

GRIMES LAW OFFICES, LLC

www.GrimesLaw.org

2005 MARKET STREET
SUITE 1120
PHILADELPHIA, PA 19103

Tel: (215) 569-2770
Fax: (215) 569-9788

1025 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, DC 20036

Tel: (202) 327-5470
Fax: (202) 327-5499

CONTRACTS 2.0:

ESSENTIAL MEETING CONTRACT CLAUSES FOR 2011 & BEYOND

Presented By:

JOSHUA L. GRIMES, ESQUIRE

Attorney At Law

GRIMES LAW OFFICES, LLC



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PERSONAL SERVICE, PROFESSIONAL RESULTS

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Tel: (215) 569-2770
Fax: (215) 569-9788

JOSHUA L. GRIMES
Admitted in DC, NJ, PA
E-Mail: GrimesJ@GrimesLaw.org

1025 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, DC 20036

Tel: (202) 327-5470
Fax: (202) 327-5499

BIOGRAPHY OF JOSHUA L. GRIMES, ESQUIRE

Joshua L. Grimes, Managing Attorney of Grimes Law Offices, LLC in Washington, DC and Philadelphia, specializes in serving the hospitality industry. Among his clients are meeting and event planners, corporations, associations, hotels, restaurants, convention and conference facilities, and tour operators.

In his law practice, Mr. Grimes meets the specialized legal needs of hospitality industry professionals. His work on behalf of associations and meeting and event planners ranges from incorporation issues to association governance, attrition mitigation, liquor liability, contract drafting and review, employment issues, and ADA compliance. Mr. Grimes' advice helps planners protect themselves and their organizations from potential risks and damages, and thereby reduce the likelihood that they will face costly legal problems in their work.

Mr. Grimes also represents hotels, tour operators, convention centers and meeting facilities. His work for hotels includes contract negotiation, franchise and management agreements, property sales, labor issues, and civil litigation. Mr. Grimes was in charge of legal matters for the opening of the Pennsylvania Convention Center.

A former aide to ex-Pennsylvania Governor Edward G. Rendell, Mr. Grimes is a member of the Board of Directors of the Academy of Hospitality Industry Attorneys. He is also a member of MPI and the Mid-Atlantic Society of Association Executives.

A frequent author and speaker on hospitality law topics, Mr. Grimes was an Adjunct Professor of Hospitality Law in the **Temple University School of Tourism and Hospitality Management** from 1999-2006. His articles are featured in publications such as *Convene, Corporate Meetings & Incentives, The Meeting Professional, Lodging Hospitality, Successful Meetings, Association Trends, Event Solutions*, and *Mid-Atlantic Events Magazine*.


Mr. Grimes is a **Platinum Series Speaker** for Meeting Professionals International, and a **Best In Class Speaker** for the Professional Convention Management Association. His presentations are frequently offered at chapter meetings of MPI and PCMA throughout the United States and Canada.

Mr. Grimes is a featured speaker at major hospitality industry meetings as well. He recently spoke at **MPI's Gulf Meetings and Events Conference** in Dubai and the **Gulf Incentive, Business Travel, and Meetings Exhibition (GIBTM)** in Abu Dhabi. Mr. Grimes has also presented for the **American Society of Association Executives (ASAE)**, **Meeting Professionals International (MPI)**, the **Professional Convention Management Association (PCMA)**, the **Hospitality Sales & Marketing Association International (HSMIAI)**, the **International Association for Exposition Management (IAEM)**, the **International Association of Assembly Managers (IAAM)**, the **International Special Events Society (ISES)**, the **Association of Collegiate and College Events Directors - International (ACCED-I)**, and the **Canadian Association of Exposition Management**.

Mr. Grimes is a graduate of the University of Pennsylvania and The George Washington University National Law Center. He is admitted to the Bars of Pennsylvania, New Jersey, and the District of Columbia.

