



# **APEX Contracts Accepted Practices**

*Approved by the Convention Industry Council on December 14, 2006*

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# I. INTRODUCTION & PURPOSE OF THIS REPORT

This report outlines the work to date of the APEX Contracts Panel and describes the process by which members of the meetings, conventions, and exhibitions industry can provide input on the panel's recommendations for accepted practices in the area of Contracts.

APEX (Accepted Practices Exchange) is an initiative of the Convention Industry Council (CIC) that is uniting the entire meetings, conventions, and exhibitions industry in the development and implementation of voluntary accepted practices. These industry-wide voluntary accepted practices are creating and enhancing efficiencies throughout the meetings, conventions, and exhibitions industry.

Seven working panels of volunteers, each addressing key areas, have worked or are working to develop accepted practices. Each panel has a formal charge, which serves as a guide to direct its work:

**Terminology Panel:** The purpose of the APEX Terminology Panel is to develop accepted terminology that encompasses all aspects of the meetings industry.

**History/Post-Event Reports Panel:** The purpose of the APEX History/Post-Event Reports Panel is to develop recommended industry-accepted practices for collecting, storing, and retrieving accurate and thorough history/post-event report data on meetings, conventions, and events.

**Requests for Proposals (RFPs) Panel:** The purpose of the APEX RFPs Panel is to develop recommended industry-accepted practices for consistent and thorough Requests for Proposals (RFPs) that address core information and unique needs.

**Resumes & Work Orders Panel:** The purpose of the APEX Resumes & Work Orders Panel is to develop recommended industry-accepted practices for preparing and sharing complete resume and work order instructions/details for meetings, conventions, and other events.

**Meeting & Site Profiles Panel:** The purpose of the APEX Meeting & Site Profiles Panel is to develop recommended industry-accepted practices for consistent and thorough profile formats for sites, as well as meetings, conventions, and other events, that include both core and unique information.

**Housing & Registration Panel:** The primary purpose of the APEX Housing & Registration Panel is to develop recommended industry-accepted practices for collecting, reporting, and retrieving complete housing and registration data for meetings, conventions, and other events. A secondary purpose is to recommend industry-accepted practices for housing issues such as housing providers, Internet issues, international housing, and disclosure.

**Contracts Panel:** The original purpose of the APEX Contracts Panel was to review all aspects of industry contracts and develop contract guidelines and, where appropriate, acceptable contract language guidelines. Additionally, the panel was to develop an outline to format industry contracts. The panel determined that for legal and practical reasons "acceptable contract language" should not be created.

## II. BACKGROUND & GENERAL APPROACH

The APEX Contracts Panel began its work by identifying issues and contract clauses that could be addressed by the panel, best practices that could be developed, "points of pain" that could be solved, etc. It is not possible to create a "standard" contract for a variety of reasons, including the large and multifaceted industry with many different types of vendors, customers, facilities and requirements, and also because legal considerations and fostering competition would prevent creation of such a document. It was decided instead to create an educational document including the definition of key clauses to help both planners and suppliers with an understanding of the purposes and considerations that affect them. Additionally a sample contract outline was developed which is not necessarily applicable to or appropriate for all meetings or events.

### III. CONTRACTS PANEL MEMBERS

November 9, 2006

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## IV. INTRODUCTION TO HOUSING FACILITY & CONVENTION CENTER CONTRACTS

### A. Overview

The goal of the APEX Contracts Panel is to provide guidance about various aspects of industry contracts to event organizers, hoteliers, and other tourism and hospitality industry professionals referred to in this document as “industry professionals.” The APEX Contracts Panel materials are not intended to develop an industry “standard” document, but to provide an overview of voluntary accepted practices for negotiations for the use of hotel, and event space. The APEX Contracts Panel materials should in no way be construed as a substitute for legal advice. Industry professionals are encouraged to seek legal advice regarding contracts and other legal matters, as no single contract will work perfectly for every event.

### B. Contract Basics

- A contract is “an agreement between two or more persons (or entities) that creates an obligation to do or not to do a particular thing.” A contract spells out the rights and duties of the contracting parties. A well-written contract should be a clear roadmap of the parties’ expectations and responsibilities.
- Any valid contract must have three elements: an offer, acceptance, and consideration (something of value given for the promise of contract performance usually a promise or payment).

- Failure, without legal excuse, to perform any promise which forms the whole or part of a contract is breach of contract. A breach may result in cancellation of the contract by the non-breaching party and the loss of further business to the breaching party. The non-breaching party may also bring an action for monetary damages against the breaching party.
- Any person signing a contract must meet requirements of capacity to sign including: 1) must be of legal age (determined by the state of his or her residence); and 2) must be at his or her full mental capacity at the time he or she signs the contract. Moreover, the party signing must have the actual, inherent or apparent authority to bind the party on whose behalf he is signing the contract.
- A contract should always be dated. This is especially important in the contract negotiation stage, to ensure that the most current version of the contract is signed by each party.

### **C. General Approaches to Consider**

- Careful, informed contract review is an essential aspect of contracting.
  - Identify any provisions that need to be rewritten, changed, or deleted.
  - Identify which person(s) are authorized to make binding commitments on behalf of the organization. It is permissible to request a letter from an organization confirming the person's authority.
  - Identify any missing provisions that need to be added.
  - Check each provision to be sure that all terms have been clearly defined and explained.
  - Each important topic in a contract should be covered separately with its own header and clause and be sufficiently detailed.
- Careful consideration, sound legal advice, and clear contract language will enable both sides to understand and meet their obligations.
- All parties are encouraged to seek appropriate legal counsel prior to the execution of any contract. Attorneys serve a valuable role in reviewing contracts by assuring the legal soundness of the language, avoiding conflicting wording, and preventing liability loopholes.
- All contracts should be in writing. While some (but not all) oral contracts may be legally binding, oral contracts are not recommended. Oral representations should not be relied upon, as it is easy to "forget" what was agreed to. Parties to an oral contract often have different recollections of contract details, leading to disputes.
- Full contact information for each party including company/organization name, contact person's name and title, mailing address, phone, fax, and e-mail address should be included in contracts.
- After the contract is signed, regular communication between the parties regarding potential changes in the scope of the event may help the parties address potential problems before they arise.
- Both parties should have a fully executed (signed) version of the final contract. Retaining a record of contracts being sent or received is important.
- All information and correspondence related to any contract should be retained at least until the satisfactory conclusion of the contract or event, including full and final payment. Such information should be purged in accordance with government regulations and organizational document-retention policies. (This includes notes on negotiations, meetings, telephone calls, emails, faxes, etc. between parties as well as drafts of the contract).

