

**[Insert State Name ] Orthopaedic Society**  
**MODEL HOTEL CONTRACT**

**AGREEMENT**

The following represents an agreement by and between the [insert State name] Orthopaedic Society (“Society”) and the [insert name of hotel] (“Hotel”) made on [insert month, day, year] for the purpose of Society’s [insert name of meeting] (the “Event”) to be held [insert meeting dates from Society’s meeting calendar] (the “Official Dates”) and outlines specific conditions and services to be provided.

**ORGANIZATION:** [insert State name] Orthopaedic Society \_\_\_\_\_

**SOCIETY CONTACT:** \_\_\_\_\_

Name: \_\_\_\_\_ Job Title: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ City, State, Zip Code: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

**Hotel CONTACT:** \_\_\_\_\_

Name: \_\_\_\_\_ Job Title: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ City, State, Zip Code: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

**OFFICIAL PROGRAM DATES:** \_\_\_\_\_

**ANTICIPATED ATTENDANCE:** \_\_\_\_\_

**NAME OF EVENT:** \_\_\_\_\_

**GUEST ROOM COMMITMENT**

Hotel agrees that it shall hold the following guest room block exclusively for the Event, consisting of [insert number] (total number of room nights) in the pattern set forth below (“Room Block”):

Day	MON	TUES	WED	THURS	FRI	SAT	SUN	MON
Date	xx/xx/xx	xx/xx/xx	xx/xx/xx	xx/xx/xx	xx/xx/xx	xx/xx/xx	xx/xx/xx	xx/xx/xx
Guest Rooms	#	#	#	#	#	#	#	#
Suites [specify by name, type and/or location]	#	#	#	#	#	#	#	#
Total per Night	Total	Total	Total	Total	Total	Total	Total	Total

The Room Block will consist of standard rooms, unless otherwise indicated. Specific requests shall be listed (i.e., club floor, ocean views, balconies, etc.).

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The Guest Room Commitment or Room Block provision must be included in every contract and should clearly state Society's requirements in terms of number of rooms, type, location, and the total number of room nights. Check calendar against room block to make sure date and day match up. Include the year in the date section of the guest room commitment because the meeting will likely be held in a different year than the contract was signed or it could be a multi-year contract.

**SOCIETY GUEST ROOM RATES** *[Insert one of the following provisions]*

**[Option 1]**

Hotel confirms to Society the following group guest room rates (net of all taxes) for Event:

Single:	\$ [insert amount]
Double:	\$ [insert amount]
Additional Person:	\$ [insert amount]

Hotel's room rates are subject to applicable state and local taxes (currently \_\_\_\_\_%) in effect at the time of check-in.

The Society Guest Room Rate provisions should be included in every contract. The option above addresses the situation in which the rates can be confirmed (usually for meetings booked 2 years or less prior to arrival).

**[Option 2]**

Society rates for *[insert Event year]* have not been established, but if the Event were to be held in *[insert current year]*, Hotel would provide rooms to Society at the following group rates (net of all taxes):

Single:	\$ [insert amount]
Double:	\$ [insert amount]
Additional Person:	\$ [insert amount]

Hotel shall advise Society of the room rates for the Event on or before *[insert date, usually 6 months to 1 year prior to meeting]*. Such rates shall not increase more than *[insert specific percentage]* per year based on the above-referenced group rates for *[insert current year]*. Hotel's room rates are subject to applicable state and local taxes (currently \_\_\_\_\_%) in effect at the time of check-in.

If the meeting is contracted more than 2 years prior to arrival, most hotels will only agree to a current year discounted rate with a maximum annual increase provision, such as the one outlined in the option above. Always try for no increase and a 3%-5% cap. Rate caps are important, especially when booking rooms well in advance of the meeting. This provision ensures that the rates will not increase over a certain percentage of the current base rate. Rate caps also allow Society to more easily assess the estimated cost of the meeting.

**LOWEST GROUP RATE**

In no event shall Society's group rates be greater than the lowest rate publicly offered, from whatever source, to guests of Hotel between *[insert first and last blocked dates]*. If lower rates are offered by Hotel, such rates shall be provided to Society and its guests as well.

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The provision above protects the integrity of the rate in the event rates in that particular city drop significantly after the contract is signed. The provision ensures that Society will get the best rate offered to any group. Most hotels will only agree to the rates being the best *group* rates during the blocked dates because of negotiated corporate and airline rates – and that’s reasonable. The key here is lowest group rate publicly offered, no matter how the reservation is made – through a housing agent, on the Internet, etc.

### **RATE APPLICABILITY PRE-ARRIVAL AND POST EVENT**

Society's group rates shall apply beginning [*insert date three days prior to first blocked date*] through and including [*insert date three days after last blocked date*], with rooms outside the block subject only to room availability.

The Rate Applicability Pre and Post provision is important to include in contracts for dates or cities in which people would like to stay longer or arrive earlier. Most hotels will agree to 3 days pre and post.

### **COMMISSION** [*Insert one of the following provisions*]

#### [Option 1]

The above group guest room rates are net, non-commissionable, unless otherwise specified.

#### [Option 2]

The above group guest room rates are commissionable to [*insert name of agent*] at a rate of [*insert specific percentage*] of the revenue collected by Hotel from Society’s occupied and paid for rooms.

#### [Option 3]

Hotel and Society shall each be responsible for ..... [*insert details and method of particular commission arrangements*].

#### [Option 4]

Society has contracted with [*insert name of agent, meeting planner, travel bureau*] to provide housing services for this Event. [*Name of agent*] acts with full authority of the Society in all matters concerning sleeping room reservations. Society staff has been instructed to direct all inquiries relating to housing administration directly to [*name of agent*].

Some Societies may decide that commissions burden their members and would rather raise the meeting fee than pass through such a cost, especially with members comparing room rates with hotel website rates, etc. If the room rates do not include a commission, use Option 1.

### **GUEST ROOM REVIEW AND ADJUSTMENT**

The stated guest room commitment is based upon most recent histories and is subject to change as provided in this Agreement. Under no circumstances shall Hotel unilaterally reduce the Room Block without Society’s prior written consent. [*Insert Option 1 + 2 or Option 3 here*]

#### [Option 1]

On or before [*insert date*], Hotel will confer with Society to re-evaluate guest room commitment usage. At this time and without liability, Society shall have the right to reduce the Room Block and meeting space up to [*insert percentage*] to more accurately reflect Society’s current history.

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The Guest Room Review and Adjustment provision is important because it allows Society to have some flexibility with respect to the room block. If the hotel agrees, the room block can be adjusted by a percentage if historical usage indicates a larger or smaller room block is necessary. This flexibility is especially important for planning programs well in advance because the historical usage during the programs occurring in the interim may vary somewhat from the stated room block. Society would like to re-evaluate the room block 6 months prior to the arrival date, but many hotels generally prefer the adjustment to be 1 year out.

[+ Option 2]

Society shall have the right to further reduce the Room Block up to *[insert specific percentage]* without liability, on or before *[insert date]* (thirty (30) days prior to arrival). This date shall be known as the “Final Adjustment Date.” *[If different, substitute the method of adjusted schedule].*

If the hotel agrees, Society would also like to make another final percentage adjustment to the room block, preferably all the way to the first day of the event, as most of Society’s cancellations occur within the last 2 weeks before the event. If you are unable to persuade the property to go up to arrival date, then try for 7-14-30-60 days prior to the arrival date – the closer to arrival, the better. Sometimes the hotel will agree to allow a second (final) adjustment (e.g. 5% to 10%) if the initial adjustment percentage above is lower (e.g. 10% rather than 20%).

[Option 3] [use in lieu of Option 1 + 2]

On or before *[insert specific date]*, Hotel will confer with Society to re-evaluate guest room commitment usage. At this time and without liability, Society shall have the right to reduce the Room Block and meeting space up to *[insert specific percentage]* to more accurately reflect Society’s current history.

As most Society cancellations probably occur within the last 1-2 weeks before the event, Society can negotiate to re-evaluate the room block on a specific date that’s closer to the arrival date than 1 year to 6 months out. At that time, Society can propose to reduce the room block by a one time flat adjustment percentage (e.g. 20% - 25% range) up to the first day of the event. With this method, neither the hotel nor Society has to worry about dates and adjustment schedules, etc. Society becomes committed to a specific number of room nights for the event. If that number is not reached, attrition is assessed according to the appropriate provision in the Agreement. Option 3 is becoming organizations’ preferred choice.

**CUT-OFF DATE**

Hotel shall hold the Room Block until 11:59 p.m. *[insert Hotel’s time zone]* *[insert specific date-month, day, year]* (the “Cut-Off Date”). Room reservations received on or before the Cut-Off Date shall be confirmed at the Society group rates. Hotel agrees to allow Society to substitute names for rooms in the Room Block canceled by attendees. After the Cut-Off Date, Society will be given the opportunity to guarantee additional rooms before any portion of the Room Block is released. After review with Society, Hotel may release any unsold rooms in the Society Room Block not guaranteed for sale to the general public. Hotel shall continue to accept reservations, at the Society group rates, after the Cut-Off Date, on a space available basis. Such rooms shall accrue to the Room Block and be counted in the calculation of complimentary rooms and attrition fee, if any.

