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***CRITICAL ISSUES TO ADDRESS AND PROVISIONS TO INCLUDE
IN SUPPLIER CONTRACTS***

A. GENERAL CONCERNS FOR ALL SUPPLIER CONTRACTS

1. Performance - Contracts should address the date, time, place, method, standards, and other specific requirements of performance. The supplier's responsibilities and deadlines should be clearly spelled out. These can be detailed in an exhibit which is attached to and referenced in the contract.

2. Payment - The contract should include the compensation to be paid, along with a time frame of payment due dates. Final payments should be conditioned upon the supplier's complete performance of its obligations. The supplier's reimbursement, if any, of expenses should be addressed as well. Also, for supplier contracts in which union labor is to be used, the contract should address the supplier's responsibility to forward payment for such labor to the appropriate individuals or entity and include an indemnification provision to the extent such payments are not forwarded.

3. Compliance with Laws - The supplier should represent and warrant that its performance will be in compliance with all applicable laws and regulations, including the

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Americans with Disabilities Act. For example:

"*Supplier* shall perform the Contract in compliance with all applicable governmental laws and regulations, including but not limited to, the Americans with Disabilities Act, its regulations and guidelines, labor laws, workers compensation laws, and fire, safety and health regulations, and shall indemnify, defend and hold harmless [*Organization Name*], its officers, directors, employees and agents, and each of them, from any claims made against any of them arising out of any breach by *Supplier* of this provision."

4. Indemnification - A general indemnification provision should be included in every supplier contract. It should always state that the supplier shall "indemnify, defend, and hold harmless...." The "defend" aspect requires the supplier to hire counsel to directly defend the matter on the organization's behalf. It should also always cover acts of "negligence" and not be limited to simply acts of "gross negligence" (a more difficult standard to prove). For example:

"*Supplier* shall indemnify, defend, and hold harmless [*Organization Name*], its officers, directors, employees and agents and each of them (collectively "the indemnitees"), from and against any and all claims, demands, actions, judgments, costs, and expenses, including costs of defense thereof, incurred by any of the indemnitees caused by or arising from the negligence, gross negligence, or intentional misconduct of *Supplier*, its officers, directors, employees, agents or contractors."

5. Cancellation - This issue should also be addressed in every supplier contract. Cancellation options and fees should be clearly expressed in the contract. Instances in which the organization can cancel without liability should be addressed as well. For example:

"[*Organization Name*]'s performance of its obligations under the Contract is subject to acts of God, war, disaster, government regulations, civil unrest, transportation interruption, terrorism, unavailability of the [*facility name*] or any other space to be utilized by [*Organization Name*] for the Event, and other such conditions beyond the control of the parties making it inadvisable, illegal, impracticable, or impossible for [*Organization Name*] to perform its obligations under the Contract. The Contract may be terminated by [*Organization Name*] without liability for any one or more of such reasons upon written notice to *Supplier*, and *Supplier* shall refund any monies advanced by [*Organization Name*], less substantiated expenses incurred and not recoverable."

6. Insurance - The supplier's insurance coverage should be addressed in every supplier contract. In supplier contracts involving "high risk" activities, e.g., transportation, pyrotechnics, the supplier should name the organization and any sponsoring organization as additional insureds. For example:

"*Supplier* represents and warrants it shall carry adequate liability and other insurance protecting itself against any claims arising from its performance under the Agreement. *Supplier* shall name [*Organization Name and Sponsoring Organization(s)*] as additional insureds on its general commercial liability insurance and provide [*Organization Name and Sponsoring*

Organization(s)] with evidence thereof. Supplier acknowledges that [Organization Name or Sponsoring Organization(s)] has no obligation to maintain insurance on Supplier's behalf."

7. Assignment - A non-assignment provision should be included in every supplier contract. For example:

"*Supplier shall not assign its rights and duties under this Agreement without [Organization's] prior written consent.*"

B. SPECIFIC CONCERNS FOR CERTAIN TYPES OF SUPPLIER CONTRACTS

1. Catering/Bartending Services - *[Organization Name]* should obtain a copy of the caterer's most recent health department inspection. Service of alcoholic beverages should also be addressed.

"*Service of Alcoholic Beverages* - If alcoholic beverages are to be sold or served during the functions, such beverages shall be dispensed only by *Supplier's* employees and bartenders.

Service Requirements - *Supplier* shall: (a) request proper identification (photo ID) of any person who in *Supplier's* judgment appears to be of questionable age and refuse alcoholic beverage service if the person is either under age or proper identification cannot be produced, and (b) refuse alcoholic beverage service to any person who, in *Supplier's* judgment, appears intoxicated, or for any other reason required by law, cannot be served.

Training - *Supplier* represents and warrants that *Supplier* personnel that dispense alcoholic beverages have undergone adequate training to prevent any incidents which could result in claims of liquor liability.

Indemnification - Notwithstanding any other provision of this Agreement, *Supplier* shall defend, indemnify and hold harmless *[Organization Name]* and their respective 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 *Supplier's* sale or service of alcoholic beverages."

2. Speaker/Performer Contracts - *[Organization Name]* should obtain a representation from the speaker/performer that he/she is not infringing on another's work and include an indemnification to the extent this commitment is breached. For example:

"*Speaker/Performer* represents and warrants that none of the material contained in the Presentation/Performance to be made by *Speaker/Performer* will violate or infringe upon the proprietary or statutory rights of any person or entity, or constitute an invasion of anyone's right to privacy, and that *Speaker/Performer* shall not libel, slander or defame anyone in making the Presentation/Performance. In the event *Speaker/Performer* is alleged to have engaged in any conduct which, if true, would constitute a breach of such warranty, *Speaker/Performer* shall defend, indemnify and hold *[Organization Name]* and their respective officers, directors,

employees and agents, and each of them, harmless from any and all claims or causes of action, including court costs and attorneys' fees, resulting from such conduct."

If the speaker or performer's program is to be filmed, taped, etc., *[Organization Name]* must obtain the speaker's consent. For example:

"In consideration of payment of _____ dollars *[insert amount, e.g. "ten", or "a copy of the audio tape and/or CD-ROM"]* (\$_____), and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I consent to *[Organization Name]* and those acting on its behalf recording my presentation at and participation in *[Program Name]* on _____ *[insert date]* ("the Program").

If the speech or performance recording will be reproduced and distributed by *[Organization Name]*, the speaker/performer should agree to the following:

"I consent and give my permission to *[Organization Name]* and those acting on its behalf to reproduce my presentation and participation in the Program in whole or in part and in any and all forms as may be chosen, to abridge, edit or otherwise modify, and to use in any manner, either verbatim or as edited, the audio, video or CD-ROM recording of my presentation and participation in the Program, and to distribute and use copies of all or part of my presentation and participation in the Program in any manner *[Organization Name]* may find appropriate, retaining all proceeds derived from such distribution and use.

I irrevocably grant, assign and transfer to *[Organization Name]* all of my rights, title and interest in the Program, including but not limited to copyright and ownership thereof, and all rights subsumed thereunder, under copyright laws of the United States and all foreign countries, and I retain no rights of any sort therein.

I release *[Organization Name]*, and those acting on its behalf from any claims or liability of any kind arising out of or in connection with my presentation and participation in the Program, and I release all claims for payment for audio tapes, video tapes and/or any other materials prepared and/or distributed and/or marketed by *[Organization Name]* involving, concerning or with respect to my presentation and participation in the Program."

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