- Persons signing contracts should indicate their authority with their signature. For example, “ABC Association, by Jane Smith, its authorized agent” (if Jane Smith is an independent planner, for example) or “by Jane Smith, director of events, ABC Association” (if Jane Smith is an employee, for example).
- Contracts are about allocating risks between and among the parties. Business conditions may determine how the risks are allocated in the contract during the negotiations.
- While each party should strive to protect his or her own interests (or those of a client or employer) in the negotiation process, each party should negotiate in good faith.
- Contracts should be straightforward, understandable, and clear to anyone who reviews them. When needed, diagrams or examples should be included to make sure that needs are clear. Contract language should be as clear and specific as possible so that both parties know exactly to what terms they have agreed. Legalese that isn’t understandable should be rewritten in plain language that is clear to both parties.

#### **D. Understanding Contract Terms, Definitions, and Clauses**

While industry professionals are not expected to be legal experts, it is highly recommended that they have a fundamental understanding of common contractual terms, definitions and clauses. Industry professionals will be more effective and efficient in handling contract negotiations and knowing how to review contracts to protect their interests when they are familiar with such language.

The following section in no way covers everything that event professionals need to know, but is intended to address the most commonly referenced terms, definitions, and clauses. All of these terms are outlined in the APEX Glossary found at <http://www.conventionindustry.org/glossary>. In addition, many other websites provide legal definitions of industry-related terms.

#### **E. Contract Terms**

The following are brief descriptions of the key terms or terminology used by industry professionals. This section is provided so that industry professionals may have a quick reference to many of the frequently used terms, clauses, and industry lingo related to contracts and agreements.

**Actual Damages (may also be referred to as Compensatory Damages)** – Compensation for actual injuries or loss (Black’s Law Dictionary). For hotels, these may include unsold meals, unsold sleeping rooms, and losses on ancillary outlets (e.g., gift shop, spa, golf course, etc.). For conference centers, these may include unsold packages and losses on ancillary outlets. For meeting organizers, these may include additional costs associated with relocating a meeting, if possible, or losses (e.g., refunded registration fees, travel expenses that are not recouped, etc.) if relocation is not possible. The law automatically will award an injured party actual damages in the event of a breach of contract if there is no damages clause in the contract.

**Addendum/Amendment** – A document that is added or to be added; a list or section consisting of added material. In the industry, an addendum is sometimes used to add provisions to a party’s “standard” contract. If used to modify a contract which has already been signed by all parties, it may be called an amendment, additional consideration may be necessary, and it must be signed by all parties.

**Agent** - A person authorized by another (principal) to act for or in place of him. (Black’s Law Dictionary). For example, an employee granted the authority by his or her employer is acting as an agent when they sign a contract for the employer.

**Americans with Disabilities Act (ADA)** - A federal law that forbids discrimination against persons with disabilities, defined as a condition impacting an individual’s major life function. Specifically, Title III of the ADA requires that places of public accommodation such as hotels, conference centers, convention centers, arenas, theaters, etc. must be accessible to persons with disabilities. The ADA applies to both event organizers and to facilities. The facility is generally responsible for public areas, sleeping rooms, rest rooms, etc., and the event host is responsible for function room layouts and accommodating special needs (e.g., providing a sign language interpreter or materials in large print), although specific responsibilities may be allocated in the contract.

**Anticipatory Breach** - A breach of contract before performance is due.

**Arbitration** – A private process of dispute resolution used as an alternative to litigation in court. A neutral third party (arbitrator) or a panel of arbitrators renders a decision after a hearing at which both parties have an opportunity to be heard. Where arbitration is voluntary, the disputing parties select the arbitrator who has the power to render a binding decision. Both parties must agree to arbitration before it can be used unless required by applicable law. Several organizations, including the American Arbitration Association, the International Chamber of Commerce, and JAMS, handle arbitration claims.

**Assignment** - The act of transferring to another all or part of one's property, interest, or rights (Black's Law Dictionary), e.g., to the new owner of a hotel property or conference center or the new owner of an exhibition. In event contracts, there is sometimes a clause that expressly allows or forbids the assignment of the contract to another party.

**Attrition – Guest Room Attrition** - The difference between the contract commitments and the actual number of sleeping rooms utilized or revenue generated. An "attrition clause" defines the extent of the group's liability for failing to fulfill its minimum commitments and may contain numbers or formulas for determining the damages owed, if any.

**Attrition – Food and Beverage Attrition** - The difference between the actual food and beverage covers paid for or the total dollar amount spent on food and beverage and the number or formulas agreed to in the terms of the facility's contract. This situation is commonly addressed in Attrition/Performance Clauses

**Attrition – Package** - At conference centers, the difference between the contracted number of packages (CMP, DMP or other) or package revenue and the actual number of packages utilized or package revenue generated. This situation is commonly addressed in Attrition / Performance Clauses at conference centers.

**Authority** – Permission; right to exercise the power delegated by a principal to its agent. (Black's Law Dictionary)

**Block** – 1) Total number of sleeping rooms (or, at a conference center, packages) reserved for an event. 2) Number of rooms, seats, or space reserved in advance for a group. 3) Assignment of space.

**Breach** – A failure to perform when performance is due, or the interference with the other party's performance. For example, if a hotel has committed to provide 500 rooms but only 200 rooms are available on that day of check-in, the hotel is in breach. As another example, if a group is required to pay a deposit by May 1 and does not do so, the breach occurs, on May 1. Some failures to perform may be excused under legal doctrines, such as Force Majeure.

**Cancellation Clause** - A provision in a contract that outlines damages to be paid to the non-canceling party if cancellation occurs. Notwithstanding any language in the contract to the contrary, a party may always cancel a contract; the issue is whether damages are owed for the cancellation and, if so, how much.

**Capacity** – Legal qualification, competency, power or fitness (Black's Law Dictionary); e.g., a party's capacity and authority to enter into a contract may be questioned.

**Complete Meeting Package (CMP)** – A per person plan which typically includes conference rooms, sleeping rooms, three meals, continuous refreshment service, conference services and certain conference technology (A/V).

**Concession(s)** – 1) Contractual agreement where one party provides something of value to the other party in exchange for something else, pending certain conditions (APEX Glossary). 2) The voluntary yielding to a demand for the sake of a settlement; a rebate or abatement (Black's Law Dictionary). 3) Merchandise or refreshments sold on site to individuals in conjunction with an event.