The “Cut-Off Date” provision is important in that at the specified cut-off date, the hotel will review the reservation pick up for the event, release the unreserved rooms for general sale after notice to the Society, and continue to accept reservations from those attendees who make reservations after the cut-off date based on a space available basis at the

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Society's group rate. A cut-off date that is 30 days prior to arrival is customary. Another essential component is that the rooms sold after the cut-off date will be credited to Society's total room night usage for purposes of complimentary room credits, attrition fees and/or function space rental fees. Finally, the provision allows for substitution of attendee names.

### **EXCEEDING ROOM BLOCK** *[optional]*

Should Society exceed the contracted Room Block, it is understood Hotel will continue to accept Society group reservations at the negotiated group rate, subject only to room availability. Hotel will work with and inform Society within three (3) days of any potential sell-out situation in Hotel over the Official Dates. In the event of a sell-out or potential sell-out, Hotel will assist Society in finding alternate and comparable overflow accommodations acceptable to Society.

The Exceeding Room Block provision is good to include in contracts as it ensures that the hotel will continue to accept Society's reservations at the group rate as long as there are rooms available. Some hotels may challenge this provision because they do not want to be obligated to the group rate beyond the original room block. If you think attendance for a particular meeting may exceed the original room block, an alternate way to address this situation is to include language in the Guest Room Review and Adjustment provision allowing Society to increase, as well as reduce, its room block and meeting space up to the negotiated percentage on or before the stated date.

### **METHOD OF RESERVATIONS** *[Insert appropriate terms]*

Society may make reservations for its staff and VIPs by rooming list. Individual attendees will make reservations for the Event directly to Hotel by telephone and/or reservation form or through Society designated agency (*insert name and relevant information*). Hotel or Agency shall send prompt confirmation of reservations within 48 hours of receipt to each guest. Society has no liability for individual guest charges.

The Reservations provisions are important to include in the contract and should be customized to fit the reservation process for that particular event, e.g., rooming list, call-ins, housing bureau, or reservation form. If Society is using a reservation form, Society should insure that all hotel information on the form is correct and complete and includes hotel cancellation policy and requests for "special needs" accommodations. Society may forward a sample copy of any reservation form used in connection with the meeting to the hotel for review prior to publication in the registration brochure. Further, if the individuals are not to receive confirmation directly from the hotel, the Method of Reservations provision should be changed accordingly.

### **GUARANTEED RESERVATIONS**

Hotel may require all guest room reservations be accompanied by a first night room deposit, or guaranteed with a major credit card with expiration date or by Society. Hotel will not hold any reservations unless secured by one of the above methods. Should a guest cancel a reservation, Hotel shall fully refund the deposit provided notice of cancellation is given forty-eight (48) hours or two (2) days prior to arrival [*adjust times as necessary*]. Any reservations cancelled less than forty-eight (48) hours prior to arrival are subject to deposit forfeiture of one night's room and applicable tax. Any cancelled room nights for which Hotel is paid - i.e., forfeited deposits for late cancellation or no shows - shall be credited to Society's Room Block and counted in the calculation of any attrition or function space rental fees, if any.

If requested, Hotel shall provide Society or its designee weekly pick up reports, beginning [*insert date approximately three months in advance of arrival, or as otherwise required*] detailing the room pick-up to date, and identifying by name guests with guaranteed reservations.

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## **RELOCATION**

Should Hotel fail to honor the guaranteed reservation of any confirmed guest(s), regardless of when their reservation was made, Hotel shall, at its own expense, provide:

1. Free lodging at an equal or better nearby Hotel approved by Society;
2. Reimbursement of all additional transportation costs incurred by the confirmed guest(s) for travel to and from the Event and any related group functions;
3. Any communications necessary for the guest(s) to inform family or work of their changed location;
4. A priority reservation for the first available room at Hotel;
5. A fruit basket (or equivalent amenity) placed in the guest's room upon the guest's return to Hotel;
6. Placement of the name and phone number of any relocated guest(s) into Hotel's telephone system so that callers are directed to Hotel in which that person is staying.

The above accommodations shall apply for as long as that guest(s) is denied lodging at Hotel consistent with the reservation. Hotel shall notify Society prior to relocating any Society guest, and Society reserves the right to determine who will be relocated. If a walked guest refuses to return to Hotel when lodging becomes available, Hotel will not be responsible for payment of any additional sleeping room and transportation charges from that point forward.

Any and all walked room nights will be credited toward Society's complimentary room nights and attrition fee, if any. They will also be included in Society's final total Room Block pick up.

The Relocation provision should be a part of every contract as most hotels typically oversell a certain percentage of their rooms making it likely that someone will have to be "walked" or relocated to another property. This provision ensures that bumped attendees will have alternate accommodations and transportation to and from the hotel. Additionally, such a provision is critical to help attendees remain happy during an unpleasant situation. The hotel's various obligations in such a situation are set forth above and can be customized to fit Society's needs. An important component is that the walked guests be listed in the hotel's system so that callers can find them.

## **COMPLIMENTARY ROOMS**

Hotel will provide Society with the following complimentary rooms and other considerations, and where applicable, Society shall designate individuals to receive these considerations:

1. One (1) complimentary room night (unit) for every *[insert appropriate number]* revenue-generating room nights on a cumulative basis. Hotel will credit Society's Master Account for the total number of complimentary accommodations accrued by Society at Society's group rate.
2. *[Insert negotiated number]* complimentary *[specify suites by name or type]* Suite(s) per night, to be available beginning *[insert specific date]* through check-out on *[insert specific date]*.
3. *[Insert negotiated number, if any]* complimentary Hospitality Suite(s) for *[insert*

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*number of days or times*].

Complimentary rooms are only available for use during the Official Dates of the Event. Complimentary guest rooms that are earned, but unused during the Event, shall be credited to Society's Master Account at Society's single rate, exclusive of any tax, service or other charges.

The Complimentary Rooms provision is important to include in every contract. A 1:50 ratio is generally standard in the industry. Note that complimentary rooms should be credited on a cumulative or total basis, rather than on a per night basis. Society likes to state that unused complimentary room nights will be credited to Society's master account (as the provision above is written), but many hotels insist that complimentary room nights must be used during Society's stay or they are forfeited. Always try!

### **OTHER CONSIDERATIONS**

1. *List detail and insert negotiated numbers, if any, for any other additional complimentary considerations negotiated with Hotel, e.g., room upgrades to "best view rooms" and/or suites for (designated entitled individuals, i.e., Society Officers or Directors), sponsored coffee break or cocktail receptions, welcome amenities, airport limousine transfers, etc.]*
2. Hotel shall provide [*insert negotiated number, if any*] rooms per night for the period [*insert applicable dates*] for Society staff at a rate of \$ [*insert negotiated reduced rate*] per night ("staff rate").

The Staff Rooms provision is good to include in contracts. Most hotels will agree to the staff room rate provision although some will challenge the percentage discount (*usually 50% discount off group rates*) or the number of rooms per night.

3. [*Insert negotiated number, if any*] complimentary rooms per [*insert number*] nights for site inspection or pre-planning visit.
4. Hotel shall arrange to check baggage on a complimentary basis for guests arriving before check-in for whom rooms are not available, and for guests attending functions on their day of departure.

### **CHECK-IN/CHECK-OUT**

Check-in time is [*insert time*]. Check-out time is [*insert time*]. Society attendees arriving prior to Hotel's established check-in time shall be accommodated as rooms become available. The Hotel shall accommodate late check-outs for Society VIPs, subject to space availability.

The Check-In and Check-Out provisions are good to include in the contract but are not essential. Most hotels do not have any objection to the provisions.

### **GRATUITIES**

Except in the case of group functions, gratuities, exclusive of service charges, for individuals utilizing Hotel facilities shall be at the discretion of the guest. If Hotel automatically charges a daily resort fee, it shall notify all guests at time of reservation confirmation and again at time of

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check-in and list on housing form.

### **MISCELLANEOUS HOTEL CHARGES**

Charges and fees for parking, valet service, shuttle service, fitness center, golf, high speed Internet access, and other amenities shall not exceed the usual and customary fee charged to Hotel guests. Hotel shall not add any surcharges to Society's room rates and shall not attempt to impose any surcharges directly or indirectly to Society's attendees, regardless of whether additional goods or services are offered in exchange for such surcharge.

The Gratuities and Miscellaneous Hotel Charges provisions help to ensure the hotel will not "pad" its usual charges during the meeting. Most hotels will agree to these provisions, but they are not essential. However, it is important that the contract provides that no additional "hidden changes" will be assessed – if a charge is not spelled out in the agreement, it doesn't get assessed. Many resort properties automatically charge a daily resort fee to each guest that covers all gratuities and miscellaneous charges. In that case, this provision can be deleted and replaced with one that states that explains the Resort Fee charge and what it covers.

### **PARKING** [optional]

Hotel shall notify Society of the number of available parking spaces in the Hotel parking lot as of the date of this Agreement (the "Hotel Parking"). The Hotel shall not substantially decrease the Hotel Parking prior to the meeting. If there is a substantial diminution in the Hotel Parking prior to the meeting, the Hotel shall:

1. Notify the Society Contact at least two (2) months prior to the arrival date; and
2. Provide alternative parking arrangements for Society.

The daily parking rate, if any, over the dates of the Event shall not exceed \_\_\_\_, the rate as of the date of this Agreement. The Hotel will also provide Society with five (5) complimentary parking spaces per day for its staff and VIP's.

