



ASSOCIATION OF CORPORATE TRAVEL EXECUTIVES

“Power, Partnerships, and Possibilities” Conference

Montreal, Quebec — November 21, 2006

Preserving Partnerships through Preparation

1. INTRODUCTION

- X Underlying premise of the presentation, and relevance to the theme of the Conference
- X Objective of session
- X Prevention vs. remedy

2. THE CONTRACT

- X Review of essential legal components, in general
- X Review of essential practical components, in general
- X Ditto re the specific contracts that ACTE members are apt to enter into
- X Some specific issues
- X Certainty vs. adaptability
- X Need to anticipate, and to allocate, risk
- X Need for care and precision (*Re Rogers Cable....*)

3. OWNERSHIP AND RESPONSIBILITY

- X Agency or other relationship
- C Website
- C Staff
- C Data
- C Liability for unintentional errors
- C Liability for intentional decisions
- C Dealing with disputes

4. CURTAILING THE TERM OF THE CONTRACT

- X "Cause" (a.k.a. breach)
- X Liquidated damages vs. penalty
- C Force Majeure, in general (*Atlantic Paper Stock.....*)
- C "Acts of God" and "Acts of Man"
- C Material change in the commercial environment
- C Renegotiation

5. EXTENDING THE TERM OF THE CONTRACT

- X Evergreen clauses
- X Diarizing and planning re timelines and processes

6. INTERNAL and OTHER PROCESSES

- X Office Procedures
- X E & O Insurance
- X Ownership of data, and privacy issues

7. CONSUMER PROTECTION LAW

- X General
- X Travel-Specific

8. ARBITRATION vs. CHOICE OF LAW AND FORUM

- X Choice of law and forum (purpose, details, negotiability, *Molson Coors* and *Red Seal*)
- X Arbitration (purpose, details, negotiability and utilization)

9. CONCLUSION

- X Prevention vs. remedy
- C Certainty vs. adaptability
- C Allocation of risk

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CONTRACT CHECKLIST

1. Parties
2. Recitals
3. Interpretation
 - * Defined Terms (including “knowledge”)
 - * Headings
 - * Number and Gender
 - * Currency
 - * List of Attachments
 - * Entire Agreement
4. Representations and Warranties of Party “A”, and period of survival
5. Representations and Warranties of Party “B”, and period of survival
6. Responsibilities of Party “A” (non-financial)
7. Responsibilities of Party “B” (non-financial)
8. Financial Details
 - * How much?
 - * When paid?
 - * Contents and format of relevant reports?
 - * Retention of records?
 - * Interest/penalty if not paid on time?
 - * Legal impact if not paid on time?
 - * Allowable expense recovery and the process for recovery?
 - * Right to audit, and consequences of under-reporting?
 - * Other enforcement options in the event of a breach?
 - * Guarantees and security?
9. Exclusivity, non-compete and related issues
10. Term
 - * Normal
 - * Extension/renewal
 - * Curtailment, and related process re dispute resolution
 - * Transition provisions at end of relationship
11. Indemnification
 - * Details re process
 - * Duration
 - * Floor and ceiling
12. Confidentiality, etc.
 - * During the Term

- * At the end of the Term
- 13. Insurance
 - * Type
 - * Beneficiary
 - * Responsibility for Premium
- 14. Proprietary Rights
 - * Ownership of data
 - * Other's right to access/use it, and related limitations
 - * Logos, trade names, trade marks, etc.
- 15. Changes to Parties
 - * Sub-contracting (process and consequences)
 - * Assignment (process and consequences)
 - * Change of control (arm's length vs. non-arm's length)
- 16. Disaster Program
- 17. Notice and Amendment
- 18. Law and Forum
- 19. Arbitration
- 20. General
 - * E.g. Notice, Severability, Survival, Damages, etc.

CASES and STATUTES

- X *Atlantic Paper Stock Ltd. et al. v. St. Anne-Nackawic Pulp & Paper Co. Ltd.* (1975) 56 D.L.R. (3d) 732 (S.C.C.)
- X *Molson Coors Brewing Co. v. Miller Brewing Co.*, [2006] O.J. No. 4236
- X *Red Seal Tours Inc. v. Occidental Hotel Management B.V....* [2006] O.J. No. 3724
- X *Re Rogers Cable Communications Inc. and Aliant Telecom Inc.* CRTC Decision 2006 - 45 (July 28, 2006)
(<http://www.crtc.gc.ca/archive/ENG/Decisions/2006/dt2006-45.htm>)
- X *Travel Industry Act, 2002* (Ontario), S.O. 2002, c. 30, chap. D
(http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/02t30_e.htm)
- X *Travel Industry Act, 2002* Regulations, O.Reg. 26/05
(http://www.e-laws.gov.on.ca/DBLaws/Regs/English/050026_e.htm)