**Condition of Premises** - A Condition of Premises clause addresses the issue of the condition of the property and any material deterioration or damage to the facility that occurred between the time that the contract was



signed and the commencement of the event. It may provide remedies or procedures to apply in the event of a change in condition. This clause is rarely used for short term bookings.

**Consideration** – The price paid for the contractual bargain. The “price” may be in money or may be a promise to do or not to do something. Consideration is an essential element to forming a valid contract.

**Contract** – An agreement between two or more parties creates in each party a duty to do or not do something and a right to performance of the other's duty or a remedy for breach if the other party fails to perform its duty. If there is an offer, acceptance of the offer, and consideration, there is a contract, regardless of the name given to the document.

**Day Meeting Package (DMP)** – A per person plan which typically includes conference rooms, lunch, continuous refreshment service, conference services and certain conference technology (A/V). No sleeping rooms are utilized under a DMP.

**Disclosure** – To reveal knowledge; to free from secrecy or ignorance or make known (Black's Law Dictionary). In the industry, a disclosure clause may require a party to disclose issues to the other party or to third parties, including issues like rebates, surcharges, or commissions.

**Disputed Charges** – Sets forth the method (e.g., mediation, arbitration, litigation) to be used by the parties in resolving contractual disputes and may provide procedures (e.g., venue and choice of law) to be utilized in the resolution of disputes.

**Dispute Resolution** – The means by which the parties agree to resolve any contract disputes. This resolution may include litigation, arbitration, mediation, or other means agreed to by the parties to the contract.

**Early Departure Fee** – A set fee charged to a hotel or conference center guest who checks out of the hotel or conference center earlier than the original departure date indicated in the reservation or verified at check-in.

**Excuse of Performance** – Circumstance in which a contractual obligation is excused due to a factor not within the control of either party which makes performance impossible or commercially impracticable and the risk of which has not otherwise been allocated. See also Force Majeure, Frustration of Purpose, Termination.

**Force Majeure** – Superior force; problem beyond the anticipation or control of the party to a contract. See also Excuse of Performance, Frustration of Purpose, Termination.

**Frustration of Purpose** – Performance of the contract remains possible but the expected value of performance to the party seeking to be excused has been destroyed due to reasons beyond the excused party's control.

**Function Space** – An area in a facility that can be reserved by an individual or entity to hold events.

**Impracticable (Impracticability)** – 1. A fact or circumstance that excuses a party from performing an act, especially a contractual duty, because (though possible) it would cause extreme and unreasonable difficulty. For performance to be truly impracticable, the duty must become so much more difficult or much more expensive to perform that it becomes virtually impossible, and this difficulty or expense must have been unanticipated; not all increases in expense or difficulty rise to the level of “impracticability.”

**Indemnification (Hold Harmless)** – Indemnification is a contractual promise in which one party (called the “indemnifying party”) agrees to protect another party (called the “indemnified party”) from liability as a result of a third party claim based on the negligent or wrongful action or omission of the indemnifying party or its employees, contractors, or agents. This promise is sometimes referred to as a “hold harmless” obligation. An indemnification obligation would typically extend to the payment of monetary damages and reasonable legal fees and expenses. The exact nature of a party's indemnification obligation will be determined by the language contained in the contract.

**Licenses, Permits & Insurance** – These clause(s) may enumerate the specific licenses, permits, and insurance that a party to a contract must have; may include a statement that the party has all licenses, permits,

and insurance required by the contract and/or by law to perform the services or provide the goods that are the subject of the contract.

**Liquidated Damages** – An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches (Black’s Law Dictionary). If parties to a contract agree upon liquidated damages that will be paid in the event of a breach, the terms of the clause will be used to determine the amount owed. Unless the clause requires some proof of actual loss or mitigation, the injured party is not required to prove actual damages.

**Liquor Liability** – This clause apportions the risk and liability for any injury or damages caused by the negligent or wrongful sale or service of alcohol; sometimes part of Indemnification (Hold Harmless).

**Litigation** – Litigation is the broad term for the process of resolving a dispute filed with a court. It encompasses the initial complaint and answer, discovery of varying degrees, motions to the court, trial and appeal.

**Material breach of contract** - A breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages. Whether a breach is significant enough to be considered “material” depends on the particular circumstances.

**Mediation** – Private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties (Black’s Law Dictionary).

**Mitigation of Damages** – A party seeking actual damages for a breach of contract must use reasonable efforts to alleviate the effects of the injury or breach, or else be precluded from recovering the damages that could have been mitigated. Mitigation does not apply in a contract that includes a Liquidated Damage clause unless the clause specifically requires mitigation.

**Non-Performance** – Neglect, failure, or refusal to do or perform an act stipulated to be done. The failure or neglect to render performance called for in a contract, rendering the non-performer liable in damages (Black’s Law Dictionary).

**Option Status** – An option is a statement which gives one party the power to accept an offer (proposed contract) for a limited time. An option is not legally binding if no consideration has been paid for this offer. A facility sends a contract with an option for the organizer to sign and return the contract by a certain date or the space may be released by the facility. Option status may also be used in a situation where two groups are interested in the same dates and space at a facility.

**Overbooking** – The practice of confirming more seats or rooms than are actually available.

**Pick-up Reports** – This report advises the group or event organizer of the number of guest rooms (or, at a conference center, packages) reserved out of the group block as the event dates approach, and after the conclusion of the event provides the number of guest rooms (or packages) actually used out of a group room block.

**Performance** – The fulfillment or accomplishment of a promise, contract, or other obligation according to its terms, relieving such person of all further obligation or liability there under (Black’s Law Dictionary).

**Preamble** – An introductory statement at the beginning of a document that includes identification of the parties, an affirmative statement of intent to enter into a contract, performance dates and the name or title of meeting or event that is the subject of the contract. Also called “Recitals” or “Background” in contracts.

**Relocation** – Establishes the consequences to the housing facility of denying accommodation to a guest holding a sleeping room reservation either through a group or individual guest guarantee.

**Remedy** - The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief. (Black's Law Dictionary).

**Renewal** – In industry contracts, this clause specifies under what circumstances and terms a contract may be renewed.

**Self-Insurance** - A plan under which a business maintains its own special fund or has sufficient assets available to cover any loss. Unlike other forms of insurance, there is no contract with an insurance company. (Black's Law Dictionary).