The Parking provision is important for large meetings where you expect most of your attendees to have cars. Locking in the daily rate is good to do if the contract is signed well in advance of the event.

### **GUEST ROOM BILLING ARRANGEMENTS**

All guests will be individually responsible for payment of their own room, tax, and incidental charges. Society has no liability for individual guest charges. Society shall provide Hotel with a list of individuals whose room, tax and/or incidentals will be posted to the Master Account.

The Guest Room Billing Arrangements provision must be included in every contract and must be customized to fit the payment arrangement for each particular meeting.

### **FUNCTION SPACE** - [Insert one of the following provisions]

#### **[Option 1]**

The Hotel shall provide all meeting and function space outlined in the Schedule of Function Space [insert actual name of attachment] and any other function space to Society on a complimentary basis.

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[Option 2]

The function space outlined in the attached Schedule of Function Space [insert actual name of attachment] shall be provided to Society on the following fee basis:

Total Number of Room Nights Occupied and Paid for by Society and its Attendees	Total Function Space Rental Fee
[insert number] or more	0
[insert number] - [insert number]	\$ [insert amount]
[insert number] - [insert number]	\$ [insert amount]

The Function Space provision is important to include in every contract in which Society will be using function space. Most hotels will offer function space and set-up on a complimentary basis because the group is bringing in significant revenue from its stay. If the hotel will not agree to the first option, Society can suggest the second option and then negotiate room pick up percentages and function space rental fees that are favorable to it. If there are no sleeping rooms, only use Total Function Space column.

[Insert one of the following provisions]

Hotel shall give Society the right of first refusal over any unreserved function or hospitality space or suites over the period [insert Official Dates], prior to its release to any ancillary or affiliate groups to Society or the public.

The Function Space Hold and Release provision is critical in trouble-shooting a situation in which Society may need more space or is concerned about others “piggybacking” on its meeting.

Hotel shall not reserve, assign or provide function or hospitality space or suites to any Society guest, attendee, affiliate, exhibitor or any other third party without obtaining prior written approval from Society. Requests for function or hospitality space or suites must be submitted to Society in writing. Once approved, the guest, attendee or third party is responsible for all costs associated with the function or hospitality space or suites.

The Function Space Approval provision works in connection with the Space Hold and Release provision to ensure that Society has control over the organizations reserving function space in the hotel. Some hotels may challenge this provision or may want to add in a time frame (usually 24 or 48 hours) in which Society must provide its approval of the request to the hotel.

**MASTER ACCOUNT**

Hotel shall establish a Master Account for Society, subject only to objective standards of creditworthiness. Only those individuals specifically authorized in writing by Society’s authorized representative(s) may make charges to Society’s Master Account. All fees, costs and other expenses, unless specifically authorized by Society in writing or as otherwise provided in this Agreement, shall be paid by the party incurring the charge. The Master Account shall be billed to: [insert State name] Orthopaedic Society, and directed to the attention of the Society contact [insert billing information: address, contact person and title, if different], or to the person whose name is provided to Hotel in writing at least thirty (30) days prior to arrival of the authorized signatories for Event.

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Each of the Master Account provisions is important because they protect Society from unauthorized charges. Most hotels will agree to these provisions but may require Society to pay a deposit (especially with resort properties). The deposit requirement can be included in this provision as well. A master account provision may not be applicable for all meetings. If paying on site, don't pay charges that you didn't agree to or that are in dispute.

Daily Review - If so requested, Society and Hotel each shall designate a representative to meet on a daily basis during Event to review and verify the previous day's charges to the Master Account.

The Daily Review provision is critical in order for Society to keep abreast of its expenditures and to make appropriate adjustments.

Post-Event Report - Hotel shall provide Society with a complete Post-Event Report for the Event on or before [*insert specific date*]. This report will include room pick-up (including list of names of individuals staying at Hotel, or the substitute hotel pursuant to the relocation clause, during the Official Dates), percentage of singles/doubles, no show factor, cancellation rate, as well as food and beverage activity charged to Society attendees' rooms to include room service, restaurant usage, banquet and affiliate functions.

Society requires that the Agreement include a Post-Event Report provision. The Post-Event Report is critical because it gives Society the ability to check room pick-up, no show factor, cancellation rate, etc. If Society's food and beverage provision is based on a guarantee of a minimum dollar amount of expenditures during Society's stay, rather than on attendance at any given function, Society may want the Post-Event Report to also include all food and beverage activity charged to Society attendees' rooms including room service, as well as restaurant usage, and banquet and affiliate functions. The requirement for the report can be added to the Master Account provisions or it can be a separate Post-Event Report provision. Some groups like to use their own Post-Convention Report form for the hotel to complete and that component can be included within this provision as well. The hotel should be able to provide the report within the month following the event.

Payment - Upon receipt of the Master Account statement and the Post-Event Report, Society shall promptly advise Hotel of any discrepancies or errors so that Hotel may review and, if necessary, make proper adjustments. The balance, exclusive of disputed charges, shall be payable within forty-five (45) days of receipt of the Master Account statement and any requested supporting information and documentation, and no interest charges shall be assessed provided payment is so made. Upon resolution of any disputed charges, Hotel shall rebill the remaining charges to Society. Payment of these charges shall be made within forty-five (45) days of receipt of the statement, and no interest charges shall be assessed provided payment is so made.

The Payment provision is important because it gives Society the opportunity to make adjustments to the Master Account after the meeting. It is critical that there be a statement that the Master Account is not payable until Society receives the Master Account invoice together with all supporting information and documentation (Post-Event Report).

### **COMPLIMENTARY SET-UP AND AV EQUIPMENT RENTAL**

Hotel shall provide, in each room equipped with a permanent amplification system, at least one microphone and microphone patch, in good working order, at no charge. Hotel shall also provide at no charge a reasonable amount of equipment for meeting and food & beverage

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functions (i.e., chairs, tables, lecterns, blackboards, easels, pads, pencils, water and candy dishes, etc.) and set-up in each room up to seating capacity, as requested by Society. Hotel shall accommodate any requests by Society for 24-hour function space utilization as set. Any additional equipment charges will require Society's prior approval and written consent.

The Complimentary Set-Up (sometimes called AV or In-House Equipment) provision is good to include in every contract. Hotels generally agree to this provision unless there is an "extraordinary room set-up" requirement (the definition of which should be included in the contract). Negotiate appropriately for your meeting. If you need more microphones try to negotiate a discount off hotel list prices.

### **CONFLICT AVOIDANCE**

Hotel shall avoid booking guest room blocks, hospitality suites, and function space over the Official Dates on behalf of any organization with an interest in the medical profession, excluding Society-approved exhibitors, or whose simultaneous presence in Hotel during the Official Dates may embarrass Society, its attendees, exhibitors or guests. If requested, Hotel shall provide to Society, in writing, the names, addresses and business affiliations of guests utilizing suites over the meeting dates. All ancillary or affiliate groups to Society must have the express approval of Society's meeting management prior to booking subgroup activities.

The Conflict Avoidance provision is often included in order to protect the group's meeting. It restricts the hotel from booking space at the same time to a competing organization or to one with a competing interest. Many hotels accept this provision but others have objected to it on the basis that the hotel is not able to identify a competitor group. In such cases, the hotels will often request a list of competitors, but this is often impractical as the list is too large for groups to provide. Some hotels have agreed to this provision if it is changed so that the hotel is only prohibited from reserving space for organizations that it is aware are competitors of Society. This provision can work in connection with the Function Space Approval provision above or be substituted for it, depending on how much control Society wants and how accommodating the hotel is willing to be.

### **REASSIGNMENT OF ASSIGNED SPACE**

Hotel shall not change any of the function space reserved for Society without the prior written approval of Society.

The Reassignment of Assigned Space provision is also important to protect Society from having its space downgraded to another space without Society's prior written consent. It is essential in the Schedule of Function Space to identify specific rooms by name so that Society later has a "benchmark" to evaluate other space the hotel may want to reassign to Society.

### **QUIET ENJOYMENT**

Hotel shall be responsible for ensuring that Society's use of all function space is free from outside distractions, disturbances and interruptions. Walls shall be sound resistant, but if they are not, Hotel shall avoid assigning to any function room(s) adjacent to or across from Society's function rooms any group which may generate noise sufficient to detract from Society's functions. If necessary, Hotel shall leave an empty room between Society and such other group as a buffer to eliminate the risk of disturbance. In the event Society's use of any function space is disturbed despite these efforts, upon notice from Society Hotel shall respond immediately to cause such disturbance to cease.

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The Quiet Enjoyment provision is important because it protects the quality of the function space from noise, and other disturbances such as odors, dust, etc. Hotels will generally accept this provision except that some hotels may object to the third sentence or “empty room requirements” sentence because of function space constraints.

### **SCHEDULE OF EVENTS**

Hotel shall provide to Society, and regularly update, a schedule of all events taking place in the Hotel over the Official Dates. All Society events shall be included and prominently noted in Hotel's schedule of events published to guests, unless noted: “Do Not List.”

The Schedule of Events provision is important to include in order to help Society “troubleshoot” any possible problems that might arise from another group’s use of the hotel. Hotels rarely object to this provision.