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ESSENTIAL MEETING
CONTRACT CLAUSES
FOR 2011 & BEYOND**

JOSHUA L. GRIMES, ESQ.
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Session Objectives

- Identify Cutting-Edge Contracting Issues Affecting the Meetings Industry.
- Draft Contract Provisions to Help Your Business Adjust to the Latest Trends.
- Learn How to Protect Your Meetings Against Unforeseen Future Developments.

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Accountability Laws

- TARP / Federal Stimulus & Sarbanes-Oxley Act.
- Intended to Ensure “Responsible” Spending by Corporations & Associations.
- Mandates Becoming Industry “Best Practices.”

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How Does This Affect Business?

- Many Organizations “Strictly” Follow Rules.
- Funders, Members, and IRS Expect Others to Comply.
- Suppliers Challenged to Meet New Realities of “ROI Spending.”

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Responsible Spending Rules (1)

- Many Companies Adopt “Excessive or Luxury Expenditures” Policies.
- 4 Categories of Expenses:
 - Entertainment or Events;
 - Office & Facility Renovations;
 - Aviation or Other Transportation Services;
 - Similar Items, Activities or Events.
- “Excessive and Luxury Expenditures” Should be Identified for each Organization.

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Responsible Spending Rules (2)

- Identify Types/Categories of *Prohibited* Expenditures.
 - May Include a Threshold Amount Per Item, Activity or Event, or
 - Threshold Amount Per Employee Receiving the Item or Participating in the Activity or Event.
- Identify Types/Categories of Expenditures Requiring *Prior Approval*.
 - May Include Threshold Amounts as Above.

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What To Do (1):

- Understand that Accountability Requirements Are Becoming “Best Practices” Applicable to All Companies & Associations.
- Create Written Meeting, Entertainment & Travel Policies.
 - Focus on Business Rationale For Expenditures.
 - Board of Directors Should Adopt Policies.
 - Post Policies on Website.
 - Consider Alcohol Policy Also.
- Follow Sarbanes-Oxley Practices – Show ROI.

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What To Do (2):

- Draft Contracts that *Work* -- Not Just Papers Full of Fine Print.
- Consider Appearances, Not Just Strict Legal Compliance.
- Create Written Record of Expenditures & Justifications, Including ROI & Competing Bids.
- Preserve Records.

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Role of Suppliers:

- Understand Customers' Accountability Obligations; Instruct Employees.
- Create Practices & Procedures to Assist Customers With Compliance.
 - Compare to Pharma Rules.
- Obtain Customers' Expenditure Policies & Other Policies Applicable to Your Services.

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**Contract Provision – Planners
(Clause #1)**

“Supplier acknowledges that it has been provided with Company’s policies regarding the following: (i) Meetings & Events; (ii) Travel; (iii) Alcohol; and (iv) Conflicts of Interest. Supplier agrees to use reasonable efforts to assist Company in complying with these policies, including providing its goods and services in compliance with such policies.”

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**Contract Provision – Suppliers
(Clause #2)**

“Supplier will use reasonable efforts to assist the Company in complying with its corporate policies as furnished to Supplier; provided, that Supplier will not be liable to the Company or any other party for failure to adhere to the Company’s corporate policies, except due to Supplier’s willful misconduct or gross negligence.”

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Room Rates

- “A La Carte” Pricing.
- Specify What’s Included.
- No Additional Fees Provision.
- Negotiating the Best Rates.
- Pricing Compared to Internet Discounters.

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Sample Extra Charges Provision (Clause #3)

The room rate(s) and other charges and fees specified in this Agreement (plus applicable taxes) shall be the only mandatory fees or charges assessed by the Hotel in order for the Group’s guests to check into a guest room. Unless otherwise agreed by the Group in advance (in this Agreement or elsewhere), the Hotel may not require that a guest pay a mandatory “resort fee”, telephone surcharge, or any other additional amount in order to obtain a room (though such charges may be imposed with the agreement of Group (in its sole discretion) at reasonable rates for services actually rendered).