**Severability Clause** – A clause that states that if one or more provisions of a contract are found invalid or unenforceable by a court, the remaining provisions will still be enforceable if the parties intent can be carried out.

**Termination Clause** – Termination clauses are provisions that excuse non-performance of the contract without liability due to occurrences or events specified in the contract, making the contract void as if it had never been signed. For example, Force Majeure protects the parties in the event that the contract cannot be performed due to enumerated causes which are outside the control of the parties and can not be avoided by exercise of due care (Black's Law Dictionary). Note that termination of the contract may also occur as a matter of law where, for example, circumstances beyond a party's control make it impossible, illegal or commercially impracticable to perform the contract. Termination may also be addressed in clauses entitled "Force Majeure," "Excuse of Performance," or "Frustration of Purpose."

**Waiver** – An express waiver is the voluntary and intentional relinquishment of a legal right, including a right created by a contract. In order to waive, a party must have both knowledge of the existing right and the intention of forgoing it. A waiver may also be implied where a party's decisive, unequivocal conduct reasonably allows the inference of an intent to waive (Black's Law Dictionary). Waiving one contractual right does not necessarily waive all rights conferred by the agreement.

**Walk** – Guest holding confirmed sleeping room reservation is denied accommodations at the housing facility where the reservation is held upon arrival and is relocated to another housing facility. See also Relocation.

## ***F. Contract Clauses***

All industry professionals must be aware of several contract clauses when negotiating housing, facility and convention center contracts. Some clauses are used more frequently than others. However, it is important for industry professionals to be familiar with and aware of all of the following housing, facility and convention center contract clauses. Note that this is not an all-inclusive list, nor is it intended to establish or reflect industry standards, but does reflect voluntary accepted practices.

### **1. Americans with Disabilities Act (ADA) Requirements**

**Definition:** The Americans with Disabilities Act (ADA) is a federal law that forbids discrimination against persons with disabilities, defined as a condition impacting an individual's major life function. Specifically, Title III of the ADA requires that places of public accommodation such as hotels, conference centers, convention centers, arenas, theaters, etc. must be accessible to persons with disabilities. The ADA applies to both event organizers and to facilities. The facility is generally responsible for public areas, sleeping rooms, rest rooms, etc., and the event host is responsible for function room layouts and accommodating special needs (e.g., providing a sign language interpreter or materials in large print), although specific responsibilities may be allocated in the contract.

**Purpose:** Specifies responsibilities of each party (facility and event organizer) for making an event accessible to attendees with disabilities under the requirements of the ADA. An "Americans with Disabilities Act Clause" may also require a facility to indicate that it is in compliance with the ADA and that it is committed to "reasonably" accommodating persons with disabilities and special needs.

### ***Approaches to Consider:***

- The ADA applies to both event organizers and to facilities. The facility is responsible for public areas, sleeping rooms, rest rooms, etc., and the event host is responsible for function room layouts and accommodating special needs (e.g., providing a sign language interpreter or materials in large print).
- Facilities may be exempt (“grandfathered”) under the ADA depending on the date of construction and any renovations or alterations made to the facility.
- Event organizers should ask if attendees have “special needs” on registration forms, exhibitor applications, or other registration materials. If an attendee responds that he or she does have special needs, the event professional has a responsibility to be proactive and find out what type of accommodation the attendee is requesting. Event organizers must provide a “reasonable accommodation” to the attendee, but the accommodation may not be the exact accommodation requested by the attendee. If in doubt, contact legal counsel to determine what is “reasonable.”
- It is important that all parties inform one another when they become aware of an attendee with a disability so that all parties have an opportunity to provide a reasonable accommodation as required by law.

## **2. Assignment**

**Definition:** The act of transferring to another all or part of one’s property, interest, or rights (Black’s Law Dictionary), e.g., to the new owner of a hotel property or conference center or the new owner of an exhibition. In event contracts, there is sometimes a clause that expressly allows or forbids the assignment of the contract to another party.

**Purpose:** Contracts are assignable unless there is a clause in the contract that expressly forbids the assignment or requires the other party to consent before assignment is valid. State law may affect the obligations of the assigning party.

### ***Approaches to Consider:***

- The parties can include a clause that may stipulate whether the parties to the contract may or may not assign their rights or responsibilities to a third party and whether consent may be required.

## **3. Attrition – Guest Rooms**

**Definition:** The difference between the contract commitments and the actual number of sleeping rooms utilized or revenue generated. An “attrition clause” defines the extent of the group’s liability for failing to fulfill its minimum commitments and may contain numbers or formulas for determining the damages owed, if any.

**Purpose:** Establishes the obligation of the group to meet contract commitments. May establish a method or formula for determining damages.

### ***Approaches to Consider:***

- An attrition clause is not required in order to have a binding contract. If there is no attrition clause, the obligations of the parties will be determined as a matter of law. The absence of an attrition clause does not necessarily mean that a party does not owe damages.
- Ancillary revenues and meeting room rental may be considered in the attrition calculations or may be the subject of a separate clause.
- Negotiated concessions may be impacted by failure to achieve contract commitments.
- Attrition clauses may calculate attrition on a “per night” or “cumulative” basis.

- Attrition clauses should address the issue of whether attrition calculation for commissionable rates will be based on the commissionable room rate or “net” the commission.
- Any attrition clause should clearly define what charges are included and how they are calculated.
- Whether attrition damages are taxable depends on the law of the state, county, or municipality in which the housing facility is located.
- Government related entities may be limited by law in their ability to agree to attrition obligations.
- At a conference center, an attrition clause may be based on the difference between the committed number of CMP, day meeting packages or total packages (or the contracted package revenue) and the actual number of packages used or package revenue realized by the center.
- If the contract contains any provision allowing an adjustment of the room block, it should be coordinated with the attrition clause, e.g., does the adjustment create a new room block to which the attrition allowance is applied or is the adjustment part of the allowable attrition?
- Attrition clauses often include provisions for liquidated damages. That is, the parties expressly stipulate the damage amount or calculation method in the contract.
- If the parties agree to reduce or mitigate the damages based upon the facility’s ability to resell unused rooms, which is not required when the parties have agreed to liquidated damages, the process of calculating the resale or mitigation credit should also be clearly defined.

#### **4. Attrition - Food & Beverage (F&B)**

**Definition:** The difference between the actual food and beverage covers paid for or the total dollar amount spent on food and beverage and the number or formulas agreed to in the terms of the facility’s contract. This situation is commonly addressed in Attrition/Performance Clauses.

