

2021: Proposed Compensation Provision and Accompanying Cancellation Terms

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1. FEES¹

a. Payment(s)

i. Progress Payment(s)

1. A progress payment is a non-refundable² payment by Client to DMC in exchange for services rendered³ by DMC at different stages of the program lifecycle⁴.
2. A total of ⁵ progress payments shall be made by Client to DMC. The first progress payment of \$ (representing ⁶ of the initial estimated program cost⁷) shall be made (⁸) days following the effective date of this Agreement⁹. The second progress payment of \$ (representing ¹⁰ of the initial estimated program cost) shall be made (¹¹) prior to program commencement.

3. Additional Progress Payment(s)

- a. If the initial estimated program cost increases during the program lifecycle, Client shall pay to DMC an additional progress payment that brings the total sum of progress payments received by DMC to ¹² of the latest estimated program cost.¹³ All progress payments from Client to DMC are reflected as credits toward the final balance of the Program.

¹ Additional terms (e.g., method of payment, past due, final counts, taxation) are not included herein.

² Right away, it is clearly established that a payment is non-refundable. This is because it is for services rendered by the DMC.

³ This may include services to be rendered in the immediate future if the DMC chooses to collect payment prior to the rendering of services (e.g., a retainer). Note, however, the Client may be justified in removing the non-refundable component of this term because there is the possibility that the services are not performed.

⁴ The "program lifecycle" is defined and explained in a separate writing.

⁵ The number of progress payments will vary depending upon the program and the DMC.

⁶ The percentage of the latest estimated program cost will vary depending upon the program and the DMC.

⁷ "Initial estimated program cost" will be used to define the latest estimated program cost at the time of entering into the event service agreement. Any changes to the initial estimated program cost shall be characterized as the "latest estimated program cost".

⁸ The number of days following the effective date of the event service agreement will vary depending upon the program and the DMC.

⁹ "Agreement" refers to the event service agreement.

¹⁰ The number of days leading up to the program will vary depending upon the program and the DMC. Be certain, however, that this amount reflects a combined total of nonrefundable progress payments the DMC wishes to receive prior to program execution.

¹¹ These number of days reflect the amount of time remaining before the program begins. If a third progress payment is requested, consider whether this second progress payment is based upon the number of days prior to program commencement or following the effective date of the event service agreement.

¹² This percentage must match the combined total of progress payment percentages in the above section.

¹³ A client may ask whether they are entitled to a return of progress payments (or a portion thereof) if the initial estimated program cost decreases. Although it depends upon the DMC fielding the question, it is advised that DMCs decline to return any amount of progress payments. Remember, progress payments are for services rendered. Therefore, time and costs have already been expended and the Client's unilateral decision to reduce the latest estimated cost of the program does not nullify that fact.

b. Deposit(s)

i. Program Deposit(s)

1. A program deposit is a recoverable payment (unless otherwise stated in this Agreement)¹⁴ by Client to DMC in exchange for the securing of goods and/or services of a third-party supplier¹⁵ for the exclusive purpose of the Program.

2. A program deposit of \$ [REDACTED] (representing [REDACTED]%¹⁶ of the latest estimated program cost) shall be made [REDACTED] ([REDACTED]) days prior to program commencement.¹⁷

3. Advance Program Deposit(s)

a. If any advance program deposit is required prior to the receipt of the above-described program deposit for the securing of certain goods and/or services of a third-party supplier,¹⁸ Client shall pay to DMC the required amount.¹⁹

b. If an advance program deposit is required, this amount will be deducted from the [REDACTED]%²⁰ program deposit that shall be made [REDACTED] ([REDACTED])²¹ days prior to program commencement.²²

4. Additional Program Deposit(s)

a. If the initial estimated program cost increases during the program lifecycle, Client shall pay to DMC an additional program deposit that brings the total sum of program deposits received by DMC to [REDACTED]%²³ of the latest estimated program cost. All program deposits from Client to DMC are reflected as credits toward the final balance of the Program.

¹⁴ This language is helpful in putting the client at ease about the recoverability of deposits. Although it uses qualifying language (i.e., “unless otherwise stated...”), it is clear in its intentions and avoids any confusion about the difference between a progress payment and a program deposit. It will be up to the DMC to become educated and informed as the extent of recoverability of the program deposit when asked by the Client.

¹⁵ If a DMC so chooses, they may modify this term to specify vendors, venues, etc.

¹⁶ This percentage must reflect all or a portion of the remaining balance of the latest estimated program cost. For example, if 20% of the latest estimated program cost is comprised of the progress payment, and 70% of the latest estimated program cost is comprised of the deposit, then 10% + of the latest estimated program cost is comprised in the final balance.

