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## CONTRACTING FOR THE NEXT DECADE:

### *ESSENTIAL MEETING CONTRACT CLAUSES FOR 2009 & BEYOND*

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**Presented By:**

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**Attorney At Law**

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## JOSHUA L. GRIMES

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## ***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 Pennsylvania Governor Edward G. Rendell, Mr. Grimes is Legal Counsel to the Greater Philadelphia Hotel Association and a member of the Academy of Hospitality Industry Attorneys. He served as Chair of the AHIA's recent meeting in Philadelphia. He is also a member of MPI and PCMA.

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 often 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. 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. In 2008 he 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 spoken at international conferences of 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.

**CONTRACTING FOR THE NEXT  
DECADE:  
ESSENTIAL CONTRACT CLAUSES  
FOR 2009 & *BEYOND***

**Joshua L. Grimes, Esquire  
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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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This presentation is for informational purposes only and does not constitute legal advice. Those seeking legal assistance are directed to seek advice from a competent attorney of their choosing.

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## Federal Stimulus Law

- "TARP" is Official Name: Troubled Asset Relief Program.
- Intended to Mandate "Responsible" Spending by Stimulus Recipients.
- Perception of Meetings Biggest Issue.
- Mandates May Become New Industry "Best Practices."

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## How Does This Affect Business?

- Stimulus Fund Recipients:
  - Must Comply With Rules
  - Uncertainty About Pending Regulations.
- Other Businesses (Non-Recipients):
  - Rules Not Applicable, But Shareholders & Funders May Expect Compliance.
- Hotels / Meeting Industry Suppliers:
  - Cancellations, Drop-Off in Demand
  - Products/Services With "Luxurious" Names or Images Avoided.

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## Treasury Dept. Rule – June 2009:

- TARP Recipient Company Boards Must Adopt "Excessive or Luxury Expenditures" Policy.
- 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 Company.

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### Treasury Dept. Rule (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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### Treasury Dept. Rule (3)

- Policy Must Provide Reasonable Approval Procedures for Prior Expenditure Approval.
- CEO or CFO Must Certify That Prior Approval Policy Was Followed With Respect to the Particular Expenditure.
- Violations of Policy Must Be Promptly Reported to Appropriate Person(s).
- Mandate Accountability for Adherence to Policy.

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### Question #1: Pick the “Luxury” or “Excessive” Expenditures:

- A. Corporate Sales Meeting at 5 Diamond Beach Resort.
- B. All-Expenses Paid Incentive Trip For Sales Staff to Caribbean Island Resort; Spouses Invited.
- C. First-Class Air Travel For Association Executives From US to Dubai for International Business Meeting.
- D. CVB Salesperson Entertaining Clients at High-Class “Gentlemen’s Club.”

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## What To Do (1):

- ❑ Understand that TARP Requirements May Become "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.

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## What To Do (2):

- ❑ CEO Should Certify Expenditures In Addition to Responsible Employees & Finance Officials.
- ❑ Consider Appearances, Not Just Legal Compliance.
- ❑ Create Written Record of Expenditures & Justifications, Including ROI & Competing Bids.
- ❑ Preserve Records.

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## Role of Suppliers:

- ❑ Understand Customers' New Legal 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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## 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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## 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

- ❑ Benefits:
  - 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

- Challenges:
  - 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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## 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.
    - Religious Convictions.

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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 #2: 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.
- ❑ Keep Vigilant on Hotel Upkeep, Renovations, Guest Comments.

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### Green Meetings

- ❑ Ask Hotels & Venues For Green Certification From Recognized Organization.
- ❑ Verify Certification with Issuer.
- ❑ Make Continued Certification Condition of Contract.
- ❑ Insert Specific Green Tasks & Benchmarks Into Contract.

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### Question #3: 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 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 #4: 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.
- ❑ RFID Transmissions – Limit Information on Badges.

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## Summary / Q&A

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## **CONTRACTING FOR THE NEXT DECADE: ESSENTIAL MEETING CONTRACT CLAUSES FOR 2009 & BEYOND**

### **SAMPLE HOTEL CONTRACT CLAUSES**

#### **CLAUSE #1 - 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 #2 – NEW HOTEL PERFORMANCE DAMAGES CLAUSE – HOTEL VERSION:**

The Total Sleeping Room Nights Reserved on page 1 of this contract will generate \$61,040.00 revenue for Hotel (Anticipated Room Revenue). In the event that you do not use all of the sleeping rooms in your Room Block, you agree that the Hotel will suffer damages. Such damages will occur because Hotel will have lost the opportunity to offer your unused rooms to others either individually or as part of another block and will incur additional costs in attempting to resell inventory that was already sold. The parties agree that the exact amount of such damages will be difficult to determine. 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 your lack of performance. 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. Should Group fall below this amount, Group agrees to pay to Hotel as reasonable liquidated damages and not a penalty, 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.

**CLAUSE #3 – NEW HOTEL PERFORMANCE DAMAGES CLAUSE – REVISED:**

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 you do not use all of the sleeping rooms in your Room Block, you agree that the Hotel will suffer damages. The parties agree that the exact amount of such damages will be difficult to determine. 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 your lack of performance. 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). 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.

**CLAUSE #4 – 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 #5 – 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.

**CLAUSE #6 – STATE FORCE MAJEURE LAW WAIVER PROVISION:**

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 – HOTEL QUALITY CLAUSE:**

Group’s selection of the Hotel was materially dependent upon the quality of the Hotel’s facilities and services. Accordingly, should the Hotel fail to maintain its facilities and services at the same level or better than existed on the date of this Agreement, Group shall have the right to cancel this Agreement and invoke its remedies as if the Hotel had canceled its performance hereunder.

**CLAUSE #8 – 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.