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✦ “LOWEST AVAILABLE RATES” AND “REBOOKING CREDIT;” WHY HOTELS ARE NOT OBLIGATED TO PROVIDE THESE CONCESSIONS TO GROUPS.

Often, customers complain that a hotel should not be allowed to offer lower rates than the negotiated group rate in an event contract, or that if the group cancels that it should be allowed to “rebook” the event at a later date without payment of cancellation fees. Both of these positions are based upon the group’s misunderstanding of the nature and law surrounding group contracts.

✦ A hotel is not obligated to offer lower rates to a group if such rates are available in the hotel.

A convention contract is a type of “futures” agreement: the customer agrees to purchase a certain amount of the hotel’s inventory at an agreed rate at a date in the future. The hotel is obligated to hold that inventory for the benefit of the customer and cannot sell it to others, even if a better opportunity arises. Both parties are obligated to honor the contract regardless of the prevailing market at the time of the event. Thus, if it turns out that the prevailing rates at the time of the event are higher than the customer’s contracted rates, the hotel cannot demand that the customer pay the higher rates. Similarly, if the prevailing rates are lower than the contracted rate, the customer cannot insist on getting the lower rate.

The hotel inventory is perishable. This Hotel has an inventory of X number of rooms available to sell each night, but if it does not do so, it has lost the opportunity to sell that inventory on that night forever. If the hotel is full 364 nights a year but has unsold rooms on the 365<sup>th</sup> night, the hotel has lost revenue that it cannot make up. As a result of this, all hotels sell their inventory at a wide variety of rates every night. There are different rates offered to air line crews; corporate negotiated rates; special discount rates such as AAA or AARP; rates offered on “opaque channels” such as Priceline; and so on. The hotel has the right to sell its inventory at whatever rates it desires in order to maximize occupancy. Many of these special rates are negotiated based on the volume of business the customer can offer, or the extended length of stay of the guests, such as airlines that guarantee a minimum number of rooms per night for several years at a time.

When a customer enters into a contract to hold a convention event, the rates offered are determined on based many factors, including the ratio of the number of guest rooms being held to the amount of meeting space and food and beverage functions being held at the hotel. A customer that is holding many rooms but having all

of its meetings at the convention center will likely get a different rate than a customer that is having all of its events within the hotel. A customer that wants to hold just a few guest rooms but use a great deal of meeting space will be offered a higher rate, as if the customer is using a disproportionate amount of meeting space, the hotel will have no space to offer other customers who may want to reserve other guest rooms. In other words, not every group event is created equal.

Hotel room rates are similar to airline tickets or car prices. Different customers purchasing at different times may pay very different prices depending on a variety of factors. A person buying a plane ticket would never expect that the airline would give him a refund if he found out that the person sitting next to him paid less for his ticket. If you buy a car today for \$25,000 and find out that your neighbor purchased the same make and model for \$22,000 a few days later, you would not expect the dealer to give you a refund, either.

Thus, when groups suggest that a hotel is “undermining” the group’s efforts to fill its room block by offering lower rates, it is simply not correct. The hotel sold a portion of its inventory to the group when the contract was signed. The hotel has every right to offer its other inventory to other customers at whatever rates it deems appropriate. The rooms being offered at lower rates to others likely do not include the typical complimentary rooms, rebates, loyalty program points, suite upgrades, room amenities, or any of the other “extras” commonly provided in group event contracts.

Both sides took a risk when they signed the contract that the “deal” would turn out to be better than anticipated for one side than anticipated. If prevailing rates skyrocket, the hotel cannot demand that the group pay the higher rates. The group should understand that it is equally unfair to expect the hotel to reduce the group’s rates if prevailing rates have declined.

Groups have many options available to them to ensure that their attendees reserve their rooms within the official group block at the contracted rate. These methods include requiring the attendees to reserve their rooms as part of the group block in order to be eligible to register for the event, or requiring the attendee to pay higher registration fees if the attendee elects not to stay at the convention hotel as part of the group block. The hotel is providing meeting space and other services for the event based on the expectations that the group will fill the guest rooms. If attendees do not use the rooms, they should bear their fair share of the burden of the attrition fees that the group will be required to pay.

Groups should also keep in mind that one of the reasons that a hotel may be offering lower rates is because the group has not filled its room block. Because of the

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group's reduced attendance the hotel was forced to offer lower rates to try to attract whatever business possible to fill the unused group rooms on top of its other inventory.

✦ When a group "postpones" or "rebooks" an event, the hotel is still entitled to damages.

Moving the date of an event is not a "postponement," it is actually a cancellation. As noted above, hotels sell perishable inventory, meaning that the hotel has an inventory of guest rooms **and meeting space** available to sell each night and to the extent it does not sell some of them it has lost the opportunity to make money on those guest rooms and meeting space on that particular night forever. If a customer contracts to use rooms in March and then moves the event to June, it is still damaging the hotel. The hotel could have hosted the group in March and other guests in June, making money on two sets of dates. When the group moves its March event to June, it is reserving perishable inventory on two sets of dates, but paying for them only once, thus the hotel is damaged.

In addition, the hotel negotiated the terms of the March event based on demand, market factors and other considerations specific to the March dates. The hotel may have been unwilling to agree to the contract terms for the March event if the customer had requested them for June. Thus, a customer cannot assume that so long as it "rebooks" at a later time that a hotel will agree to waive damages for the first cancellation.

Unfortunately, sometimes a group that "postpones" or "rebooks" ultimately does not have the event on the second set of dates either. Hotels are legally entitled in that case to collect damages for both sets of cancelled dates, as the hotel sold its perishable inventory to the group two times and is entitled to damages for both cancelled contracts.

✦ Lowest Rate and Rebooks Clauses are Valuable Concessions Granted by Hotels.

Hotels may be willing to negotiate lowest rate or rebook clauses with good customers, but customers need to recognize that under the law they are not entitled to these accommodations. When hotels do agree to such clauses, the customer should recognize the significant value that they are being given by the hotel.