

# Association Meeting Contract Q&A

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

**Q:** *What are common areas of concern associations should be aware of in meeting contracts?*

**A:** Once the business terms have been agreed on – that is, the specific dates, place, time, and rental rate for the meeting space – it is easy to overlook the provisions in a meeting contract that deal with the "what-ifs." Unfortunately, these are also typically the areas in a contract that contain the most legalese, and that are most likely to cause financial heartburn to your organization should plans go awry. As with all contracts, it is critically important to understand the fine print to protect your organization's interests – and assets. Four such principal areas of legal concern in almost every meeting contract are the cancellation, mitigation, force majeure, and indemnification provisions. Hotels, convention centers, and other meeting venues typically will negotiate these 'worst-case scenario' provisions hotly if you object to their form language, so you'll need to be well armed with knowledge before jumping into the fray!

**Cancellation.** A typical hotel meeting contract might provide the following:

"The Hotel agrees to reserve the contracted guest rooms and/or meeting/banquet space to the exclusion of other business opportunities. Should the organization cancel the contracted guest rooms and/or meeting/banquet space after contract signature, a cancellation fee will be assessed as outlined on the following schedule: Cancellation 0-30 days out: 100% of total contracted guest room revenue and estimated food and beverage revenue based on menu prices at time of cancellation."

Without such a cancellation clause, the hotel would be forced to prove its actual damages in the event your organization cancelled. But, under basic principles of contract law, the hotel's damages would be limited to lost profits, not total revenue. At minimum, you would want to re-word the sample cancellation clause above to base damages on estimated lost profit, not 100% revenue. The cancellation clause also could be negotiated to provide for a date change instead of a cancellation, for example, by providing that no cancellation fees will be due provided that your organization agrees to hold an event of similar size within one year. You also would want to include a parallel provision in the contract to protect your organization in the event of the hotel's cancellation.

**Mitigation.** Again, under basic principles of contract law, the injured party has a duty to mitigate its damages – here, by reselling the space. The hotel or meeting venue should be required to undertake all reasonable efforts to resell any unused or canceled rooms and any unused or canceled function space, and to credit those revenues against any performance clause fees or liquidated damages. The hotel also should be required to provide proof of its efforts to mitigate damages and evidence that the rooms or function space remain unsold.

**Force Majeure.** The force majeure clause is a critically important element in every meeting contract. A typical hotel-drafted force majeure clause might provide (if you're lucky!) that "performance of the Agreement by either party is subject to strikes, acts of God, war, or civil disturbances." To protect your organization, you will want to add to this list, at minimum, government regulation, acts of terrorism, curtailment of transportation facilities preventing or unreasonably delaying at least 25% of event attendees and guests from appearing, or other similar causes beyond the control of the parties. The contract should permit either party to terminate the agreement without penalty for such reasons. The contract also should reference the force majeure clause in any other section of the agreement - such as attrition and/or cancellation provisions - that provide for the payment of damages or performance fees. Note that, under the sample cancellation provision provided above, if your organization were forced to cancel its meeting as the result of a hurricane or other natural disaster, it would still have been on the hook for the cancellation fee.

**Indemnification.** Finally, a mutual indemnification provision is critical. Indemnification is a promise, usually contractual, to protect a party from financial loss. Note that this promise is worthless without the funds to back it up, and your organization always should insist on evidence of the meeting facility's insurance. A typical form contract almost always will include a one-sided provision requiring your organization to indemnify the hotel; here, as with the cancellation provision, what's left out of the agreement can be more important than what's included. The hotel or meeting venue will typically require your organization to indemnify the hotel against claims and liabilities incurred by the hotel as the result of the negligent acts or omissions of your organization or its employees in connection with your organization's use of the meeting space. You should not agree to indemnify the hotel for the acts or omissions of your event attendees. In addition, you should require the hotel to indemnify your organization (and its agents and employees) against claims asserted against them arising from the acts or omissions of the hotel, or its employees, in connection with your agreed-upon use of the space.