### **ROOM BLOCK ATTRITION** *[Insert one of the following:]*

#### **[Option 1]**

It is understood and agreed by the parties that Hotel will not assert any fees against Society or withdraw any of the complimentary considerations outlined in the Agreement should Society hold the Event but fail to utilize the total Room Block.

Room Block Attrition provisions have become standard in hotel contracts. It is unlikely Society will get the hotel to agree to waive any attrition. If the hotel does agree, however, it is still important to include language in the contract about attrition. Doing so is the best way to ensure the hotel will not come back to Society after the event and attempt to assess attrition fees. In other words, it’s better to include the first option rather than just saying nothing in the contract regarding attrition. If Hotel agrees to waive attrition, make sure it is not hidden elsewhere.

### ***ASSUMING THAT HOTEL INSISTS ON ATTRITION, THERE ARE SOME POINTS THAT SHOULD BE ADDRESSED IN ALL SUCH PROVISIONS:***

#### **[Option 2 – coordinated with % adjustment in Guest Room Review and Adjustment, Option 3]**

In the event Society pays for less than *[insert number of room nights equal to percentage of total room nights, e.g., 80% of the total room nights]* room nights, Society shall pay Hotel an attrition fee as outlined in this provision. The attrition fee shall equal the difference between *[insert same number as above]* room nights and the total number of room nights paid for by Society and its attendees (regardless of the method of reservation or room rate charged) multiplied by \$ *[insert amount, e.g., 70% of net, non-commissionable single room rate]*. The attrition fee shall not be in effect for any night during Society’s stay in which all available rooms in Hotel are sold. In the event a portion of Hotel’s available rooms have been sold, the attrition fee shall be based on either the difference between *[insert number of room nights equal to percentage of total room nights, e.g., 80% of the total room nights]* room nights and the total room nights paid for by Society or the number of rooms available in Hotel, whichever is lower. Payment of any attrition fee shall be contingent upon Society’s receipt of information and written documentation which reports both the number of rooms available in Hotel for each night during the Official Dates and the names of the individuals staying at Hotel during Official Dates. Hotel shall provide Society with information and written documentation as Society may request for verification of any attrition fee due. This attrition fee shall represent Hotel’s exclusive remedy for Society’s failure to pay for at least *[insert same number as above]* total room nights during its Event.

Most hotels will agree to Option 2, but the required percentage of room nights and the rate to be charged for each room night below the required percentages are negotiating items. Society would generally like the required

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percentage to be 70-80%, while the hotels would like it be 85-95%. Resort properties are often in the 95% range.

Note that all room nights sold to Society's event attendees should be credited to Society's total room nights, regardless of how the individual made the reservation or at what rate the individual was charged for the room. This also includes walked guests' room nights, forfeited deposits for "no-shows," etc. Such a provision is critical nowadays with Internet hotel reservation services and corporate discounts so prevalent.

Another significant issue to include is Society's right to obtain information and documentation from the hotel to verify any attrition fee. This information would include the number of rooms available for sale at the hotel during the blocked dates. Society will also want to match up its conference attendance list with the hotel's list of who stayed there during the blocked dates to ensure the accurate number of room nights has been credited to Society's room block. This can be controversial in that hotels do not like to give out "confidential" information about who was staying there during the blocked dates. One way to overcome this issue is to have the hotel give Society the list subject to a nondisclosure agreement. Under no circumstances should Society agree to an attrition provision that does not require the hotel to produce a detailed Post-Event Report in advance of any attrition payment being paid. Be sure to include room nights for any individual who was walked or forfeited the deposit.

The exclusive remedy paragraph is important because if Hotel asserts an attrition fee against Society, the payment of the fee must be the end of it - not litigation for additional damages. Most hotels will agree to this provision.

Notwithstanding the above, in lieu of paying any attrition fee, Society may elect to contract with Hotel for the same or similar sized event as the Event that is the subject of this Agreement, provided such event is scheduled to occur on or before [insert specific date]. The parties shall mutually agree upon the specific dates of such event.

This paragraph addresses the situation in which Society is willing to schedule another event at the hotel at a later date in order to offset an attrition fee. Hotels will often agree to this paragraph provided that the next meeting is in the near future (12-6 months or even less) while Society would likely want additional flexibility (up to 2 years from the original date).

[Option 3]

Should the room nights actually paid for by Society be \_\_\_% less than the Room Block as of the Final Adjustment Date, Society shall pay the attrition fee as outlined below:

Percentage of Room Block Occupied	Total Attrition Fee
___% - 100%	Waived
___% - ___%	\$ _____ or actual # rooms x rate or x ___% of rate
___% - ___%	\$ _____ or actual # rooms x rate or x ___% of rate
___% - and Below	\$ _____ or actual # rooms x rate or x ___% of rate

Upon receipt of such information, Society shall have the right to identify additional room nights, including forfeited deposits for no-shows and late cancellations which should be credited toward its Room Block, and Hotel shall credit such room nights to Society regardless of room rate or method of reservation. Hotel shall also credit the negotiated, cumulative number of complimentary room nights toward Society's Room Block. Society's receipt of information required by this provision shall mean that the information is supplied to Society's office and shall not require presence of a Society staff person at Hotel to review such information.

State and local tax shall not be applied to the attrition fee unless required by law. [Optional: If

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law requires payment of tax, Society shall make payment of tax by separate check made payable to the municipal or state taxing authority.]

Many hotels assert that they have to charge sales tax on attrition fees. If this issue is raised during the negotiation, Society should ask the hotel to provide Society with a copy of the appropriate tax law or ordinance which requires the hotel to charge tax on attrition fees. Generally such sales tax issues are governed by state, county or city ordinance. Alternatively, Society can make payment of tax by separate check made payable directly to the taxing authority.

The attrition fee shall not be in effect for any night during Society's stay in which all available rooms in Hotel are sold or occupied. [See text box below for alternative approach.\*] In the event a portion of Hotel's available rooms have been sold, the attrition fee shall be based on either the difference between [insert number of room nights equal to percentage of total room nights, e.g., 80% of the total room nights] room nights and the total room nights paid for by Society or the number of rooms available in Hotel, whichever is lower.

A key component of an attrition provision is that Society does not have to pay an attrition fee for any nights in which the hotel is sold out. \*Alternatively, rather than Society not having to pay an attrition fee for any nights in which the hotel is sold out, it is possible to negotiate: "No attrition fee shall be asserted against Society if all available rooms in Hotel are sold for any of the sequential blocked nights of Society's Event." The rationale here would be that if attendee is unable to book a room for the first night of the meeting (or any other one night during the event) because the hotel is sold out, the attendee is likely to book his/her entire stay at another hotel, rather than go one place for one night and then back to the official hotel for the remainder of the meeting. Therefore, Society may lose room nights because of hotel's sold out status - therefore, no attrition assessed at all.

Society should also receive credit for partial sell-outs, e.g., group slips 25 room nights on one night, but only 10 rooms are available for sale. Society should only pay an attrition fee on 10 rooms as opposed to the 25 rooms.

Notwithstanding the above, in lieu of paying any attrition fee, Society may elect to contract with Hotel for the same or similar sized event as the Event that is the subject of this Agreement, provided such event is scheduled to occur on or before [insert specific date]. The parties shall mutually agree upon the specific dates of such event.

The terms of this section represent Hotel's exclusive remedy for the guest room attrition fee.

### **FOOD AND BEVERAGE REQUIREMENTS**

Hotel shall accommodate Society's food & beverage requirements for functions scheduled at Hotel, if any. Society shall provide Hotel with a minimum guarantee of the number of people who will attend [insert number of hours, according to Hotel's policy] hours in advance of the function. Hotel shall set for up to 5% over the guaranteed minimum, the specific percentage as directed by Society.

The Numbered Guaranteed provision is straightforward and hotels rarely object to it provided the guarantee policy is consistent with their policy.

### **CATERING RATES** - [Insert one of following provisions]

#### **[Option 1]**

Hotel shall provide Society with confirmed food and beverage prices on or before [insert date 6

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to 12 months] in advance of Society's arrival date. These prices do not include any applicable [insert type (e.g. state, local)] tax(es), currently at \_\_\_% [insert number], and service charges of \_\_\_% [insert number]. There will be no special labor or service fees over and above the normal gratuities for any of Society's food and/or beverage functions. No changes shall be made to such prices without the prior written consent of Society. [In no event shall Society's meal prices be greater than the lowest rate offered to guests of Hotel between [insert first and last blocked dates].

[Option 2]

Hotel's current minimum catering selections are as follows:

Continental Breakfast:	\$_____ per person
Breakfast:	\$_____ per person
Lunch:	\$_____ per person
Dinner:	\$_____ per person

Hotel promises that the rates charged to Society will be no more than the rates listed above, increased by not more than \_\_\_% [insert number for cap] per year. [In no event shall such prices exceed Hotel's published menu prices during Official Dates.]

There shall be a discount for catered meals. [insert the percentage for discount or reduced rates].

[Option 3]

Hotel's food and beverage rates below are guaranteed as of the date of signing this Agreement. These prices do not include any applicable [insert type (e.g. state, local)] tax(es), currently at \_\_\_% [insert number], and service charges of \_\_\_% [insert number]. There will be no special labor or service fees over and above the normal gratuities for any of Society's food and/or beverage functions.

