function space not required for the meeting would be released back to the hotel.

**e. Rates/Complimentary Rooms:**

In the 1970s and 1980s, hotels generally did not charge groups for meeting space, especially if a meal was held in the room and/or if the ratio of sleeping rooms to meeting space warranted. While this is still the case in some circumstances, ever-increasing labor costs make it increasingly difficult for hotels to "comp" meeting/function space. However it is negotiated, it is important to specify whether or not there will be meeting/function room rental charges, what the specific criteria are, if any, for earning complimentary meeting/function rooms, and what the specific rental charges, if any, will be. If there will be rental charges, either set a firm price in advance or specify a computation method, as described in section 4(c) above. If the latter, be sure to specify the date on which the room rates will be determined, to include a clause guaranteeing that the group will receive the lowest rates in the Hotel at the time of the meeting, and to specify current sales tax rates.

**f. Setup Charges:**

Labor charges and union contracts often dictate whether charges will be levied for the setup of meeting/function rooms. Often separate charges will apply to the setup of each and every chair, table, easel, etc.; these charges can add up very quickly. Be sure to specify the setups, if any, for which the Association will be charged, exactly what these charges will be (or when and how they will be determined, if not set in advance), and on what the charges will be based -- actual attendance, the number of chairs/tables set, sleeping room attrition, etc.

**g. Anticipated Number of Meeting Attendees:**

Specify the anticipated number of meeting attendees, and clarify that this number does not serve as a guarantee, but only as a nonbinding estimate; the Association shall not be liable if this number overestimates the actual number of meeting attendees. Note the distinction between this clause and those described in sections 4(f) above and 6 below.

**h. Service and Staffing:**

Specify the service and staffing level required for each and every function, including the types of services to be provided, the number of trained staff needed, dates and specific time frames, uniform requirements (e.g., black tie, doorman uniform), etc.; specify the costs to the Association, including any minimum charges, and how those costs will be calculated, or the fact that there are no costs; specify whether or not some or all of the facility's employees are unionized, and, if not, that the facility shall promptly notify the Association of any efforts to so organize any class(es) of employees; and include a guarantee by the Hotel of friendly,

courteous, competent service.

**i. Equipment:**

Specify the equipment required for each and every function, along with any rental charges, if any, to be assessed (see section 5(f) above regarding setup charges). Attempt to negotiate equipment rental on a complimentary basis. If the facility has to rent equipment from outside vendors to accommodate the meeting/function, specify the rates to be charged, including whether or not that includes a markup, or alternatively, specify that the Association will rent the equipment directly from the outside vendors. Finally, specify the facility's cutoff date for ordering equipment.

**j. Utilities:**

Specify when heat, air conditioning, light, power, and/or water will be turned on and off for every day during the meeting/function, including the setup and dismantling periods. If there will be a charge for utility use during setup and dismantling, or during any other period, specify the rates to be assessed. Attempt to negotiate utility use on a complimentary basis.

**6. Food and Beverage:**

Specify preliminary figures of anticipated attendance for each function at which food and beverage will be served; date(s) for final guarantee(s), including if, how, and when the guarantee(s) can be revised; for what percentage over the guarantee the facility will set; what charges will be assessed, if any, for meal function attendance attrition and/or cancellation; how far in advance food and beverage prices will be set, including whether facility will guarantee that food and beverage costs shall be at least a specified percentage less than menu prices published on a specified date; how charges will be applied (e.g., per drink, per person, etc.) and any minimum charges; how food and beverage will be served (e.g., passed hors d'oeuvres, buffet luncheon, etc.) (see section 5(h) above regarding service and staffing), including table decor; whether there will be any complimentary food or beverage (e.g., coffee stands, food and beverage for staff, etc.); and whether exhibitors may serve food and/or beverage from their booths, and, if so, whether they must obtain it exclusively through the facility.

**7. Gratuities:**

Specify whether gratuities shall be optional at the discretion of the Association or whether they shall be mandatory. If the latter, describe the facility's policy and formula for calculating gratuities.

**8. Taxes:**

Specify all applicable federal, state, and local taxes, along with their current rates, for all aspects of the meeting/function (e.g., sales taxes, service taxes, etc., and on what they can be assessed -- room charges, food and beverage, service charges, gratuities, parking, etc.)

**9. Parking:**

Specify any parking charges, including rates and how they are assessed (e.g., per automobile, flat rate per day for the group, etc.); whether valet parking will be available, and, if so, during what hours; and whether an "in and out" policy will be in effect (allowing or prohibiting automobiles to go in and out of the garage in a given day without additional charges). Attempt to negotiate parking on a complimentary basis for all attendees, for VIPs, for staff, or for some combination thereof, or alternatively, a discounted rate for some combination thereof.