**Purpose:** Identifies the obligation of the group to meet minimum attendance or revenue commitments for food and beverage and may include a formula or method for determining damages that will be paid in the event that the minimums are not achieved. Like a room attrition clause, a food and beverage attrition clause addresses the performance of the group in terms of catered food and beverage.

##### ***Approaches to Consider:***

- A food and beverage attrition clause is not required in order to have a binding contract. If there is no attrition clause, the obligations of the parties will be determined as a matter of law.
- Food and beverage attrition clauses may be based upon a minimum dollar amount of spending for the entire event rather than on a specific food and beverage agenda or attendance at functions.
- This type of clause may be called different things, such as “Food and Beverage Attrition,” “Food and Beverage Performance,” or “Food and Beverage Guarantee.”
- The clause should clearly specify the amount or method of calculating the damages that will be paid in the event that the agreed upon minimums are not met.

- The clause should specify whether the calculation is inclusive or exclusive of tax and gratuities and/or service charge.

## **5. Audit**

**Definition:** An audit is examination and review of records pertaining to an event to gather information and confirm billing. For instance, comparison of a group's attendee registration list with a hotel's in-house guest list is an audit. This process is not the same as an audit as defined by accounting practices.

**Purpose:** The primary purpose of an audit is to gather accurate information to verify contract performance and plan for future events. For example, a group may be interested in determining how far in advance of an event attendees typically make hotel reservations. An audit may be used to confirm that all of a group's attendees' reservations have been credited toward the Group room block pick up.

### ***Approaches to Consider:***

- Various privacy laws and business practices may impact a hotel's ability to release personal information about its guests to third parties, including groups. Similarly, those laws may impact a group's ability to release such information to a hotel. The audit process must take into account these privacy obligations and practices, such as through the use of a confidentiality provision.
- The parties may agree in their contract whether and how attendees who reserved rooms outside the official group block will be credited to the group pick up and, if so, whether and how commissions, rebates, or similar payments will be made and credited to the group pick up.
- Audit provisions may include gathering and providing information on:
  - Room block versus room pick-up
  - Food and beverage pick up
    - Meeting package block vs. package pick-up
  - Ancillary revenue
  - Registrants
  - Exhibitors
  - Vendors
  - Box office
- Careful documentation of all communications and commitments, especially any changes or amendments to original agreements, is helpful in ensuring a fair comparison in the audit process.
- The audit clause should indicate how the cost of the audit (if any) will be allocated.

## **6. Cancellation**

**Definition:** A cancellation clause is a provision in a contract that outlines damages to be paid to the non-canceling party if cancellation occurs. Notwithstanding any language in the contract to the contrary, a party may always cancel a contract; the issue is whether damages are owed for the cancellation and, if so, how much.

**Purpose:** Defines what happens if one of the parties cancels the contract for reasons other than those specified in the contract for cancellation without liability, termination or as permitted by law. (See the Termination clause.) Cancellation clauses usually contain provisions for notice of cancellation as well as damages to be paid by the canceling party.

***Approaches to Consider:***

- Define the term “Cancellation” to differentiate it from “Attrition” (under-performance) and “Termination.”
- Clearly set forth the obligations of the parties in order to reduce the need to resort to litigation or arbitration.
- The absence of a liquidated damages provision does not mean that either or both parties may cancel without liability, but means that the canceling party is liable for the other party’s actual damages to be proven in court or through arbitration.
- Establish what specific cancellation fees or damages will be due, or how they will be calculated using a specific formula with all elements defined.
- Establish when payment of cancellation fees or damages is due and payable.
- While cancellation need not necessarily be in writing, it is advisable for the canceling party to do so (and for the non-canceling party to confirm in writing) to establish a clear record.

**7. Commissions, Rebates, Assessments**

***Definition:*** Commission – a fee or percentage of the proceeds paid to a third party (Webster’s Dictionary). Rebate - to give back part of an amount paid (Webster’s Dictionary). Assessment - to impose a fine, tax or special payment on a person or property (Webster’s Dictionary).

***Purpose:*** Specify the terms and conditions under which commissions, rebates or assessments, if any, will be calculated and paid.

***Approaches to Consider:***

- State whether room rates (or, at a conference center, packages) are commissionable or net, non-commissionable. In the case of a package plan, specify whether the commission is based on the room portion or the total plan.
- Include in the contract the commission, rebate or assessment percentage or amount when the room rate or package rate to be charged to attendees includes a commission, assessment or rebate to be paid to either the sponsoring group or a third party such as a travel agent or independent event planning or site selection organization, or housing bureau.
- Identify whether rates will include commission/rebate at the earliest stages of negotiation, and if so a clause should be included in the agreement or otherwise be in writing. This clause explains whether commissions, rebates or assessments are to be paid, to whom and addresses disclosure of the commission, rebate or assessment.
- Examine the legal and ethical requirements regarding disclosure to attendees of commissions, rebates, and assessments.
- Include to whom and when the commission will be paid, and when and under what conditions that recipient may be changed.
- Consider including a provision specifying that no commissions will be paid that have not been disclosed to and agreed by the group.

## 8. Concessions

**Definition:** 1) Contractual agreement where one party provides something of value to the other party in exchange for something else, pending certain conditions (APEX Glossary). 2) The voluntary yielding to a demand for the sake of a settlement; a rebate or abatement (Black's Law Dictionary). 3) Merchandise or refreshments sold on site to individuals in conjunction with an event.

**Purpose:** Concessions may be offered by a hotel or conference center to a group as an incentive for good performance or as an incentive for a group to choose that hotel or center for its meeting.

**Approaches to Consider:**

- All concessions agreed to should be specified.
- The amount or type of concessions may be determined by a group's performance (e.g., achieving a certain percentage pick up of the room or package block) or may be straight concessions that the group gets regardless of performance.
- If concessions are tied to performance, the contract may specify how and which concessions will be negated or recomputed based on certain levels or percentages of pick up.

## 9. Condition of Premises

**Definition:** A Condition of Premises clause addresses the issue of the condition of the property and any material deterioration or damage to the facility that occurred between the time that the contract was signed and the commencement of the event. It may provide remedies or procedures to apply in the event of a change in condition. This clause is rarely used for short term bookings.

**Purpose:** Protects the organizer should the condition of the contracted portion and/or public space of the facility premises materially deteriorate between the time the event is booked and when it is held in a way that materially impacts the group.

