

SPECIAL CONSIDERATIONS FOR MEETING AND EVENT CONTRACTS

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Presenters



PRISCILLA SABA

- Vice President and Senior Counsel Lodging in the Operations Group of the Law Department for Marriott International, Inc.
- Lead counsel for the Global Sales & Revenue Management Department at Marriott
- Negotiates meeting and event contracts, as well as resolves conflicts arising from such contracts



STEVEN M. RUDNER

- Founder and Managing Partner, Rudner Law Offices, which exclusively represents hotels, resorts and conference centers throughout the world in regard to group contract issues
- Past-President of the Academy of Hospitality Industry Attorneys
- Member of the State Bars of New York, Texas, Arizona, Colorado and District of Columbia

OVERVIEW OF THE ISSUES:

- Globalization of Meeting Planning
- Ascendancy of Procurement Departments
- Hotel Sales Training has not yet adapted to the challenge

Confidentiality Clauses



SAMPLE CLAUSE #1

You acknowledge that you or your employees may, in the course of performing your respective responsibilities under the Agreement, be exposed to or acquire information which is proprietary or confidential to us or our affiliated companies or their clients or to third parties to whom we owe a duty of confidentiality. The term Confidential Information shall mean any and all proprietary, confidential or non-public information in any form obtained by you or your personnel, employees, subcontractors or agents in the course of performing your respective responsibilities under the Agreement. Any and all non-public information of any form obtained by you or your employees while providing the Services shall be deemed to be confidential and proprietary information. You agree to hold such information in strict confidence and not to copy, record, reproduce (using any medium), sell, assign, license, market, transfer or otherwise dispose of, give or disclose such information to third parties or to use such information for any purposes whatsoever other than the provision of Services to us, and to advise each of your employees

cont.....

who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential.

Confidential Information shall not include information which is (i) in or becomes part of the public domain other than by disclosure by you in violation of the Agreement, (ii) demonstrably known to you previously, (iii) independently developed by you outside of the Agreement or (iv) rightfully obtained by you from third parties. This provision shall survive termination and expiration of the Agreement.

SAMPLE CLAUSE #2

All information, written electronic or oral, relating to the business, operations, plans, services, facilities, processes, software, methodologies, technologies, intellectual property, research and development, clients and suppliers, partners, principals, employees, consultants and authorized agents of the disclosing party that is supplied by or on behalf of the disclosing party to the other party or otherwise acquired by the other party during the course of dealings between the parties or otherwise, shall be deemed “Confidential Information.”

In consideration of the disclosures hereunder, each party shall keep in confidence the other’s Confidential Information during the term of this Agreement and for a period not less than five (5) years from the date of termination of this Agreement. To this end:

cont.....

(a) Each party shall use the other's Confidential Information only for the purposes of the particular business objective or written agreement pursuant to which a given item of Confidential Information was discussed. Upon the completion of the business objective or the termination of any written agreement pursuant to which a given item of Confidential Information was disclosed, or upon the demand of the disclosing party, an authorized officer of the recipient shall promptly, at the election of the disclosing party, either return to the disclosing party or destroy (including permanently deleting such Confidential Information from all computer records) all Confidential Information in the recipient's possession or control relating to such business objective or written agreement, and shall certify to the disclosing party as to such return or destruction.

(b) Neither party may disclose the other's Confidential Information to third persons without the disclosing party's prior written consent, provided that each party may disclose the other's Confidential Information to its employees and authorized agents, subcontractors, partners, principals and consultants on a need-to-know basis. Each party shall be responsible for ensuring that any of its employees, authorized agents, subcontractors, partners, principals and consultants who receive Confidential Information comply with the foregoing obligations.

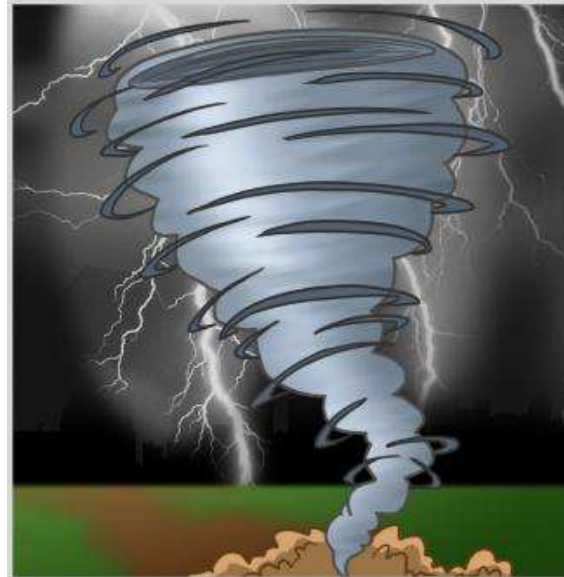
DANGERS PRESENTED:

- Unlimited Liability
- Groups fail to guard their own information
 - Materials left in public spaces
 - Attendees overheard
- Hotel becomes insurer of all of Group's data
- No standard of care

CONCEPTS TO CONSIDER:

- Group's information must be marked "confidential"
- Group obligated to provide hotel only that information which it needs to host meeting
- Group obligated to use commercially reasonable efforts to maintain confidentiality of its own information
- Standard of Care: Same manner as hotel protects its own information

Force Majeure Clauses



SAMPLE CLAUSE #1

If the Event is canceled by either party for reasons beyond its control, including, but not limited to fire, flood, strikes, riots, civil disturbance, government regulations, natural disaster, severe weather conditions, mechanical malfunction, or other conditions which make it impossible, illegal or inadvisable in the canceling party's commercially reasonable opinion to hold the Event, Hotel will (a) reschedule the Event for another date mutually agreed upon by the parties and allow Group to apply all monies paid to Hotel by Group to such Event, or (b) refund all monies paid to Hotel by Group without penalty, less expenses incurred by Hotel in preparation for the Event.