**10. Transportation:**

Specify whether the facility will provide local transportation (e.g., a shuttle to and from the airport, a shuttle to and from the hotel and the exhibition hall, etc.), and, if so, what charges, if any, there will be for this service. If such transportation will be provided, specify the hours during which it will be available, how it can be accessed, and how many vehicles will be available at any given time.

**11. Promotion and Publicity of Meeting, including Signage:**

Specify the facility's policy, if any, on displaying signs and other promotional materials; what signage the

facility will provide during the meeting/function, if any, and at what charge, if any; if and how the facility will promote the meeting/function in advance (e.g., electronic sign outside convention center, advertisements in local newspaper, etc.); and whether Association may use facility's logo in connection with advance promotion of the meeting/function.

**12. Other Services to be Provided by Facility:**

Specify any other services to be provided by the facility (e.g., doormen, bellhops, room amenities, complimentary newspaper delivered to guest rooms, complimentary telephone use -- with no surcharges -- for Association staff, etc.), including a description of the service(s) (e.g., uniformed doormen, USA Today newspaper, etc.) and what charges, if any, there will be for the service(s).

**13. Billing and Payment Arrangements:**

Specify how and when credit will be established; what charges will be applied to the master account and what charges will be billed to individual guests/attenders; the size of a deposit, if any, to be provided to facility, how it will be returned, and a guarantee that it will be refunded in full in the event of termination under section 19 below or cancellation by the facility under section 18 below; when payment will be expected and, if not received by then, what late penalties, if any, will be assessed; any discounts for speedy payment; and that disputed items will not be payable until resolved.

**14. Conferences between Association and Facility Staffs:**

Specify the dates, times, and places of any scheduled conferences between Association and facility staffs (e.g., 7:00 a.m. in the staff room during each day of the convention), including specifically who will represent the facility.

**15. Construction and Remodeling:**

Specify that the facility warrants that the facility will remain in the same or better condition at the time of the Association's meeting as it is at the time of contract signing; will promptly notify the Association of any construction or remodeling to be performed in facility prior to the Association's meeting; warrants that any such construction or remodeling will not interfere in any way with the Association's use of the facility; in the event of such interference, will promptly pay the Association liquidated damages in a specified amount and will provide, without charge, comparable meeting and/or sleeping room facilities at a comparable or superior nearby facility, along with free transportation to and from the substitute facility(ies), as needed.

**16. Warranty of "Quiet Enjoyment":**

Specify that the facility warrants that there will be no outside distractions that could interfere with the "quiet enjoyment" of guest rooms to be used by Association and its meeting attenders/guests.

**17. Other Meetings/Functions at Same Time:**

Specify that the facility will promptly notify Association of any concurrent or overlapping meetings or other events to be held in facility during the Association's meeting, and that the facility warrants that there will be no outside distractions that could affect the ordinary use of meeting rooms or other facilities by Association and its meeting attenders/guests.

**18. Cancellation:**

Distinguish this provision from section 19 below, *Termination*. The Cancellation clause should specify that the contract may be cancelled by mutual written agreement of the parties at any time, or by the Association without penalty upon giving written notice to the facility prior to a specified date; that the facility may not cancel the contract for any reason; that the Association may cancel the contract between two specified dates if it pays the facility a specified amount of liquidated damages, and after the latter of the two specified dates if it pays the facility an even higher specified amount of liquidated damages; that the facility must undertake all reasonable efforts to resell cancelled rooms and must credit those revenues against liquidated damages in an amount not to exceed the full amount of such damages; that liquidated damages, if any, shall be payable 30 days after the Association's meeting ends, provided the facility provides proof of its efforts to mitigate damages and proof that rooms being held for the Association's attenders/guests were unsold; and

that the Association will not owe any liquidated damages if the facility meets or exceeds its average occupancy level for the week of the Association's meeting.

**19. Termination (*Force Majeure*):**

Distinguish this provision from section 18 above, *Cancellation*. The Termination clause should specify that the performance of the contract by either party is subject to Acts of God, war, government regulation, disaster, fire, strikes, civil disorder, acts of terrorism, outbreak of infectious disease or illness in the host city, curtailment of transportation facilities preventing or unreasonably delaying at least 25% of meeting attenders/guests from attending, or any other similar cause *beyond the control of the parties* making it inadvisable, illegal, or impossible to hold the meeting or provide the facility; and that the contract may be terminated without penalty for one or more of such reasons by written notice from one party to the other. In addition, specify that the contract may be terminated upon the breach of any *material* term, provided written notice of the termination is given. Finally, specify that the performance of the contract is contingent upon the availability of the facility as the site for the Association's meeting; if for any reason beyond the control of the Association the facility is not available, or is not in acceptable condition, then the contract may be terminated without penalty by written notice from the Association to the facility.