**Approaches to Consider:**

- When employing this clause, consider establishing objective measures which would include material, negative changes from the quality at time of contracting and which exclude normal aging and wear and tear.
- For some events (e.g., major exhibitions, productions, etc) consider whether there should be a walk-through inspection of function space immediately before and after an event to establish the condition of the premises. A checklist may be appropriate.

## 10. Construction/Renovation

**Definition:** A construction/renovation clause addresses the situation in which construction or renovation of the portions of the facility to be used by the group may materially disrupt or interfere with the contracted event and the extent to which the disruption (e.g., "material") will trigger a remedy.

**Purpose:** Specifies the party's obligations when the facility will be undergoing renovation or construction during the group's meeting dates which will materially interfere with the contracted event.

**Approaches to Consider:**

- Specify that facility will notify the group in the event construction or renovation of the portions of the facility to be used by the group, including public space or those which may be substituted by the facility, is scheduled, if that construction or renovation will materially disrupt the group's use of the facility and establish communication requirements as well as a remedy.



- Use of terms like “material” disruption or interference are subject to various interpretations and the parties may negotiate more objective measurements, e.g., construction costs above a specified dollar amount.

## 11. Convention Center/City Booking

### a. Destination Booking Agreements/Letters of Intent

**Definition:** Establishes an understanding between a Destination Marketing Organization/Convention & Visitors Bureau (DMO/CVB) and event organizer to utilize facility space and hotel rooms in the city over specified dates.

**Purpose:** Pre-establishes the understanding between a city and an event organizer to bring an event to that destination prior to the negotiation and signing of hotel, convention center and/or other facility contracts. This is particularly important because many centers will only issues contracts in a shorter time period than is needed for hotel and other facility contracts.

#### **Approaches to consider:**

- The event organizer should clearly understand the relationships between DMO/CVB, center and other facilities. It is also important to understand the types of documents used by these entities to hold, confirm and contract for space and rooms as they may vary from destination to destination.
- The DMO/CVB’s primary responsibility is to attract meetings and events to the destination for booking at hotels, convention centers and other facilities, while the center provides the space, utilities, and services for the events in their facility. The DMO/CVB obtains a booking agreement or letter of intent with the event organizer stating they will have selected that destination, subject to successful contract negotiation with specific hotels and facilities.
- The booking agreement may be a non-binding agreement between the DMO/CVB and the event organizer which temporarily reserves the dates of the event with the hotels and facilities until contracts are signed between all parties.

### b. License Agreement Provisions for Convention Centers and Other Facilities Without Sleeping Rooms

**Definition:** A limited purpose short term agreement to use a convention center, stadium, arena, performing arts center, auditorium, or amphitheater for an event.

**Purpose:** To contract for a specific event to utilize defined space at a facility for a specified period of time to include event move in/set up, actual event and event move out/tear down.

#### **Approaches to consider:**

- If hotel rooms and additional space are required they must be covered with separate contracts.
- While every convention center uses it own form of license agreement, the following are provisions common to many of them. Instead of including every facility rule or requirement in the primary license document, the facility may issue a set of rules and regulations that is incorporated by reference into the license agreement

#### **List of Commonly used License Agreement Provisions**

- Americans with Disabilities Act
- Assignment and Delegation
- Cancellation
- Choice of Law

- Compliance with Facility Regulations
- Compliance with State & Federal Laws
- Condition of Facility
- Concessions and Novelties
- Copyright Infringement/Music Licensing
- Discretionary Matters
- Dispute Resolution
- Entire Agreement
- Exclusive Service Contractors
- Force Majeure
- Indemnification and Hold Harmless
- Insurance
- Limitations on Liability for Facility
- Name of Event & Purpose
- Notice of Default
- Period of Time and Use of Facilities
- Radio & Television Broadcasting
- Remedies Upon Default
- Rental Amount
- Reservation Deposit
- Seating Capacity
- Severability
- Services Provided
- Security
- Simultaneous Events and Common Areas
- Stage Restrictions
- Standards of conduct, with right to eject
- Termination of Agreement
- Ticketing and Box Office
- Vacation of Premises
- Waiver of Subrogation

### **Building Rules and Regulations**

- Be aware of rules and regulations before signing a license agreement.
- A facility's rules and regulations will include numerous details that are not in the license document, but are binding because they are incorporated by reference, unless otherwise negotiated.
- Rules and regulations may incorporate all the services available at the facility, and may or may not specify the additional charges imposed depending on which services are needed by the tenant or user.

### **Common Rules and Regulation Topics**

- ADA services & equipment
- Animals
- Alcoholic beverage policy
- Business service center
- Booth cleaning
- Common areas
- Crate storage
- Dressing rooms
- Exclusive concessions

- Floor dimensions & diagrams
- Floor plan requirements
- Floor weight limits
- Facility equipment use
- HVAC systems
- Hanging of signs, banners and posters
- Hazardous waste
- Health and safety laws
- Helium balloons
- Movement of musical equipment
- Hours of operation
- Inspection of the facility
- Intermissions during performances
- Life, health, and safety policy
- Orchestra pit
- Property damage
- Rehearsals
- Scoreboard and jumbotron use
- Security procedures
- Service contractors
- Smoking policy
- Stage restrictions
- Tax issues (state and municipal information)
- Truck marshalling
- Union rules
- Ushers
- Utility rates and order forms (for air, water, gas, and electric)
- Waste removal

## 12. Disclosure

**Definition:** To reveal knowledge; to free from secrecy or ignorance or make known (Black's Law Dictionary). In the industry, a disclosure clause may require a party to disclose issues to the other party or to third parties, including issues like rebates, surcharges, or commissions.

**Purpose:** Ensures that key financial and other terms are made known to both parties at the time of contract signing, and not later.

### **Approaches to consider:**

- Facility must disclose any mandatory fees, surcharges or exclusive contractors that materially impact the group.
- Facility must disclose any policies that are known at the time of contracting to materially impact the event.
- Subsequent fees may be imposed if they are mutually agreed upon.
- Where material policies are contained in another document referred to or incorporated into the contract, that document should be reviewed by the planner prior to executing the contract.
- Commissions/rebates/assessments – see section #7

### 13. Dispute Resolution

**Definition:** A Dispute Resolution Clause sets forth the method (e.g., mediation, arbitration, litigation) to be used by the parties in resolving contractual disputes and may provide procedures (e.g., venue and choice of law) to be utilized in the resolution of disputes.

**Purpose:** To specify in advance of any contract dispute the method of dispute resolution to be utilized by the parties.