The Meal Prices or Catering Minimums provision should be included in every contract. It ensures the hotel will not "pad" the food and beverage prices it charges to Society. The first option rarely meets with objections from the hotels except as to the guarantee time (Society should try for 12 months but the hotel will likely agree to 6 months) and the last sentence as to the lowest rates (hotel may argue that other groups may be receiving lower prices because of the quantity purchased). The second option is more often found in contracts booked years in advance of arrival. Hotels will list the current year prices with a maximum annual increase provision, much like the room rate provisions. This price cap will ensure the meal prices will not increase over a certain percentage of the current base catering prices. Typically, the price cap is in the 5-7% range. Option 3 is probably the most difficult to obtain unless the meeting is within a year of signing the contract. The taxes and service charges need to be included with information provided by the hotel.

**FOOD & BEVERAGE ATTRITION OR CANCELLATION** - [Insert one of the following]

[Option 1]

It is understood and agreed by the parties that Hotel will not assert any fees against Society or withdraw any of the complimentary considerations outlined in the Agreement should Society cancel any food and beverage function as outlined on the attached Schedule of Function Space [insert name of actual attachment] or hold any food and beverage function as outlined on the attached Schedule of Function Space but have less than the estimated number of attendees

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present at the function.

The Food & Beverage Attrition or Cancellation provision is important to include so that both parties are in agreement on what Society's food and beverage obligations are during the meeting. Just as with the room attrition provision, it is difficult to get the hotel to agree to the first option above.

[Option 2]

Society, its affiliates and sponsors collectively shall generate a minimum of \$ [insert amount] in total food and beverage revenue from group food and beverage functions (excluding tax and service charges) held at Hotel during Society's Event. Hotel will extend a \_\_\_% allowance in food and beverage revenue. In the event Society, its attendees, affiliates and sponsors collectively fail to generate \$ [insert same amount as above] in total food and beverage revenue (excluding tax and service charges), Society shall pay to Hotel a fee equal to the difference between the actual total food and beverage revenue collectively generated by Society, its attendees, affiliates and sponsors (excluding tax and service charges) and \$ [insert same amount as above]. This fee shall represent Hotel's exclusive remedy for Society's attrition at or cancellation of any food and beverage event during the Event.

The second option is based on a guarantee of a minimum dollar amount of expenditures during Society's stay, rather than focusing on attendance at any given function. This provision gives Society flexibility to add, reduce or modify a function so long as at the end of the event, Society has spent the required amount in food and beverage. Try to include "attendees" in the provision, so that all food and beverage activity charged to Society attendees' rooms including room service and restaurant usage is also credited to Society's minimum requirements. This isn't always possible, but it's worth a try. Society's event has brought that added revenue to the property. Note that in the provision above, the minimum amount is exclusive of tax and service charges. Most hotels will agree to such a provision, although they may attempt to delete the individual attendees' food & beverage activity, and the only negotiating will take place on the minimum guarantee amount.

[Option 3]

Should any of the functions listed on the attached Schedule of Function Space [modify name of attachment as appropriate] be cancelled less than seventy-two (72) hours prior to their scheduled date, Society agrees to compensate Hotel no more than \_\_\_% [insert number - as low as possible, but in no event higher than 40%] of the estimated minimum food and beverage revenue, excluding tax and service charges, Hotel would have received for such function based upon the then-current catering prices and contracted number of attendees for the Event. This fee shall represent Hotel's exclusive remedy for Society's attrition at or cancellation of any food and beverage function during the Event.

Note: FYI - current rough estimates of profit margin on f&b is 18-20% for plated meals and up to 30% on buffets.

**ALCOHOLIC BEVERAGES**

If alcoholic beverages are to be sold or served on Hotel premises (or elsewhere under Hotel's alcoholic beverage license), such beverages shall be dispensed only by Hotel's employees and bartenders. Hotel represents and warrants that all Hotel personnel who dispense or serve alcohol have undergone adequate training to prevent any incidents that could result in claims of liquor liability. Alcoholic beverage service may be denied to those guests who appear to be intoxicated or are underage.

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Notwithstanding any other provision of this Agreement, Hotel shall defend, indemnify and hold harmless Society, its directors, officers, employees and agents, and each of them, from and against any and all losses, damages, claims, expenses and liabilities of any kind, including costs of defense thereof, caused by or arising from the Hotel's sale or service of alcoholic beverages. The terms of this provision shall survive the termination or expiration of this Agreement.

The Alcoholic Beverages provisions are very important to include in the contract even in situations in which alcohol will not be served at a group function. Although hotels rarely object to these provisions, on occasion a hotel will object to the section on indemnification on the basis that it believes the issue is addressed under the Agreement's general indemnification provision. The protection provided under this provision is more comprehensive as it does not include a negligence requirement. Therefore, Society should insist upon its inclusion so that Society is adequately shielded from liability should any damage or injury result from an attendee's excessive drinking.

### **DUTIES, RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES OF HOTEL**

Hotel represents and warrants that it shall provide adequate staff to promptly handle check-ins and check-outs during the Event including but not limited to front desk, bellhops, doormen, car parkers.

The prompt check-in and check-out provision is good because it ensures attendees will be promptly checked-in and will not have to wait in long lines, etc. More importantly, this section can be later used as leverage in a situation in which the hotel is attempting to collect for attrition, and Society wants to negotiate various concessions.

Hotel represents and warrants that it shall be in full compliance with all applicable governmental laws and regulations during Official Dates, including specifically all applicable fire, health and safety codes and regulations, and the Americans with Disabilities Act.

The Compliance with Applicable Laws provisions are important because they require the hotel to be in compliance with all applicable laws, etc. This is especially important with respect to the condition and operation of the hotel. Note that security procedures must be in place, but are confidential to the hotel. However, the hotel should make them available to Society's authorized representative for review upon request.

Hotel represents and warrants that it maintains procedures and policies covering security, fire safety and other safety issues, and that Hotel shall make all such procedures and policies available for inspection upon request by Society.

The Duties, Responsibilities, Representations and Warranties provisions rarely meet with objections from hotels. Occasionally, hotels claim that they cannot guarantee "full compliance" with laws or that the deterioration in quality provision is too subjective.

Hotel represents and warrants that the quality of its services and the physical condition of Hotel shall be the same or better at the time of performance than on the date of the site inspection or execution of this Agreement, whichever is later. Society's authorized representative exercising his or her reasonable judgment shall make such determinations.

The Quality of the Hotel provision is important because it ensures Society will receive the same or better quality of hotel and services as they were at the time of execution of the Agreement. Because property may deteriorate over

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time, the provision is particularly important when rooms are booked well in advance of the actual dates of the event.

**AMERICANS WITH DISABILITIES ACT** - [Insert one of the following provisions]

[Option 1]

Each party agrees to use good faith efforts to ensure that it complies with its obligations under the Americans with Disabilities Act and the Act's accompanying regulations and guidelines (collectively the "ADA"). Society shall do its best to identify in advance any special needs of attendees, and will notify Hotel of such needs for accommodation as soon as they are identified to Society. Society shall copy Hotel on correspondence with attendees who indicate special needs as covered by ADA. Hotel shall notify Society of requests for accommodation which it may receive otherwise than through Society to facilitate identification by Society of its own accommodation obligations or needs as required by ADA.

[Option 2]

Compliance by Hotel - Hotel shall be responsible for complying with the public accommodations requirements of the Americans with Disabilities Act ("ADA") not otherwise allocated to Society in this agreement, including: (i) the "readily achievable" removal of physical barriers to access to the meeting rooms (e.g., speakers' platform and public address systems), sleeping rooms, and common areas (e.g., restaurants, rest rooms, and public telephones); (ii) the provision of auxiliary aids and services where necessary to ensure that no disabled individual is treated differently by Hotel than other individuals (e.g., Braille room service menus or reader); and (iii) the modification of Hotel's policies, practices and procedures applicable to all guests and/or groups as necessary to provide goods and services to disabled individuals (e.g., emergency procedures and policy of holding accessible rooms for hearing and mobility impaired open for disabled until all remaining rooms are occupied).

Compliance by Society - Society shall be responsible for complying with the following public accommodations requirements of ADA: (i) the "readily achievable" removal of physical barriers within the meeting rooms utilized by Society which Society would otherwise create (e.g., set-up of exhibits in an accessible manner) and not controlled or mandated by Hotel; (ii) the provision of auxiliary aids and services where necessary to ensure effective communication of Society's program to disabled participants (e.g., Braille or enlarged print handouts, interpreter or simultaneous videotext display); and (iii) the modification of Society's policies, practices and procedures applicable to participants as required to enable disabled individuals to participate equally in the program.

Mutual Cooperation in Identifying Special Needs - Society shall attempt to identify in advance any special needs of disabled registrants, faculty and guests requiring accommodation by Hotel, and will notify Hotel of such needs for accommodation as soon as they are identified to Society. Whenever possible, Society shall copy Hotel on correspondence with attendees who indicate special needs as covered by ADA. Hotel shall notify Society of requests for accommodation which it may receive otherwise than through Society to facilitate identification by Society of its own accommodation obligations or needs as required by ADA.

The Americans with Disabilities Act ("ADA") provision is important to include (and should *only* be included) in

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contracts with U.S. hotels or hotels in U.S. territories or possessions. The public accommodations of the ADA require hotels to make their facilities and services accessible to persons with disabilities. The parties are permitted to allocate their responsibilities, and the provisions above represent such a reasonable allocation. The first provision above is mutual whereby the hotel and Society each agrees to use good faith efforts to comply with their obligations under the ADA. By using a mutual provision, only one paragraph is necessary. The more typical ADA provisions can also be offered, but all 3 paragraphs should then be included.