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New Attrition / Performance Damage Clauses

- Traditional Attrition & Cancellation:
 - Permitted Slippage.
 - Customer Paid Lost Profits as Liquidated Damages on Each Empty Room.
- New Attrition & Cancellation:
 - Hotel Places Agreed-Upon Minimum For Rooms and F&B Spending.
 - If Minimum Not Achieved, Group Makes Up Difference.

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Benefits of New Approach

- Total Spending Commitment Easy to Understand.
- Damages Calculation Also Easy: % of Unspent Funding Commitment.
- Same Formula For Rooms and F&B Attrition.

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Challenges of New Approach

- Agreeing on \$ Value of Rooms Commitment.
- Should Damages Equal a % of the Commitment?
- Is There Be a Duty for the Venue to Rebook & Credit Group?
- Still Need to Audit & Verify That All Group Members Counted in the Block.

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New Hotel Performance Damages Clause – Revised (Clause #4)

“The Total Sleeping Room Nights Reserved on page 1 of this Agreement will generate \$53,523.36 revenue for Hotel (“Anticipated Room Revenue”). In the event that Group does not use all of the sleeping rooms in its Room Block, you agree that the Hotel will suffer damages. Therefore, the parties agree that if the contracted event is held as scheduled, Hotel will not seek damages for Group’s failure to use and pay for the Total Sleeping Room Nights Reserved on page 1 if Group achieves a minimum of 80% of the Anticipated Room Revenue (\$42,818.69).”

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New Hotel Performance Damages Clause (2)

Should Group fall below this amount, Group agrees to pay to Hotel as reasonable liquidated damages and not a penalty, 70% of the difference between 80% of the Anticipated Room Revenue and the actualized guest room revenue received by Hotel for rooms used and paid for as part of the official Room Block, plus any applicable taxes as a reasonable estimate of the Hotel's losses on sleeping rooms."

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Resale Clause (Clause #5)

"Hotel shall make reasonable efforts to resell unused guest rooms in the Group's room block and rebook the cancelled food and beverage events. Any damages due pursuant to the Performance or Cancellation clauses will be reduced by the revenue received from unused Group guest rooms (as calculated in this section) and food and beverage events that are resold by Hotel. The parties agree that "resold" rooms will be calculated as follows: The resale revenue credited to attrition or cancellation damages for each room will be equal to the Group's single room rate for each day that guest rooms are resold.

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Resale Clause (2)

Unused Group rooms will be the last guest rooms resold, thus guest rooms will be considered resold to the extent that Hotel is able to sell more guest rooms than it could have sold if the Group had fully occupied its reserved block. For example, if the Group does not use thirty (30) rooms in its block but only ten (10) rooms remain unsold in Hotel, the attrition or cancellation damages owed will be reduced by the average daily rate times twenty (20)."

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**Force Majeure /
Excuse of Performance Cancellation**

- Force Majeure Traditionally Covered Only Limited Situations Where Meeting “Impossible or Illegal” to Perform.

- Occurrence Was Outside Parties’ Contemplation At Time of Contract.

- Now Typically Include Much More – Cancellation For “Impracticability” As Well.

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**Force Majeure /
Excuse of Performance Cancellation**

- Cancellation For “Labor Disputes.”
 - What Should Be Included?
 - Strikes?
 - Lockouts?
 - Work Slowdowns?
 - Does the Group Have Particular Sensitivities?
 - Economic Sensitivities.
 - “Moral” Convictions.