¹⁷ The number of days will vary depending upon the program and the DMC.

¹⁸ This section is intended to address those monies that may become due to vendors prior to receiving the program deposit. This section ensures that DMCs are not supplying their own funds to secure the services of its vendors.

¹⁹ Client may seek reasonable documentation to support this payment and it is up to each DMC to determine its comfort level with producing certain information to prove the need for additional monies.

²⁰ This percentage must match the program deposit percentage in the above section.

²¹ This deadline must match the program deposit deadline in the above section.

²² This section assures the Client that they are not responsible for the program deposit *plus* any advance program deposits.

²³ This percentage must match the combined total of program deposits in the above section.

c. Final Balance

- i. Upon Program completion, DMC shall reconcile the actual program cost and deliver to Client an invoice setting forth the actual program cost, less earlier received progress payments and program deposits. The invoice shall specify the final balance owed and shall become due () days following DMC's delivery.²⁴

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²⁴ The Client may seek additional language in this section reflecting their own internal A/P protocols and each DMC may respond according to their own preference.

2. CANCELLATION TERMS²⁵

a. Complete Program Cancellation

- i. In the instance Client cancels the program for any reason (with exception of Force Majeure), Client will pay to DMC a cancellation fee based on the schedule set forth below. DMC and Client agree that the formulas specified herein are a reasonable attempt to calculate actual damages suffered by DMC and not a penalty.

b. Partial Program Cancellation

- i. In the instance Client cancels a portion of the program for any reason (with exception of Force Majeure), Client may reduce DMC's scope of services without being subject to a cancellation fee based on the schedule set forth below. However, Client shall remain responsible for any third-party supplier costs incurred or to be incurred, as well as any progress payments made prior to the date of cancellation.

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²⁵ Additional terms (e.g., notice, cure) are not included herein.

c. Cancellation Fee Schedule

i.

<p>██████ (██) ²⁶ or more days prior to program commencement</p>	<p>██% ²⁷ of greatest estimated program cost ²⁸ throughout the program lifecycle plus all non-refundable progress payments and all non-recoverable program deposits incurred prior to the date of cancellation.</p>
<p>Between ██████ (██) days and ██████ (██) ²⁹ days prior to program commencement</p>	<p>██% ³⁰ of greatest estimated program cost throughout the program lifecycle plus all non-refundable progress payments and all non-recoverable program deposits incurred prior to the date of cancellation.</p>
<p>██████ (██) ³¹ days or less prior to program commencement</p>	<p>██% ³² of greatest estimated program cost throughout the program lifecycle plus all non-refundable progress payments and all non-recoverable program deposits incurred prior to the date of cancellation.</p>

²⁶ The number of days will vary for each DMC. However, it is advised that this number consider the number of days agreed upon to receive progress payments and program deposits.

²⁷ This percent will depend upon the DMC. However, it is advised that this number remain very low. By keeping the number low, it incentivizes clients to agree to the introduction of progress payments. Further, the DMC will already be entitled to retain the progress payments and non-recoverable program deposits. Therefore, this cancellation fee removes the guesswork in assessing a more accurate liquidated damage and focuses solely on the added revenue the DMC will receive in the event of cancellation above and beyond the progress payments and program deposits.

²⁸ Note the use of the term "greatest estimated program cost. This is to ensure that a Client would not attempt to reduce the size and scope of the program intentionally just before cancelling in order to drive the fee down.

²⁹ The number of days will vary for each DMC. However, it is advised that this number consider the number of days agreed upon to receive progress payments and program deposits.

³⁰ This percent will depend upon the DMC. However, it is advised that this number remain very low. By keeping the number low, it incentivizes clients to agree to the introduction of progress payments. Further, the DMC will already be entitled to retain the progress payments and non-recoverable program deposits. Therefore, this cancellation fee removes the guesswork in assessing a more accurate liquidated damage and focuses solely on the added revenue the DMC will receive in the event of cancellation above and beyond the progress payments and program deposits.

³¹ The number of days will vary for each DMC. However, it is advised that this number consider the number of days agreed upon to receive progress payments and program deposits.

³² This percent will depend upon the DMC. However, it is advised that this number remain very low. By keeping the number low, it incentivizes clients to agree to the introduction of progress payments. Further, the DMC will already be entitled to retain the progress payments and non-recoverable program deposits. Therefore, this cancellation fee removes the guesswork in assessing a more accurate liquidated damage and focuses solely on the added revenue the DMC will receive in the event of cancellation above and beyond the progress payments and program deposits.