### **SHIPPING AND HANDLING**

If it is necessary for Society or any Society-approved exhibitors to ship materials to Hotel, each item shall be properly packed and marked with (a) Society's name and contact; (b) the date of the Event; and (c) the name of Hotel contact. Society shall ship materials ahead only as reasonably necessary. Hotel shall store such materials free of charge in a secure location pending Society's arrival.

The Shipping and Handling provision is good to include in the contract if Society anticipates it may be shipping materials to the hotel.

### **SIGNAGE**

In accordance with the decor and atmosphere of Hotel, Society may display signage outside function rooms, in meeting registration areas, in Hotel lobby (with lobby location subject to Hotel approval), and directional signs as needed.

The Signage provision is good to include in the contract and hotels rarely object to this provision.

### **USE OF OUTSIDE VENDORS**

If Society wishes to hire outside vendors to provide any goods or services at Hotel during the Event, Hotel may, in its sole discretion, require that such vendor provide Hotel, in form and amount reasonably satisfactory to Hotel, an indemnification agreement and proof of adequate insurance. Hotel will not assess any additional charges for Society's use of an outside vendor.

### **SECURITY**

Should Society require security, Hotel will assist in making these arrangements.

The Use of Outside Vendors and Security provisions are good to include in the contract if Society anticipates it may be using outside providers or needing additional security personnel. Hotels rarely object to these provisions.

### **EXHIBITOR** [optional]

#### [Option 1]

Society will have up to [insert number] of tabletops, beginning with exhibitor setup on [insert date]. The exhibit must be removed by [insert time] on [insert date]. There will be a charge of \$\_\_\_\_\_ per tabletop, and no charge for draped tablecloth covering. Price includes table, draping and two (2) chairs.

#### [Option 2]

Hotel agrees to offer a special discounted meeting room rental of \$\_\_\_\_\_ per net square foot for exhibit space. Society and/or its Exhibit Company shall provide to Hotel a fully completed data

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sheet for each Exhibitor that rents a booth for its events. This shall include but is not limited to the number of exhibits, the floor load and square footage requirements for each booth and total for the exhibit hall. Society is responsible for submitting to Hotel by *[insert date]* a summary of its requirements of the exhibit area which shall include the number of exhibits.

**FREIGHT AND MATERIALS** *[optional]*

Exhibitor materials: Definition – any and all materials that are to be taken onto the show floor during an exhibit. Hotel does not accept exhibit materials. Convention/Conference Groups will be allotted *[insert number]* pounds of registration materials free of charge. Any materials received over and above this limit will be assessed a storage and handling charge of \$\_\_\_\_\_/hundred weight.

The Exhibitor and Freight and Materials provisions are important if Society is having a trade show, exhibits or tabletop displays as part of its meeting. These provisions define the responsibilities and limitations of the Society and/or its Exhibit Company and Hotel. The Shipping and Handling provision is targeted to materials necessary for the Society to conduct its meeting, rather than exhibitor materials for a trade show.

**INSURANCE**

[Option 1]

Hotel shall carry liability, fire, property and other insurance in an amount not less than \$1 million to protect itself against any claims arising from any activities conducted in the Hotel during the meeting and to indemnify and defend Society as provided in this Contract. The Hotel agrees to provide a certificate of insurance if requested by the Society meeting planner.

[Option 2]

Hotel and Society shall each carry Commercial General Liability insurance coverage, or be self-insured, for property damage and personal injury to be in effect over the meeting dates specified in this Contract in an amount not less than \$1,000,000 per occurrence and \$50,000 Fire Legal Liability.

Each party’s obligation to the other for any damage to, or loss of, the other’s property shall not exceed the extent of insurance and the limits provided in the Commercial General Liability insurance policy, or self-insurance fund, required of each party under this Contract.

The Insurance provision is good to include in the contract and most hotels do not object to its inclusion. The only issue may be that more hotels now require groups to carry specific amounts and types of insurance and require groups to name the hotel as additional insureds on such policies.

**INDEMNIFICATION** - *[Insert one of the following provisions]*

[Option 1]

Each party to the Agreement shall indemnify, defend, and hold harmless the other party and its officers, directors, agents, and employees and each of them, from and against any and all demands, claims, actions, or liabilities of whatsoever kind and nature, including judgments, interest, and reasonable attorneys’ fees and all other costs, fees, expenses and charges (collectively, “Claims”), arising solely out of or solely caused by the indemnifying party’s negligence or willful misconduct in connection with the provision and use of Hotel, its officers,

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directors, agents, or employees as contemplated by this Agreement. This paragraph shall not waive any statutory limitations of liability available to either party, including innkeepers' limitation of liability laws, nor shall it waive any defenses either party may have with respect to any Claims. The terms of this provision shall survive the termination or expiration of this Agreement.

[Option 2]

Hotel shall indemnify, defend and hold harmless Society, its officers, directors, employees and agents, and each of them, from any and all claims, actions, causes of action, demands or liabilities of whatsoever kind and nature including judgments, interest, attorneys' fees, and all other costs, fees, expenses and charges which Society, its officers, directors, employees, agents and members, and each of them, may incur arising out of the negligence, gross negligence or willful or wanton misconduct of Hotel, its officers, directors, employees, or agents. The terms of this provision shall survive the termination or expiration of this Agreement.

Society shall indemnify, defend and hold harmless Hotel, its officers, directors, employees and agents, and each of them, from any and all claims, actions, causes of action, demands or liabilities of whatsoever kind and nature including judgments, interest, attorneys' fees, and all other costs, fees, expenses and charges which Hotel, its officers, directors, employees, and agents, and each of them, may incur arising out of the negligence, gross negligence or willful or wanton misconduct of Society, its officers, directors, employees, or agents. The terms of this provision shall survive the termination or expiration of this Agreement.

The Indemnification provisions are essential to every contract in that they protect a party from being financially harmed by other party's negligence. Some important features of the provision are that the word "defend" is included in the first line (requires the party to hire attorneys and defend the lawsuit at the outset rather than reimbursing Society after the fact) and the phrase "negligence, gross negligence or willful or wanton misconduct" in the sixth and seventh lines (covers wide range of possible occurrences). The first provision above is mutual whereby the hotel and Society each agree to indemnify the other. By using a mutual provision, only one paragraph is necessary. The more typical individual indemnification provisions can also be offered, but it is unlikely the hotel would indemnify Society without being indemnified by Society. Therefore both paragraphs should be included if the mutual one is not used.

**RIGHTS OF TERMINATION**

Neither party shall have the right to cancel its obligations under this Agreement except as otherwise provided in this Agreement.

The Rights of Termination provision is important because it states from the outset that there is no right of cancellation or termination unless one of the following exceptions applies.

*[Insert one of the following provisions]*

[Option 1]

Force Majeure - Should events beyond the control of Hotel or Society, such as acts of God, war, curtailment or interruption of transportation facilities, threats or acts of terrorism or similar acts, State Department travel advisory or warning, civil disturbance, weather activities, disease and epidemics occurring within two weeks of the event, interruption or cessation of electrical power, strikes or labor disputes (except those involving hotel's employees), or any other emergency

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beyond the parties' control, make it inadvisable, illegal or impossible for either party to perform its obligations under the Agreement as they relate to the Event, such party may cancel the Agreement without liability upon written notice to the other party. In the event Society decides to hold its Event despite such circumstances, Hotel shall waive any fees related to a reduced-sized Event (including any room and food and beverage attrition fees and any function space rental fees) and shall offer Society's guests any lower room rate offered to guests during the Official Dates.

The Force Majeure provision (sometimes referred to as Acts of God - change heading if Acts of God title is still being used) is critically important and must be included in every contract. The essential features of this provision are that it covers both Society and the hotel and that it covers situations in which performance is "inadvisable, illegal or impossible" (instead of simply saying "illegal" and/or "impossible"). Additionally, Society is protected from attrition if it should decide to hold its meeting despite circumstances that would greatly reduce attendance. Most hotels do not object to this provision, although they may attempt to modify the list of triggering events or to remove "inadvisable." Some hotels may try to use "impracticable" rather than "inadvisable." Society prefers "inadvisable" to "impracticable." Hotels that try to delete the word "inadvisable" typically will claim that anything could be inadvisable and the hotel is too exposed. If you run into this, try Option 2 which uses "commercially unreasonable." Society should insist on including one or the other in this provision, as Society's right to terminate in an uncertain situation is otherwise compromised. Note: If the hotel contract is for an event in country other than U.S., you may want to add "foreign government or U.S." in front of State Department. Consult with Society's counsel before agreeing to any modification of this provision which does not include either "inadvisable" or "commercially unreasonable" language.