**Approaches to Consider:**

- Consider mediation
- Consider arbitration
- In the absence of any specific dispute resolution clause, litigation is always available to an aggrieved party. If litigation is selected, consider whether the parties wish to waive their ability to have a jury (rather than a judge) decide the case. Legal counsel should be consulted to determine which dispute resolution method is best for the party.
- Consider including language that awards attorneys' fees and costs to the prevailing party. In many jurisdictions, attorneys' fees are not automatically awarded to the prevailing party in a contract dispute.
- The location (aka venue) of the dispute resolution process should be specified in the contract.

### 14. Function Space

**Definition:** Function Space is an area in a facility that can be reserved by an individual or entity to hold events.

**Purpose:** Identifies the function space that an event is contracting for and all associated costs.

**Approaches to Consider:**

- Specify the dates and times for which the space is being held, including set-up times and 24-hour holds.
- Specify dates/times for actual events, if different from dates/times when space is being held.
- Specify room names (or locations on a diagram) and the circumstances under which they can be changed, e.g., at the discretion of the hotel or only with the consent of the group.

### 15. Guest Room Accommodations/Rates

**Definition:** Guest Room Accommodations will be the number and type of rooms to be held by a housing facility for a group. It includes negotiated room rates plus taxes and/or other room fees, or explains how rates will be calculated if the contract is signed several years out. It includes the reservation method and the cut-off or reservations due date, and defines what will happen to rooms not reserved within the block after the reservation cut off date.

**Purpose:** Ensures that the facility reserves the required number of sleeping rooms out of its inventory and secures them for the contracting group at a negotiated rate.

**Approaches to Consider:**

- Whether one or several clauses, the Guest Room Accommodations language may include:
- Total number of room nights to be held for the event,

- Arrival/departure pattern,
- Negotiated group rates by room type, view or run of the house.
- Cut-off date or reservations due date,
- Reservations procedures,
- Complimentary rooms formula and whether unused complimentary rooms may or may not be credited to the master account, (may be found in a separate clause in the contract),
- For meetings booked far in advance, consider including terms for reviewing any change to the room block,
- All room taxes, surcharges and extra person charges, and other applicable fees,
- Rates applicable to rooms booked after the cut-off or reservations due date,
- Whether reservations booked on either side of the room block dates will be counted in total, cumulative room block and whether group rates are applicable,
- If there is an early departure fee, state who will advise each guest of the policy; consider whether fees count toward attrition fees, if any,
- How room rates will be calculated if the contract is signed prior to the establishment of final room rates.

## **16. Indemnification (Hold Harmless)**

**Definition:** Indemnification is a contractual promise in which one party (called the “indemnifying party”) agrees to protect another party (called the “indemnified party”) from liability as a result of a third party claim based on the negligent or wrongful action or omission of the indemnifying party or its employees, contractors, or agents. This promise is sometimes referred to as a “hold harmless” obligation. An indemnification obligation would typically extend to the payment of monetary damages and reasonable legal fees and expenses. The exact nature of a party’s indemnification obligation will be determined by the language contained in the contract. As an example of indemnification, if a housing facility or convention center is sued by an attendee who is injured at an event due to the fault of the group, an indemnification clause might require the group to defend the lawsuit against the facility.

**Purpose:** Requires a party (as the “indemnifying party”) to protect the other (the “indemnified party”) and pay for any loss or damage incurred by the indemnified party for any negligent or wrongful action or omission of the indemnifying party or other agreed upon circumstances.

### ***Approaches to Consider:***

- In some cases, this obligation may require the indemnifying party to engage an attorney and affirmatively defend the third party claim.
- Because some states provide for indemnification as a matter of law, and/or because parties can protect themselves against risk through insurance, some hotel and conference center contracts do not include indemnification clauses.
- If the contract contains an indemnification clause, the parties may be willing to indemnify each other for losses arising from their own negligent or wrongful actions or omissions or the negligent or wrongful actions or omissions of their agents and contractors.
- Many government related entities may be unable to agree to indemnify due to state or local laws.
- Different degrees of negligence (e.g., “sole negligence,” “gross negligence”) have different legal meanings, so parties should understand their meanings in the context of the contract.
- Check with your insurer to determine whether the indemnification obligation your party is accepting is covered by your insurance policy. Get confirmation of coverage in writing.

## 17. Insurance

**Definition:** The insurance clause sets out the types and limits of insurance coverage parties to a contract must maintain.

**Purpose:** The clause assures a party that the other party to a contract has the wherewithal to pay for damages or loss for which it is responsible through the purchase of insurance (or maintenance of self insurance) to cover potential liability.

### **Approaches to Consider:**

- Parties should consult with their legal counsel and/or insurance broker regarding policies and coverages required or recommended. These may include, but are not limited to: commercial general liability (CGL), worker's compensation, event cancellation, business interruption, liquor liability, etc.
- Consider the dollar amount of coverage required based upon the event and activity undertaken.
- Consider specifying the minimum dollar amount of insurance to be secured.
- Consider whether any party should be named as an additional insured under any policy.
- A certificate of insurance is evidence that a party has the required insurance policies in force. Parties who are self insured may not be able to provide a certificate of insurance.

## 18. Meeting Packages

**Definition:** Meeting packages are reserved on the same basis as guest rooms at hotels and conference centers. Day Meeting Packages are reserved on the same basis as function space. Both should specify exactly what is included in the per person package and the negotiated rate plus applicable taxes. This section should include the reservation method and the cut-off or reservations due date, after which the facility will return the packages to inventory for group sale.

**Purpose:** Ensures that the hotel or conference center pulls the required number of sleeping rooms and/or meeting rooms out of its inventory and secures them for the contracting group at the negotiated rate.

### **Approaches to Consider:**

- Total number of packages to be held for the event.
- Standard vs. customized package.
- Specification of what is included in the package.
- Arrival/departure pattern.
- Negotiated package rate.
- Amount and terms of deposit.
- Attrition terms.
- Cut-off or reservations due date.
- Reservations procedure.
- Disclosure of all fees, to include early departure fee, no-show fee.
- All taxes, gratuities (whether included in package or extra), surcharges and extra person charges.
- EP (room only) rate for early arrivals and late departures.
- Specification of which charges are to be placed on the master bill and which will be paid by individuals.

## 19. Mitigation of Damages

**Definition:** A party seeking actual damages for a breach of contract must use reasonable efforts to alleviate the effects of the injury or breach, or else be precluded from recovering the damages that could have been mitigated. Mitigation does not apply in a contract that includes a Liquidated Damage clause unless the clause specifically requires mitigation.