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**Sample Force Majeure / Excuse of
Performance Provision (Clause #6)**

“Should events beyond the reasonable control of either Hotel or Group occur, including, but not limited to acts of God, war, strikes/labor disputes/labor unrest (except those involving Hotel employees, contractors or agents), governmental regulation, civil disturbance, terrorism, disaster, fire, earthquakes, hurricanes, unreasonable extreme inclement weather, curtailment of transportation facilities, public utility failure, declaration of a “Severe” risk of terrorist attack by the U.S. Department of Homeland Security,

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Sample Force Majeure / Excuse of Performance Provision (2)

issuance of a travel advisory for the region in which Hotel is located by the World Health Organization, or any other comparable condition, making it inadvisable, illegal or impossible for either Hotel or Group to perform their obligations hereunder, the affected party may cancel this Agreement without liability for any one or more of such reasons upon written notice to the other. In addition, all deposits and pre-payments made by Group or its guests shall be promptly refunded."

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Sample Force Majeure / Excuse of Performance Provision (3)

A party seeking to cancel because performance has become "inadvisable" must provide reasonable evidence that events outside its control and reasonable anticipation caused at least 30% of expected attendees (based on meeting history) not to register for the Event, or registered attendees to cancel their registrations.

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Force Majeure / Excuse of Performance Cancellation

- Some Local Courts Now Disregarding Broad F.M. Clauses.

- Solutions:
 - Express Waiver of Specific State F.M. Law – to Supersede Statutory Law.
 - Include Specifically-Negotiated "Excuse of Performance" Clause Separate From F.M. Clause.

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Question: Is Hotel Quality Part of a Meeting Contract?

1. Yes, But Only if the Contract Includes a Hotel Quality Standard.
2. Yes, Hotel Quality is an “Implied” Part of Every Meeting Contract.
3. No, There is No Hotel Quality Standard Built into a Meeting Contract.

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Hotel Quality Standards

- Issue Related to Meetings Booked Years Out.
- Will Hotel Remain the Same Quality For Years After Contracting?
- Is A Quality Standard Part of “the Deal?” Maybe ...
- What About Hotel Sale / Rebranding?
- Possible Breach of Contract For Failing to Maintain Quality or Re-Branding.

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Hotel Quality Standards

- Include Contract Provision Making Hotel Quality & Brand Material to Deal.
- Setting “Objective” Standards is a Challenge.
- Tie to Mobil / AAA Ratings At Time of Contracting.
- Use Hotel Photos / Take Pictures.

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Hotel Quality Standards (2)

- Add Staffing Requirements if Appropriate.
- All Facilities to Be Open & Available.
- Keep Vigilant on Hotel Upkeep, Renovations, Guest Comments.

Hotel / Supplier Bankruptcy

- Bankruptcy May Involve Business Shut-Down or Reorganizing.
- Communicate With Bankrupt Supplier, But Follow News & Monitor Court Docket.
- No Automatic Right to Void “Executory” Contract if Bankrupt Supplier Performing.
- Ask Supplier to “Assume” Event Contract.
- Renegotiate Contract to Delay Deposits & Payments.

Sustainable / Green Meetings

- Create Sustainability Policy For Your Organization Using Int'l Protocols.
- Incorporate Policy & Goals into Meeting RFP's / Contracts.
- Implement Benchmarks to Measure Compliance.

Green Meetings

- Ask Hotels & Venues For Green Certification From Recognized Organization; Verify With Issuer.
- Make Continued Certification Condition of Contract.
- Circulate Your Sustainability Policy / Ask Suppliers for Theirs.
- Insert Specific Green Tasks & Benchmarks Into Contract.

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Green Meetings

- Add Specifics About Green Matters:
 - Energy Savings.
 - Recycling.
 - Towel Re-Use.
 - Water Bottles.
 - Food Donations.
- Insert Method of Auditing Compliance.
- Include "Green-Friendly" Damages For Non-Compliance.

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Question: How Do You Enforce "Green" Standards?

- A. Contract Calls For Payment of Monetary Damages if Green Obligations Not Met.
- B. Contract Calls For Hotel to Remedy Defaults by Taking Other Environmental-Friendly Steps After My Meeting.
- C. We Take Remedial Steps Outside the Contract.
- D. No Enforcement.

