

## CONVENTION CENTER CONTRACT NEGOTIATIONS Part 3 - A Checklist for Modifying Convention Center Leases and Licenses

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This installment will focus on various contractual issues which should be carefully evaluated in convention center leases and licenses. You should enter into the actual negotiations from the perspective of an 'optimistic pessimist'. In other words, hope for the best, but concentrate on modifying the contractual issues that could have a detrimental effect on your event and the organization's financial well being if things were to go wrong.

This can be accomplished by carefully considering the positive and negative consequences of each contractual provision in convention center leases and licenses. The easiest way to begin is by developing a checklist of the questions that need to be addressed prior to finalizing the convention center lease or license. The following is a brief sampling of some the essential issues you need to consider and clearly address.

- 1) **Identification:** Identify all parties named in the lease or license, and define the purpose of the event (Is it a convention, exhibition or tradeshow only, gated or consumer event open to the public?)
- 2) **Define Space:** Include a detailed description of all exhibition and function space reserved. Specify the dates and time by day and daily hours of anticipated use, including move-in/out periods.
- 3) **Define Rental Rates:** Clearly define convention center's exhibition hall, general session, meeting room, office and food and beverage function space rental rates. Indicate whether the base rental is (i) flat rate for the entire term of the lease, or (ii) per net square foot for the entire term of lease, or (iii) a per day net square footage usage with a minimum square foot usage requirement, or (iv) a combination of the others to take into considers all the various types of space required. Also define exactly what is included in the basic rental rate for each type of space leased. Determine if concession stands and food service facilities located within the leased space is charged as part of the net square footage rental rate or not. Try to negotiate a certain number of complimentary meeting rooms, room re-sets, and additional move-in or out days, etc.
- 4) **Deposit Policy:** Whenever possible try to negotiate the deposit and payment schedule in terms of due dates and amount due per deposit installment payment.
- 5) **Condition of Premises:** Ask the convention center to agree that the leased space will be in a safe, clean and usable condition, and available for immediate occupancy at move-in. Set a deadline date that the convention center must inform event management of all damages caused by your event for which your organization will be held liable. Additionally, in your supplier contracts add a provision assigning liability for costs of any damages caused by them.
- 6) **Conflict of Interest and Shared Facilities:** Include a conflict of interest provision protecting you against the convention center booking a competitive event within a specified period pre or post your event or from leasing space for unauthorized exhibitor functions or non-associated exhibitors who are attempting to rent space directly from the convention center (a practice referred to as "suit casing", "poaching" or "scabbing"). In conjunction with this provision develop a procedure addressing how the convention center will notify you when other events are booked which coincide with your event's dates.
- 7) **Construction and Renovation:** Include a clause addressing what happens if the convention center will be undergoing any construction, refurbishment, or remodeling during your event.
- 8) **Exclusive Services:** Know what exclusive services are provided by convention center. Consider adding a provision restricting the convention center from making you use any

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new exclusive services that are added after a specified date prior to the actual event without your consent.

- 9) **Breach, Default and Cancellation**: Carefully review the lease or license's definitions for default, cancellation and termination by one of the parties. Clearly define what remedies will be available to both parties in case of a breach or default by the other party, and modify these provisions as necessary. If possible, add a provision defining under what circumstances, and how event management will be compensated if the convention center moves the event to an alternate exhibition hall or a different set of dates. Review the cancellation damages clause and define how the convention center will mitigate damages in the case of a default or a release or cancellation of all or part of the space held. Make sure event management will not be held liable for special, consequential or incidental damages.
- 10) **Force Majeure/Acts of God**: Make sure the Force Majeure/Acts of God clause is bilateral, protecting event management as well as the convention center for unforeseen occurrences beyond the reasonable control of the parties. A convention center should not be able to absolve itself from liability arising out of forces beyond its reasonable control without providing the same provision for event management. Furthermore, define how refunds will be handled if the event is terminated due to a Force Majeure/Acts of God occurrence.
- 11) **Indemnification**: Indemnification/hold harmless clauses should be reviewed very carefully since they secure the named party (usually the convention center) against loss or damage caused by another. You should always try to make this a bilateral provision whereby each party agrees to indemnify and hold the other party harmless, unless the indemnified party's negligence or misconduct was the cause of the damage.
- 12) **Insurance Requirements**: Determine what are the amounts and types of insurance required. Provide a copy of the convention center insurance requirement to your insurance carrier to insure proper compliance. Determine when certificates of insurance must be provided to the convention center. Do the same with your contractors and exhibitors.
- 13) **Assignment**: If there is a possibility of the event merging or being sold to another entity, make sure to modify the assignment provision accordingly to avoid possible complications and delays in transferring your rights and obligations under the lease or license.
- 14) **Dispute Resolution**. Review these provisions to determine how and where a dispute will be resolved (mediation, arbitration or in a court of law), which state's law will be apply and whether or not attorney fees and cost will be awarded to the prevailing party.

Over and above the provisions discussed above there are numerous other issues to take into consideration which can have tremendous impact on the success of your event. Issues such as fire, security and safety, union jurisdiction, food and beverage, utilities, permits, telecommunications, advertising, shuttle bussing and so on.

In closing, since convention center leases and licenses (as well as other contracts) can expose your organization to unanticipated liability and expenses, you should consider seeking the advice of a legal professional with expertise in this field at the onset of the negotiations. They can review your contracts in detail, work with you on developing a negotiation strategy aimed at achieving your organization's objectives and help you avoid the pitfalls of the unprepared.

*The Law Office of Mark Roysner specializes in all matter related to the meetings and exhibition industry. Questions can be e-mailed to Mark Roysner at roysner@roysnerlaw.com.*

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