#### [Option 2]

Force Majeure - Should events beyond the control of the Hotel or Society, such as acts of God, war, curtailment or interruption of transportation facilities either in the Conference City or in the countries/states of origin of the attendees which prevents [*or impedes*] at least \_\_% [*insert percentage – try for something less than 40% if possible*] of the attendees from arriving for the first scheduled day of the event, acts of terrorism or similar acts within the continental United States, disease, epidemic, State Department or other governmental or international agency travel advisory, civil disturbance, interruption or cessation of electrical power, strikes or labor disputes (except those involving hotel's employees) or the imminent threat thereof, or any other cause beyond the parties' control, which, in the party's reasonable judgment, would tend to make it commercially unreasonable, illegal or impossible for either party or its members to perform their obligations under the Agreement as they relate to the Event, such party may cancel the Agreement without liability upon written notice to the other party. In the event Society decides to hold its Event despite such circumstances, the Hotel shall waive any fees related to a reduced-sized Event (including any room and food and beverage attrition fees and any function space rental fees) and shall offer Society's guests any lower room rate offered to guests during the contracted dates (xx/xx/xx – xx/xx/xx).

The essential difference in Option 2 is the substitution of "commercially unreasonable" for "inadvisable" in addition to "illegal or impossible." Remember, without one or the other, Society's right to terminate in an uncertain situation is compromised. Additionally, Option 2 highlights alternative possibilities for negotiation purposes if the hotel expresses concern about a particular item on the "laundry list." For example, adding 'within the continental United States' to "threats or acts of terrorism or similar acts" may allay the concerns that a terrorist threat or event anywhere in the world would trigger a force majeure provision. Alternatively, try to just delete "threats" and leave "acts of terrorism or similar acts," rather than deleting it altogether. Don't accept a New York City or D.C. property's

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insistence on deleting all references to terrorism. On the other hand, you may have to reconsider if the meeting is in the Middle East. You can put in as much or as little of the alternatives as you find necessary for the particular contract. Consult with Society's counsel before agreeing to any modification of this provision which does not include either "inadvisable" or "commercially unreasonable" language.

Financial Difficulties - In the event that either party shall make a voluntary or involuntary assignment for the benefit of creditors, enter into bankruptcy proceedings, become insolvent or subject to foreclosure, or take any other action for the benefit of creditors or relief of debtors, the other party may cancel this Agreement without liability upon written notice to the other.

The Financial Difficulties provision is good to include because it is mutual. Most hotels do not object to it.

Deterioration in Quality - Should Hotel suffer a substantial deterioration in the quality of its facilities or services, Society shall notify the General Manager of its concerns in writing. Should the General Manager be unable to correct the deficiencies of the facilities or services to Society's expectations, Society may cancel this Agreement without liability upon written notice to Hotel.

The Deterioration in Quality provision is important to include in the contract, especially when the contract is signed well in advance of the meeting. It also protects the integrity of the facility even if it is going through bankruptcy or receivership. Occasionally hotels will object to this provision on the basis that it is too subjective.

Site Inspection - All arrangements set forth in this Agreement are contingent upon a satisfactory site inspection to take place no later than one year prior to the Official Dates [*insert specific date or within X time prior to Even or prior to opening of Hotel (for new facility)*]. Society may cancel this Agreement after the site inspection, without penalty or other liability, by providing written notification to Hotel no later than seven (7) days after conclusion of the site inspection.

The Site Inspection provision is very important to include in the contract. Because contracts are usually signed well in advance of the event, properties can change dramatically between time the Agreement is signed and the site inspection. Sometimes properties are still being built when the Agreement is executed. It is important to have the right to get out of the contract if the "finished" facilities do not meet Society's expectations or satisfy its needs.

Construction or Renovation - In the event Hotel will be undergoing any construction or renovation during the period [*insert dates 30 or 60 days before the Event through 30 or 60 days after the Event*], Hotel shall promptly notify Society, and Society may cancel this Agreement without liability upon written notice to Hotel if, in Society's reasonable judgment, such construction or renovation may tend to unreasonably affect the use of the facilities or the quality of service to be provided under this Agreement.

[*Optional:* There shall be no routine maintenance, in the Function Space during the Society meeting. If there is routine maintenance, the Hotel represents and warrants that there will be no distractions that could affect the ordinary use of the Function Space by Society. In addition, the Hotel warrants that all food, beverage and recreational outlets will be functioning normally during the meeting.]

The Construction or Renovation provision is essential to include in every contract. Some hotels will object to it on the basis that the issue of noise is addressed under the Quiet Enjoyment provision, but that provision does not give

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Society the right to cancel the Agreement without liability. Further, since this section states that Society “may cancel” the Agreement, it can later be used as leverage in a situation in which the hotel is undergoing major construction during the meeting dates, and Society does not want to or cannot move its meeting but wants to negotiate various concessions, e.g., reduced room rate, food and beverage discount. Some hotels will object to this provision on the basis that it is too subjective.

Strike or other Labor Dispute - In the event of any strikes, work stoppages or other labor disputes, actual or threatened, involving Hotel employees, Hotel shall promptly notify Society, and Society may cancel this Agreement without any liability upon written notice to Hotel if, in Society's reasonable judgment, such labor dispute may tend to materially disrupt or interfere with the use of the facilities or quality of service to be provided under this Agreement.

The Strike or other Labor Dispute provision is important to include in that it addresses strikes of the hotel's employees that may not rise to the level of a “force majeure” under the section above but may affect the quality of the facility of service. Most hotels do not object to this provision unless they do not have union employees. Occasionally, some hotels will object to this provision on the basis that it is too subjective.

Change in Management - Hotel shall promptly notify Society if there is a change in Management Company of Hotel prior to the Event, and Society may cancel this Agreement without liability upon written notice to Hotel.

The Change in Management provision is important to include in the contract in the event the management company changes from a high quality one to a lower quality one. Most hotels will agree to this provision.

Essential Facility Unavailability - In the event that the convention center and/or other meeting venue should become unavailable to Society during the Official Dates through no fault of Society, Society may cancel this Agreement without liability upon written notice to Hotel.

The Unavailability of Facilities provision is essential to include only if Society is relying on the use of another facility, e.g., convention center, in connection with the meeting.

Alternate Facilities - In the event of cancellation of the Agreement by Hotel or by Society under any of the preceding paragraphs or under the Agreement, Hotel shall assist Society in securing alternate facilities if so requested by Society.

The Alternate Facilities provision is helpful, but not essential, to include in the contract. Hotels generally accept the provision.

Refund Included - The phrase "without liability" wherever used in this Agreement shall be deemed to include a prompt refund by Hotel of any deposits and prepayments made in connection with the Event.

The Refund Included provision is essential to include because it defines the phrase “without liability” such that Society can get its deposit and any other prepayments refunded to it by the hotel.

## **CANCELLATION BY SOCIETY**

In the event Society cancels this Agreement for reasons not otherwise permitted by this

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Agreement, Society shall pay Hotel a cancellation fee, not a penalty, within *[insert time period]* days, as outlined below. Cancellation will be defined as the total non-use of Hotel by Society for the services and items outlined in this Agreement.

The Cancellation Fee provision is important to include in every contract because it clearly defines Society's exposure in the event Society has to cancel the meeting for business reasons. The fee can be based on a number of formulas: percentage of total room revenue; percentage of total room and food and beverage revenue; percentage of room profit revenue (see below); negotiated dollar amounts (perhaps loosely based on such a percentage (see below). There are 2 flat fee methods, either of which probably works best, as these methods allow for up front negotiation. Hotels generally accept this provision except that they may want to change the date parameters or fee amounts. Room night profit is generally estimated to be between 70-80%, depending on the type of property, season, etc. Only go up to 80-85% if absolutely necessary. Below there are examples of the flat fee negotiated cancellation fees and the percentage of room profit revenue cancellation fee with the relevant calculation formula.

*[Insert one of the following fee schedule provisions or other provision as appropriate]*

**[Flat Fee Method #1]**

<u>Date Notice Of Cancellation Is Received By Hotel</u>	<u>Cancellation Fee</u>
Date of Agreement - <i>state specific date</i>	\$ _____
<i>state specific date</i> - <i>state specific date</i>	\$ _____
<i>state specific date</i> - <i>state specific date</i>	\$ _____
<i>state specific date</i> - <i>state specific date</i>	\$ _____
<i>state specific date</i> - <i>state specific date</i>	\$ _____
On or after <i>state specific date</i>	\$ _____

**[Flat Fee Method #2]**

Society agrees that if it cancels the Event, it will pay Hotel \$\_\_\_\_\_ within thirty (30) days after cancellation as a reasonable estimate of the harm the cancellation will cause the Hotel. Hotel agrees that after receiving this payment, it will not seek additional damages.

**[Percentage of Room Profit Revenue Method]**

The formula used to calculate the dollar amount of Hotel's room night profit is: \$\_\_\_\_\_ (confirmed Society rate, excluding any taxes, agency commissions, Hotel and other service charges, if any) x \_\_\_% (room profit\*) = \$\_\_\_\_\_ (room profit per room) x \_\_\_% (percentage of applicable portion or Room Block, as adjusted on the Final Adjustment Date) = \$\_\_\_\_\_.