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**Green Meeting Damages Clause
(Clause #7)**

“Hotel and Group agree that, should Hotel fail to adhere to its environmental obligations as set forth in this Agreement, then Group shall be harmed. In that event Hotel shall purchase carbon offsets from a provider designated by Group, in an amount equal to the environmental damages caused by the Hotel’s breach.

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**Green Meetings Damages
(Con’d)**

In the event that Group and Hotel cannot agree in good faith upon the proper amount of carbon offsets purchase, then Hotel shall engage a recognized expert approved by Group to determine the amount of offsets to be purchased. The cost of the expert shall be borne by the Hotel.”

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**Question: Does Your Organization
Donate Unwanted Food From Events?**

- A. Yes, Because We Have a Donation Policy.
- B. Yes, Although We Have No Food Donation Policy.
- C. No, Although We Have No Food Donation Policy.
- D. No, Because the Organization Decided Not to Donate Food.

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Food Donations

- Pro's & Con's of Food Donations.
- Local "Good Samaritan" Laws on Food Donation Protect Donors.
- Many Venues Have 'No Donation' Policy – Need to Negotiate Donation into Contract.
- Need to Ensure Food Can Travel Safely.
- Check Insurance Requirements – May Limit Donations.

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Volunteer Projects

- Carefully Evaluate Skills & Dedication of Prospective Volunteers – Suitability For Prospective Tasks.
- Volunteers Should Supplement Paid Professionals, Not Replace Them.
- Create Volunteer Contract / Waiver.
- Verify Insurance Will Cover Volunteer Activities.

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Cyber Security

- Issue: Valuable Data on CDs, DVDs, Wireless Networks Vulnerable to Theft and Hackers.
- Ask About Previous Incidents at Facility.
- Ask A/V Provider to Protect Wireless Data.
- Negotiate For Appropriate Indemnification.

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Cyber Security

- Consider Possibility Wireless Network Use by Unauthorized Persons.
- Instruct Attendees on Protecting CDs, Laptops; Consider Extra Security.

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QUESTIONS & ANSWERS

JOSHUA L. GRIMES, ESQUIRE

Philadelphia, PA / Washington, DC

(215) 569-2770 / (202) 327-5470

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SAMPLE HOTEL CONTRACT CLAUSES

CLAUSE #1 – ACCOUNTABILITY CLAUSE FOR SUPPLIER CONTRACTS – PLANNER PERSPECTIVE:

Supplier acknowledges that it has been provided with Company's policies regarding the following: (i) Meetings & Events; (ii) Travel; (iii) Alcohol; and (iv) Conflicts of Interest. Supplier agrees to use reasonable efforts to assist Company in complying with these policies, including providing its goods and services in compliance with such policies.

CLAUSE #2 – ACCOUNTABILITY CLAUSE TO LIMIT SUPPLIER LIABILITY:

Supplier will use reasonable efforts to assist the Company in complying with its corporate policies as furnished to Supplier; provided, that Supplier will not be liable to the Company or any other party for failure to adhere to the Company's corporate policies, except due to Supplier's willful misconduct or gross negligence.

CLAUSE #3 - EXTRA CHARGES PROVISION:

The room rate(s) and other charges and fees specified in this Agreement (plus applicable taxes) shall be the only mandatory fees or charges assessed by the Hotel in order for the Group's guests to check into a guest room. Unless otherwise agreed by the Group in advance (in this Agreement or elsewhere), the Hotel may not require that a guest pay a mandatory "resort fee", telephone surcharge, or any other additional amount in order to obtain a room (though such charges may be imposed with the agreement of Group (in its sole discretion) at reasonable rates for services actually rendered).