**Purpose:** If applicable, mitigation requires that one injured by another's breach of contract must take reasonable steps to reduce the damages, injury, or cost resulting from the breach, and to prevent or avoid additional injury.

### **Approaches to Consider:**

- If the contract does not contain a liquidated damages clause, the non-breaching party is required to mitigate their damages, such as by trying to resell the canceled sleeping rooms or packages (or in the case of a convention center, trying to resell the canceled meeting/exhibit space) or by finding a comparable venue.
- If liquidated damages are not utilized and the injured party does not mitigate, the amount of damages may be reduced by the value of the mitigation that could have occurred. For example, if a group cancels a contract with a hotel, and the hotel does not attempt to resell, the amount of damages awarded to the hotel may be reduced by the estimated resale value of the rooms. If a hotel cancels a group, the group may not be awarded damages that could have been avoided if it had made reasonable efforts to move the event to a comparable alternate facility.
- The mitigating party may be entitled to compensation for the cost of its mitigation efforts.

## 20. Preamble

**Definition:** An introductory statement at the beginning of a document that includes identification of the parties, an affirmative statement of intent to enter into a contract, performance dates and the name or title of meeting or event that is the subject of the contract. Also called "Recitals" or "Background" in contracts.

**Purpose:** In a paragraph at the beginning of the contract, the preamble defines who the contracting parties are, specifies the performance date(s), and clarifies that the parties agree to enter into a contract.

### **Approaches to Consider:**

- The name of the entity listed in the preamble may or may not be the proper name of the responsible party under the contract. For example, the name of the exhibition may not be the same as the responsible party's legal name. Likewise, the name on a facility may not be the name of the owners or management company.

## 21. Relocation (sometimes referred to "Walk Clause" or "Overbooking Clause")

**Definition:** Establishes the consequences to the housing facility of denying accommodation to a guest holding a sleeping room reservation either through a group or individual guest guarantee.

**Purpose:** In the event the housing facility cannot accommodate any attendee with a group or individual guest guaranteed reservation upon their arrival, the clause defines what will be provided to the displaced guest and/or to the group.

### **Approaches to Consider:**

- Accommodations at a comparable housing facility as close as reasonably possible at no charge, or at no additional charge over the contracted room rate, to the guest for some or all of the nights the guest are displaced from the housing facility.
- Complimentary round trip ground transportation between housing facility and the alternate housing facility for each day the guest is denied accommodation.

- Offer to relocate guest back to first available room at the initial housing facility booked. If room becomes available and the guest elects not to return to the housing facility, the housing facility will usually have no further obligations to the attendee and the group.
- Other concessions as negotiated, such as upon return to the housing facility, upgraded accommodations, if available, and a welcome expression from management.
- Credit to the group for any guest denied accommodation toward its room block commitment for purposes of complimentary room credit, attrition and commission.
- As much in advance as possible provide notice to the group of a relocation situation giving the group the opportunity to decide which of its guests will be relocated.

## 22. Signatures

**Definition:** The Signature section of a contract designates the authorized individuals signing an agreement on behalf of the parties.

**Purpose:** Language in this section usually requires the signatories to represent that they have the authority to sign the contract and bind the contracting entity.

### ***Approaches to Consider:***

- Each party should establish policies as to who is authorized to sign contracts on its behalf.
- The parties signature lines should include their name, title, organization and date.
- All parties should receive a copy of the executed (signed by all parties) contract.

## 23. Surcharges and additional fees

*See Disclosure*

## 24. Termination

**Definition:** Termination clauses are provisions that excuse non-performance of the contract without liability due to occurrences or events specified in the contract, making the contract void as if it had never been signed. For example, Force Majeure protects the parties in the event that the contract cannot be performed due to enumerated causes which are outside the control of the parties and can not be avoided by exercise of due care (Black's Law Dictionary). Note that termination of the contract may also occur as a matter of law where, for example, circumstances beyond a party's control make it impossible, illegal or commercially impracticable to perform the contract. Termination may also be addressed in clauses entitled "Force Majeure," "Excuse of Performance," or "Frustration of Purpose."

**Purpose:** Clarifies the circumstances under which a party may terminate the contract without liability.

### ***Approaches to Consider:***

- Address the conditions under which a party may terminate an agreement without liability in case of major unforeseen events which make performance impossible, illegal or commercially impracticable. If the performance of one party is rendered impossible, illegal or commercially impracticable due to an act of God, or another specified unexpected act, then that party's non-performance is excused and cannot form the basis of an action against that party.
- Parties should consult with legal counsel to determine the possible applicability of these conditions.



- Some Termination clauses are written to address the situation where performance is begun but interrupted due to circumstances beyond the control of one or both of the parties. As an example, an event may be held in a hotel but when a tornado flattens the hotel on the second day of the event, the hotel may terminate its obligations for the remainder of the event without liability.
- If reasons for termination beyond “acts of God” are applicable; they should be stated in the contract with specificity (e.g., unavailability of the contracted convention center).

## G. Sample Contract Outline

There is no “industry standard” format or content for contracts, what follows is a sample and is not necessarily applicable to or appropriate for all meetings or events.

### AGREEMENT

Date:

1st Party (Meeting Organizer) Contact Person:

Billing Address:

2nd Party (Facility) Contact Person:

- Part A. Preamble / Option Status
- Part B. Event Details
- Part C. Sleeping Rooms or Packages
- Part D. Function Space
- Part E. Food & Beverage
- Part F. Outside Vendors
- Part G. Concessions
- Part H. Billing Arrangements
- Part I. Termination/Excuse of Performance/ Force Majeure
- Part J. Cancellation and Attrition
- Part K. Indemnification (Hold Harmless)
- Part L. Insurance
- Part M. Dispute Resolution and Governing Law
- Part N. Miscellaneous
- Part O. Notices
- Part P. Assignment
- Part Q. Attachments
- Part R. Authority of Signers
- Part S. Signatures

## V. References

Convention Industry Council’s Project Attrition [http://www.conventionindustry.org/projects/project\\_attrition.htm](http://www.conventionindustry.org/projects/project_attrition.htm) has many ideas and suggestions for dealing with and managing attrition issues.

Blackslawdictionary.com, (2005). <http://www.blackslawdictionary.com>

Convention Industry Council, APEX Industry Glossary, (2004). <http://www.conventionindustry.org/glossary/>

Find Law, (2005). <http://www.findlaw.com/>