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Key Issues to Address in Exhibit Contracts

By:

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Trade shows, no matter the size, play a key role for associations in furthering their exempt purposes and in generating non-dues revenue. But if an association's exhibit contract is not comprehensive, problems can arise. While each association has its own unique interests and concerns, following is sampling of key issues to address in all exhibit contracts.

Eligibility to Exhibit- It is important to define which types of organizations and/or individuals can exhibit at the association's show. Typically this is defined by who can participate rather than who cannot participate. These eligibility requirements serve as a filter to ensure that the trade show maintains its intended focus.

Assignment of Space – Associations should specify the system to be used for assignment of exhibit space. By specifying and following the process, the association should be better able to deflect exhibitor complaints. However, it is also important for the association to state that there may be instances in which it needs to modify exhibitors' space assignments.

Cost, Payment Schedule – It is important to specify the exhibit space cost and those items included in the cost. The contract should include the corresponding payment schedule.

Cancellation – The contract should state the cancellation policy. Typically, the contract will set forth a "sliding scale" cancellation fee schedule in which the more lead time given for notice of cancellation, the lower the cancellation fee (perhaps simply the forfeiture of the deposit); the less lead time given for notice of cancellation, the higher the cancellation fee (perhaps including forfeiture of deposit(s) and outstanding balance due). The fee amount should be a reasonable estimate of the association's damages as a result of the cancellation.

Exhibit Requirements and Restrictions – It is important to include the "do's and don't's" for exhibitors including height of booth, number of persons permitted within the booth, hours of operation, and the prohibited activities within the booth and on the show floor. The goal should be to make these requirements and restrictions clear so that they are easy to follow and to enforce.

Hospitality Functions – The contract should prohibit the scheduling of private functions, cocktail parties, special events or other hospitality functions over show hours or otherwise in conflict with the association’s events.

Objectionable Displays – It is important to state that the association reserves the right to reject or terminate exhibit privileges of any exhibitor due to conduct of personnel, method of operation, materials, or for other causes which the association believes is not compatible with the purpose of the show. If the association cancels under such circumstances, it would not be liable to the exhibitor for any refunds or other expenses incurred.

Compliance with Laws – The contract should include a statement that the exhibitor will comply with all federal, state and local laws as well as the rules and regulations of the facility hosting the event, i.e., the convention center or hotel.

Americans with Disabilities Act – It is important to include a statement that the exhibitor will ensure that its exhibit and product/service information comply with the Americans with Disabilities Act, its regulations and guidelines (“ADA”). The ADA requires that exhibits be accessible by persons with disabilities. While the association is responsible for ensuring accessibility for the meetings and the general trade show areas, the exhibitor is responsible for controlling its booth. The contract can also include an indemnification provision which would protect the association in the event it is brought into any ADA claims because of the exhibitor’s failure to comply with the ADA in its booth.

Copyright – The contract should also include an acknowledgment that the exhibitor agrees that it shall be solely responsible for obtaining any licenses which may be required for it to broadcast, perform or display any copyrighted materials including, but not limited to, music, video, and software. It is also important to include an indemnification statement protecting the association if the exhibitor fails to obtain the requisite license.

Insurance – It is important for the association to determine the types of insurance and levels of coverage that exhibitors are required to carry in order to exhibit. The contract should set forth these requirements and require the exhibitor to provide the association with certificates evidencing such insurance coverage. The association can also seek to be named as an additional insured on the exhibitor’s insurance policy which will provide it with additional protection in the event of a claim.

Indemnification – The contract should include a comprehensive indemnification provision. Indemnification is a method of shifting risk from one party to another party who can best control the risk. In the exhibit context, the association wants to protect itself from financial liability incurred as the result of the exhibitor doing something negligent. For example, if an exhibitor improperly sets up its booth and an attendee is injured as a result, the indemnification provision will serve to protect the association from the costs and damages in any related lawsuit. It is important that the indemnification provision include a statement that the exhibitor will “defend” any claims brought against the association as that is an affirmative obligation to hire

lawyers to defend the case on the association’s behalf immediately. If the word “defend” is not included, the exhibitor will only be required to reimburse the association for such costs.

Force Majeure – As with other contracts related to the association’s trade show, force majeure should be addressed. The exhibit contract should provide that if any circumstance beyond the control of the association would prevent or materially affect the trade show from being held as scheduled, or the exhibit space not being available for use due to war, governmental action or order, act of God, fire, strikes, labor disputes or any other cause beyond the control of the parties, the contract would be terminated. It is up to the association, under such circumstances, as whether it would be willing to refund any fees to exhibitors.

Subleasing – The contract should prohibit the exhibitor from subleasing its exhibit space to another organization.

Alcoholic Beverages – It is important to include a statement that the exhibitors will not serve or provide alcoholic beverages in their exhibit space without the association’s prior written consent. If consent is provided, it is likely that the exhibitor will need to purchase alcoholic beverages from the exclusive provider at the facility.

Service Contractors – The contract should address the issue of service contractors. The association will likely require the exhibitor to utilize its provider to handle drayage. It is also important to state that the exhibitor will be responsible for all costs of shipping, cartage, carpeting and handling. If an exhibitor chooses to use its own contractor, the contract should state that the contractor will provide a certificate of insurance to the association and the exhibiting company must agree to indemnify the association from any claims relating to the such contractor’s services.

Access to Attendee List – If exhibitors are going to be granted access to the attendee list for the trade show, the association should set strict restrictions concerning the exhibitor’s use of such information. For example, the association could state that the exhibitor will only be permitted to use the attendee list one time for mailing purposes and will not otherwise use or disclose the list to other parties.

Violation of Rules – The contract should specify what will happen if an exhibitor violates the contract. Typically, associations will state that any violations of the contract or rules on the part of the exhibitor will, at the association’s option, constitute cause for the association to terminate the contract, remove the exhibitor from the show, and cause the exhibitor to forfeit all fees paid to the association.

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Exhibit contracts should be reviewed and “fine tuned” on an annual basis to ensure that the association is addressing the needs of exhibitors while at the same time, protecting itself from liability.

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