**20. Change of Management/Ownership:**

Specify that the facility shall promptly notify the Association of any change in the facility's management or ownership, and that the Association may cancel the contract without penalty if there is any change in the facility's management or ownership, provided the Association notifies the facility of such cancellation in writing within a specified number of days after it is advised by the facility of the change.

**21. Indemnification (Hold Harmless):**

Specify that each party to the contract will indemnify the other(s) against all loss, expense, or damage on account of (a) any injury to the person and/or property of any member, employee, officer, agent, etc. of the other party(ies) arising out of the negligence or willful misconduct of the offending party, or (b) any breach of the representations and warranties of the offending party made in this contract. Be sure to clarify if the Association is indemnifying the facility for the actions of all meeting attenders, or whether it is limited to the actions of the Association and its employees; if the Association is indemnifying the facility for the actions of its outside vendors; and if the association is indemnifying the facility for all negligence, or merely "gross" negligence.

**22. Insurance:**

Specify that the facility shall carry liability, fire, burglary, or other insurance in such dollar amount as necessary to protect itself against any claims arising from any activities conducted in the facility during the Association's meeting, and that the facility indemnifies the Association as provided in section 21 above.

**23. *Americans with Disabilities Act* Compliance:**

Specify that the facility warrants that it complies and shall comply during the Association's meeting with the public accommodations of the *Americans with Disabilities Act*, including but not limited to the wheelchair access provisions. In addition, specify that the facility indemnifies the Association against any claims or other liabilities resulting from its failure to comply with the public accommodations provisions of the *Americans with Disabilities Act*.

**24. Fire, Safety, and Building Code Compliance:**

Specify that the facility warrants that it complies and shall comply during the Association's meeting with all local, state, and federal fire, safety, and building codes; that it maintains and shall maintain during the Association's meeting appropriate procedures and policies concerning fire safety and other safety issues; and that it shall make all such procedures and policies available to the Association for inspection upon reasonable notice.

**25. Security:**

Specify that the facility warrants that it maintains and shall maintain during the Association's meeting

appropriate security measures to protect the person and/or property of any registrant, guest, member, employee, or agent of the Association from injury. In addition, some contracts may wish to specify the exact number of trained security personnel a facility will have on duty at any given time during the Association's meeting, where those personnel will be stationed and/or patrolling, the requisite level of training, and/or other more specific security precautions to be taken by the facility.

**26. Music Licensing Warranty and Indemnification:**

Specify that the facility warrants that no musical work protected by copyright will be staged or otherwise performed, via either live or mechanical means, by or on behalf of the facility, during the Association's meeting, unless the facility has previously obtained written permission from the copyright owner or the copyright owner's designee (e.g., ASCAP, BMI or SESAC) for such use. In addition, specify that the facility warrants that it shall be fully responsible for meeting the obligations under such an agreement, including the obligation to report data and pay royalty fees. Finally, specify that the facility will indemnify the Association from and against any claims or other liabilities resulting from a breach of this provision.

**27. Governing Law:**

To help ensure the most favorable outcome in the event of litigation, specify the laws of the jurisdiction by which interpretation of the contract will be governed. Note that there must be some connection between that jurisdiction and the Association (e.g., the state in which the Association is headquartered or incorporated, in which the facility is located, in which the facility or its parent company is headquartered or incorporated, etc.).

**28. Dispute Resolution Procedures:**

If desired (as an alternative to litigation), specify that any disputes arising under the contract will be subject to arbitration. Furthermore, specify what arbitration rules and procedures will be applied (e.g., Convention Liaison Council, American Arbitration Association, etc.), in what jurisdiction will the arbitration occur, whether or not the arbitration will be binding, and in what jurisdiction the arbitration award may be entered into court.

**29. Special Requirements:**

Specify any other special requirements of the Association, including the cost(s), if any.

**30. Standard "Boilerplate" Provisions:**

**a. Warranty of Authority:**

Specify that the signatories to the contract warrant that they have the authority to enter into the agreement and agree to the terms set forth therein.

**b. Binding Agreement:**

Specify that this contract contains all of the terms agreed upon by the parties with respect to the Association's meeting and supersedes all prior agreements, arrangements, and communications between the parties concerning the Association's meeting. In addition, specify that the contract shall be binding upon and inure to the benefit of the Association and its successors. Finally, specify that the contract may be amended at any time by the mutual written agreement of the parties.

**c. Severability:**

Specify that if any term or provision of this contract is found for any reason to be invalid, illegal, or unenforceable, that finding shall not affect the validity, interpretation, or enforceability of any remaining term or provision of the contract.