

# EXAMPLE

## **Terms and Conditions** **Reference: Invoice #101309**

### **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties and may not be amended or altered except by a written instrument executed by both of them. Neither party shall rely on any statements, representations or warranties not expressly set forth herein. This agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties prepared it. The waiver by either party of any term, covenant, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term. If any provision of this agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed severed and inapplicable, and this agreement shall be otherwise fully enforceable.

### **VENUES**

If planned & applicable in Schedule A, Client agrees to let Benchmark contract and secure the venue at which client's event is scheduled in accordance with client's program agenda. Benchmark makes no warranty regarding the suitability or condition of the venue and Benchmark expressly disclaims any such warranty, express or implied, including without limitation any applicable implied warranty of merchantability or fitness for a particular purpose. In the unlikely event a contracted supplier or venue provider cannot perform the contracted services we will immediately notify you and reschedule an alternative activity and/or event with your approval.

### **CONSUMPTION OF ALCOHOLIC BEVERAGES**

If planned & applicable in Schedule A, Client hereby agrees that only the licensed concessionaire contracted for or by Benchmark will serve alcoholic beverages and that only persons aged 21 or older consume them. Client agrees that none of their guests shall bring alcoholic beverages to the Venue. The licensed concessionaire reserves the right to confiscate and remove from the event any and all alcoholic beverages brought to the venue and in addition can refuse service to anyone that appears to be over intoxicated.

### **FOOD AND BEVERAGE SERVICES**

If planned & applicable in Schedule A, all food and beverages are to be contracted and supplied by our approved vendor.

### **SPECIAL OR CONSEQUENTIAL DAMAGES**

Neither party shall in any event be liable for special or consequential damages, including without limitation extra expenses, loss of profits, or damages consequential upon loss of use, whether arising from either party's negligence, breach of the agreement or otherwise, and even if the possibility of such damages is or was foreseeable by either party. In no event shall Benchmark's liability hereunder exceed the fees payable and accruing to Benchmark hereunder (excluding therefrom the amounts payable to vendors, concessionaires and the like).

### **PROPERTY DAMAGE & EQUIPMENT LOSS**

Client shall be responsible for all death, personal injury and/or property damage, caused by Client or Client's agents, employees or guests.

### **PERSONAL ITEMS**

Client is responsible for all personal items of Client's guests. Benchmark, the venue, or other vendors shall not be liable for missing, lost or stolen items.

### **DEPOSIT**

All deposits payable under this agreement are non-refundable. In the unlikely event Client's deposit is forfeited due to conditions outlined in this contract, Benchmark in good faith, but with no guarantee, will make a business assessment to see whether any portion of the deposit can be applied to a future program.

### **PAYMENT**

We require 90% payment of contracted services not later than 30-days prior to your first event start date. We reserve the right to delay, hold or cancel any services due to the failure of Client to pay when due any advance, deposit or payment due hereunder.

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## GUARANTEE POLICY

All tours, chartered transportation, special events and activities require a 14-day final guarantee or head count, unless otherwise noted. Any contracted services that are priced on a "per person" basis are subject to possible rate increases if the group size exceeds the vehicle capacity and/or required minimum head counts are not met. Benchmark reserves the right to require additional advance deposits/payments if final guaranteed head count substantially increases the contracted dollar amount of the Client's program.

## PARTIAL PROGRAM REDUCTION

If a specific service element of Client's program is canceled by Client after the deadline required by the Guarantee Policy set forth above, Client shall pay cancellation fees applicable thereto.

## MINIMUM REVENUE GUARANTEE

Benchmark has in good faith negotiated and secured guaranteed rates for Catering, Venues, Transportation and/or Events for the exclusive use of Client and Client's guests. These rates have been negotiated and secured based on the overall dollar value of your program and Benchmark is relying on Client for this revenue production. The Minimum Revenue Guarantee listed on page 2 does not include service charges, tax, labor charges or other miscellaneous charges, unless otherwise indicated. Should Clients revenues appear to be dropping below the Minimum Revenue Guarantee listed on page 2 of this agreement Client agrees to pay the dollar for dollar difference between this guarantee and the actualized program revenue.

## COMPLETE PROGRAM CANCELLATION

Upon receipt and our countersignature of this signed agreement, the arrangements as outlined will be secured and considered definite. If in the event that Client cancels the entire program, the following cancellation schedule will apply:

NOTICE OF CANCELLATION RECEIVED	CANCELLATION SCHEDULE
Less than 45 days prior to program start date	90% of Current Estimated Charges
Between 46-90 days prior to program start date	60% of Current Estimated Charges
Greater than 90 days prior to program start date	30% of Current Estimated Charges

## NO FIDUCIARY

Benchmark is not for any purpose a partner, fiduciary or joint-venturer of Client. This agreement shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest of any kind. Benchmark is acting solely as a representative on your behalf to make the bookings outlined in this agreement.

## GOVERNING LAWS

This Agreement is made and will be performed in the state of California and shall be governed by and construed in accordance with California State Laws. By executing this contract, you consent to the exercise of personal jurisdiction over Client by, and venue in, the San Francisco Superior Court for the State of California. Any legal action in connection with this contract shall be brought and maintained in only said court. In the event of litigation arising from or associated with this contract, we agree and you concede that that the prevailing party shall recover its attorney's fees and any costs incurred. In addition, either party shall be entitled to attorney's fees and costs incurred to collect any amount owing hereunder, even if incurred prior to litigation.

## FORCE MAJEURE

Neither party shall in any event be liable for delay or failure in performance hereunder, excluding, however, the failure to pay amounts due hereunder, which shall in no event be excused, caused by act of God; force majeure; adverse weather conditions; shortage of material not reasonably foreseen; strikes or labor troubles; hostilities, war, acts of terror, restraint or seizure by a government or belligerent parties; riot or civil commotion; epidemic; quarantine; embargo; fire or explosion; or any similar or dissimilar circumstance beyond the control of either party. If, due to any of the foregoing causes, either party fails to perform in accordance with this agreement, both Benchmark & Client shall make refunds/payments in amounts both parties determine to be equitable.

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**MUTUAL INDEMNIFICATION**

Both parties agree to indemnify each other and hold each other harmless from and against any and all claims, demands, liabilities, damages, losses or expenses of any kind or nature to persons or property, including attorney's fees and costs, which either party, its agents, employees, members and guests shall at any time sustain or incur by reasons of, in consequence of or arising out of this Contract, or the acts, omissions or negligence on the part of the other party, its officers, agents, employees or other guests.

**CONTRACT DUE DATE AND MUTUAL EXECUTION**

The delivery of this agreement shall not constitute an offer by Benchmark, and shall not be deemed effective unless and until Client signs and returns a copy of this contract within 10-days of the effective date along with the requested deposits, and Benchmark countersigns. After this deadline date, if we have not received a signed contract, we reserve the right to release the space/services that are being held for you. At such time, neither of us will have any further obligations to the other. Written acceptance by Client and Benchmark constitutes a binding contract between us. Client and the individuals executing this agreement hereby represent and warrant that they are authorized to execute this agreement on behalf of Client. This agreement may be executed by facsimile or electronic signature.

**This agreement has been entered into as of the Effective Date on invoice #101309**

**Reference Benchmark Invoice: #101309**

X \_\_\_\_\_  
Authorized Signature

Today's Date: \_\_\_\_\_