SAMPLE CLAUSE #2

The performance of the Agreement by either party is subject to Force Majeure events such as but not limited to war, terrorism, threat of terrorism, government regulation, civil disobedience, disaster, or other casualty, strikes or threat of strikes, the destination's appearance on a US State Department Advisory List (or similar agency in the host country), any travel restrictions pertaining to the destination including the destination's appearance on a US Health Advisory (or similar agency in the host country), or curtailment of transportation services preventing the attendance of at least twenty-five (25%) of the anticipated attendees from attending, or similar cause beyond the control of either party making it illegal, impossible, or reasonably impracticable to hold the meeting/convention or provide the facility.

Cont.....

Following one of the events described in this Section, either party may terminate or suspend its obligations under the Agreement by written notice to the other party.

Neither party may terminate the Agreement for strikes or labor disputes involving their own employees or agents.

DANGERS PRESENTED:

- The “including but not limited to” list with catch-all
 - Threat of terrorism; fear
 - Travel restrictions: may be self-imposed
 - Curtailment of transportation
- Beyond canceling party’s control
- Inadvisable
- Impracticable

CONCEPTS TO CONSIDER:

- No damages shall be due for a failure of performance occurring due to Acts of God, war, terrorist act, government regulation, riots, disaster, or strikes, any one of which make performance impossible.
- Duty to attempt to overcome force majeure event
- Notice of exercising right to cancel

Indemnification Clauses



SAMPLE CLAUSE #1:

Each party agrees to protect, indemnify, defend and hold harmless the other party and the other party's officers, partners, employees, and agents, against all claims, losses or damages to persons or property, government charges or fines, and costs (including attorneys' fees) arising from or connected with the Event (including, but not limited to, the installation, removal, maintenance, occupancy, or use of the premises, or part thereof) solely to the extent caused by the negligence or willful misconduct of the indemnifying party or its independent contractors, guests, invitees or agents. This provision supersedes and overrides any limitation on liability, if any, set forth in the Agreement.

SAMPLE CLAUSE #2:

Each party agrees to indemnify, defend and hold harmless the other from and against any and all amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible personal property to the extent arising out of the indemnitor's negligence in the performance of the Agreement.

DANGERS PRESENTED:

- Negligence and liability for injury is not comparable across global legal systems
- Not all legal systems allow transfer of risk
- Not all legal systems share same legal foundation

CONCEPTS TO CONSIDER

- All matters to be arbitrated before an agreed international arbitral body, all subject to agreed law; with arbitrator who is licensed to practice law in the country whose law applies

Limitation of Liability Clauses



LIMITATION OF LIABILITY – SAMPLE CLAUSE

In no event shall either party hereto be liable under this agreement for any special, indirect, incidental, or consequential damages arising out of or in connection with this agreement. Neither party will be liable for amounts in excess of the total fees actually paid by group to hotel in conjunction with the event.

DANGER PRESENTED:

- Impact on Liquidated Damage clause
- Inclusion of Limitation for Willful Misconduct

Clauses Restricting Competitors



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SAMPLE CLAUSE #1

Group meetings may involve the presentation and discussion of information and materials that are confidential. During the meeting, important trade secrets and commercially valuable information may be exchanged necessitating strict confidentiality. Therefore, Hotel shall ensure that none of Group's competitors will be in-house during the Group's contracted meeting dates. Group's competitors include, but are not limited to [Insert Competitive Set].

SAMPLE CLAUSE #2

Resort understands that the following companies are considered direct competitors and would directly affect Group's meeting. Resort agrees that the Group's contact will be notified immediately if any of the following companies inquire about conducting business over the Group's event dates.

Resort will advise of any requests from the above groups prior to booking. If, in Group's reasonable opinion, it is determined that it is a conflict of interest for the Resort to accept the competitive/conflicting company's business, the Resort agrees not to contract with the competitive/conflicting company over the affected dates.

DANGERS PRESENTED:

- Hotel often does not know identity of its groups, when booked through third parties
- Clause applies to transient blocks; is not limited to group contracts
- Hotel cannot assume burden of knowing identities of competitors
- Hotels often cannot disclose identity of groups to seek consent

CONCEPTS TO CONSIDER:

Hotel will not knowingly enter into group sales contract or contract for meeting or function space, for use of Hotel during the dates of Group's meeting, with any of the competitors listed on Exhibit A below:

Notes