CLAUSE #4 – NEW HOTEL PERFORMANCE DAMAGES CLAUSE:

The Total Sleeping Room Nights Reserved on page 1 of this contract will generate \$53,523.36 revenue for Hotel ("Anticipated Room Revenue"). In the event that Group does not use all of the sleeping rooms in its Room Block, Group agrees that the Hotel will suffer damages. Therefore, the parties agree that if the contracted event is held as scheduled, Hotel will not seek damages for Group's failure to use and pay for the Total Sleeping Room Nights Reserved on page 1 if Group

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achieves a minimum of 80% of the Anticipated Room Revenue (\$42,818.69). Should Group fall below this amount, Group agrees to pay to Hotel as reasonable liquidated damages and not a penalty, 70% of the difference between 80% of the Anticipated Room Revenue and the actualized guest room revenue received by Hotel for rooms used and paid for as part of the official Room Block, plus any applicable taxes as a reasonable estimate of the Hotel's losses on sleeping rooms. The parties agree that the liquidated damages clauses provided for in this contract are a reasonable effort by the parties to agree in advance on the damages that the Hotel will suffer due to Group's lack of performance.

CLAUSE #5 – RESALE CLAUSE:

Hotel shall make reasonable efforts to resell unused guest rooms in the Group's room block and rebook the cancelled food and beverage events. Any damages due pursuant to the Performance or Cancellation clauses will be reduced by the revenue received from unused Group guest rooms (as calculated in this section) and food and beverage events that are resold by Hotel. The parties agree that "resold" rooms will be calculated as follows: The resale revenue credited to attrition or cancellation damages for each room will be equal to the Group's single room rate for each day that guest rooms are resold. Unused Group rooms will be the last guest rooms resold, thus guest rooms will be considered resold to the extent that Hotel is able to sell more guest rooms than it could have sold if the Group had fully occupied its reserved block. For example, if the Group does not use thirty (30) rooms in its block but only ten (10) rooms remain unsold in Hotel, the attrition or cancellation damages owed will be reduced by the average daily rate times twenty (20).

CLAUSE #6 – FORCE MAJEURE / EXCUSE OF PERFORMANCE CLAUSE:

Should events beyond the reasonable control of either Hotel or Group occur, including, but not limited to acts of God, war, strikes/labor disputes/labor unrest (except those involving Hotel employees, contractors or agents), governmental regulation, civil disturbance, terrorism, disaster, fire, earthquakes, hurricanes, unreasonable extreme inclement weather, curtailment of transportation facilities, public utility failure, declaration of a "Severe" risk of terrorist attack by the U.S. Department of Homeland Security, issuance of a travel advisory for the region in which Hotel is located by the World Health Organization, or any other comparable condition, making it inadvisable, illegal or impossible for either Hotel or Group to perform their obligations hereunder, the affected party may cancel this Agreement without liability for any one or more or such reasons upon written notice to the other. In addition, all deposits and pre-payments made by Group or its guests shall be promptly refunded.

A party seeking to cancel because performance has become "inadvisable" must provide reasonable evidence that events outside its control and reasonable anticipation caused at least 30% of expected attendees (based on meeting history) not to register for the Event, or registered attendees to cancel their registrations.

The cancellation provisions in this section are expressly agreed by the Hotel and Group to act as a waiver of the provisions of any provincial, state or local law, statute or regulation, including but not limited to Section 1511(2) of the California Civil Code, and any other provision of California law or the laws of any other state, to the extent that such provisions are contrary to the purpose or intent of this Section."

CLAUSE #7 – GREEN MEETING DAMAGES CLAUSE:

Hotel and Group agree that, should Hotel fail to adhere to its environmental obligations as set forth in this Agreement, then Group shall be harmed. In that event Hotel shall purchase carbon offsets from a provider designated by Group, in an amount equal to the environmental damages caused by the Hotel's breach. In the event that Group and Hotel cannot agree in good faith upon the proper amount of carbon offsets purchase, then Hotel shall engage a recognized expert approved by Group to determine the amount of offsets to be purchased. The cost of the expert shall be borne by the Hotel.