The formula used to calculate the dollar amount of the cancellation fee shall be based on a percentage of Hotel's room night profit revenue (see above) according to the following schedule:

<u>Date Notice of Cancellation Is Received By Hotel</u>	<u>Percentage of Room Block Profit</u>
Date of Signing of Agreement - <i>[insert specific date]</i>	<i>[insert specific percentage]</i> (e.g. 1%)
<i>[insert specific date]</i> - <i>[insert specific date]</i> (2 years out)	<i>[insert specific percentage]</i> (e.g. 5%)
<i>[insert specific date]</i> - <i>[insert specific date]</i> (18 mos. out)	<i>[insert specific percentage]</i> (e.g. 15%)
<i>[insert specific date]</i> - <i>[insert specific date]</i> (12 mos. out)	<i>[insert specific percentage]</i> (e.g. 25%)
<i>[insert specific date]</i> - <i>[insert specific date]</i> (6 mos. out)	<i>[insert specific percentage]</i> (e.g. 50%)
<i>[insert specific date]</i> - <i>[insert specific date]</i> (3 mos. out)	<i>[insert specific percentage]</i> (e.g. 75%)
<i>[insert specific date]</i> - to Arrival	<i>[insert specific percentage]</i> (e.g. no more)

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*than adjusted room block % under attrition clause minus any comp room ratio to which Society would have been entitled if paid for rooms were occupied)*

State and local tax shall not be applied to the cancellation fee unless required by law. [*Optional: If law requires payment of tax, Society shall make payment of tax by separate check made payable to the municipal or state taxing authority.*]

Hotel shall attempt to mitigate its losses and shall provide written proof that rooms being held for Society's attendees were not resold by Hotel. If Hotel is able to replace this canceled business, the collected amount will be reimbursed to Society, without interest. If only a percentage of the lost revenue is recovered, the difference between this figure and the fee will be reimbursed to Society. In determining whether or not the lost revenue is recouped, all room nights sold over the Event dates after notice of cancellation is received shall be credited to Society.

The mitigation provision is important in that it requires the hotel to mitigate its losses by attempting to resell the rooms and to provide a refund back to Society if it is successful. Many hotels object to this resell requirement and ask that it be removed. It is unwise to remove the mitigation paragraph unless the flat fee amounts are extremely reasonable.

Notwithstanding the above, in lieu of paying the cancellation fee noted above, Society may elect to contract with Hotel for the same or larger sized event as the event that is the subject of this Agreement, provided such event is scheduled to occur on or before [*insert date up to two years from last blocked date*]. The parties shall mutually agree upon the specific dates of such event.

This paragraph addresses the situation in which Society has to postpone the meeting to a later date. Hotels will often agree to this paragraph provided that the next meeting is in the near future (12-6 months or even less) while Society would likely want additional flexibility (up to 2 years from the original date).

The terms of this section represent the exclusive remedy for unauthorized cancellation of this Agreement by Society.

The exclusive remedy paragraph is important because if Society cancels the event for an impermissible reason, the only remedy the hotel has against Society is the cancellation fee, not litigation for additional damages. Most hotels will agree to this provision. Others will agree to it if Society pays the cancellation fee in a timely manner.

### **CANCELLATION BY HOTEL**

In the event of a cancellation of this Agreement by Hotel not otherwise permitted under this Agreement, Hotel shall pay Society for all direct, indirect and consequential damages, expenses, attorneys fees, and costs incurred by Society on account of such cancellation including, but not limited to, staff time and travel expenses to secure an alternate location for the Event, incremental room rate, function space rental, banquet meal differential, air fare differences, and long distance telephone, postage, and printing costs. In addition, Hotel will make every effort to relocate the meeting to another facility of equal quality and in a location acceptable to Society.

The Cancellation by Hotel provision is also essential to include in every contract. Rather than making the cancellation fee schedule above mutual (which often is not a good idea to do because the damage amounts are very

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different from one another), the section above uses a “grocery list” approach as to all of the items the hotel would be responsible for without forcing Society to quantify its damages. Many hotels will agree to this provision but others will only agree to it if it is changed to say “in an amount not to exceed \$\_\_\_\_” at the end of the provision. This provision and the Breach by Hotel provision accomplish the same purpose. Therefore, if the hotel rejects one, try the other. And don’t forget to delete the provision not being used.

### **BREACH BY HOTEL**

Without limiting the liability under the Cancellation by Hotel provision, the failure by Hotel to provide the space and/or services as agreed, or breach of any representation or warranty by the Hotel, shall render Hotel liable to Society for all direct, indirect and consequential damages, expenses, attorneys fees, and costs incurred by Society on account of such breach. Exercise by Society of any of its rights of cancellation under this Agreement shall not waive or otherwise affect this provision.

The Breach by Hotel provision is good to include in the contract because it makes the hotel responsible for indirect and consequential damages - something that the hotel would not be responsible for without such a provision. While some hotels accept this provision, many do not. This provision and the Cancellation by Hotel provision accomplish the same purpose. Therefore, if the hotel rejects one, try the other. And don’t forget to delete the provision not being used.

### **NOTICES**

Any notice or communication to be given under this Agreement shall be in writing and shall be sent by electronic or telephonic (facsimile) transmission, certified mail or overnight mail service to the attention of the undersigned at the addresses shown in this Agreement. Any such notice or communication shall be deemed given on the date such notice is received.

The Notices provision is important to include in the contract because it specifies the acceptable forms of notice. Most hotels will accept the provision

### **DISPUTE RESOLUTION**

In the event of any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity of it, the parties shall first attempt to resolve the matter over a cooling off period of at least thirty (30) days before resorting to formal dispute resolution, except that equitable remedies may be sought immediately.

Some Societies may prefer not to include the Dispute Resolution provision in the Agreement. If controversies arise, the alternatives in this provision are self-evident. If the hotel pushes for inclusion of a dispute resolution provision, most hotels will be satisfied with the provision offered above, though some push for arbitration. Some Societies do not like provisions that call for arbitration. You may want to consult your legal advisor if this becomes an issue.

### **CHOICE OF LAW AND FORUM**

Any disputes arising out of or related to this Agreement shall be governed by the laws of the State of [*usually insert state of Society’s incorporation*] and shall be brought only in the courts, whether state or federal, located in the State of [*insert same state as above*].

If the hotel agrees to the Choice of Law and Forum provision, it would give Society a “home court” advantage in any litigation. However, many hotels object to this provision and insist that the forum be the state where the hotel is located. In this case, delete this provision altogether and leave the issue open so that either party could sue the other

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in any state which has jurisdiction.

## **MISCELLANEOUS**

Section headings in this Agreement are included for convenience of reference only, and if there is any conflict between any of such headings and the text of this Agreement, the text shall control.

The Section Headings provision is important in the event there is any litigation concerning the proper interpretation of the agreement. Most hotels accept this provision.

Any changes, additions, stipulations or deletions including corrective lining out by either Hotel or Society will not be considered agreed to or binding on the other unless such modifications have been initialed or otherwise approved in writing by both parties.

The Modification provision protects the agreement as written and specifies that only written and mutually agreed to modifications to the agreement will be valid. Most hotels accept this provision.

Waiver by either party of any term or condition of this Agreement or any breach shall not constitute a waiver of any other term or condition or breach of this Agreement.

The Waiver provision is important because if the parties agree to waive one or more of the provisions under the contract, the other, non-waived provisions remain in effect. Most hotels accept this provision.

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be impaired or affected thereby.

The Subsequent Invalidation provision is important because if a court finds one or more of the agreement's provisions to be invalid or illegal, the other, legal provisions remain in effect. Most hotels accept this provision.

Except as otherwise provided in this Agreement, this Agreement shall be binding on and inure to the benefit of Society and Hotel, and their respective successors and assigns.

The Inurement of Benefit provision is important in the event that the identity of either party changes because of a change in ownership, merger, or consolidation. The section provides the agreement shall continue to bind the parties, even though their identities may have changed. Most hotels accept this provision.

The individuals executing this Agreement represent and warrant their authority to bind their respective employers as of the dates indicated below.

This Agreement shall be deemed executed when both parties are in possession of an original or facsimile of this Agreement signed by the other.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and date first written above.

**STATE ORTHOPAEDIC SOCIETY**

**[HOTEL NAME]**

By: \_\_\_\_\_  
[NAME]

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_  
[TITLE]

Its: \_\_\_\_\_  
[TITLE]

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## **ADDENDUM TO MODEL CONTRACT ON EXHIBIT SPACE**

### **EXHIBIT SPACE** *[optional provisions—utilize and make changes as required]*

#### **Assigned Exhibit Space**

Hotel will provide Society with Grand Ballroom Sections \_\_\_ for set-up beginning [date and time] through teardown beginning [date and time].

#### **Exhibitor Literature**

Any requests received by Hotel from Society's exhibitors to distribute flyers or literature of any kind in Hotel must be approved by Society. Exhibitor will be responsible for any fee by Hotel to distribute literature.

#### **Exhibit Space Charge**

All space will be provided on a complimentary basis, including set-up and tear down days (based on current schedule of events with tabletop only exhibits for one day).

#### **Exhibit Space Inclusion**

Included in exhibit space will be all heat and air-conditioning during show days, and lighting and utilities throughout the entire period, general maintenance of aisles, trash disposal, and use of adequate loading docks. Hotel guarantees that the exhibit space will be entirely cleaned when Society takes possession of the space.

#### **Hotel Responsibility**

Throughout the rental period outlined above, Hotel will be responsible for cleaning all bathroom facilities in and adjacent to the exhibit space as well as hallways, corridors and common areas adjacent to the exhibit space.

#### **Exclusive Services**

Hotel or its exclusive contractor provides the following services on an exclusive basis: None *or insert appropriate language.*

#### **Union Regulations**

The following unions currently hold jurisdiction in Hotel's Exhibit/Meeting Space: None *or insert appropriate language.*