

# “Can I Get A Witness”: Standard Terms for Agreement with Live Performers at a Hotel Venue in the UAE

by Fiona Robertson - f.robertson@tamimi.com - Dubai International Financial Centre

March 2016

Hotels contain many vast and diverse departments, such as housekeeping, marketing, reservations and food outlets.

In this region, one of the bigger revenue generators for hotel operators is the bar or club. In the competitive entertainment industry, bars and clubs are increasingly hiring musical acts – singers, bands and DJs – to generate interest and gain an audience. But many hotel venues are doing this on an ad hoc basis, using emails and calls to confirm and not having a set of standard terms that they present to entertainers that are performing in the venue. As with every aspect of your business, having and using a standard form contract for venue entertainment ensures that everyone understands the business side of the deal. There are no unexpected surprises for either party.

The basics are easy – the performer will perform on a certain date, at a certain time, for an agreed upon length of time, possibly alongside another act, and some money will be paid. Here are some other key terms that you might consider for inclusion in an entertainers’ contract

## **Cancellation by the venue**

Cancellation terms can vary enormously from venue to venue – they depend on issues such as lead times for marketing or cancellation terms agreed with other suppliers (such as a company that might be supplying the sound system). Any venue will usually have a set cancellation time and this should not vary from act to act. Performers are used to seeing a sliding scale for cancellation – in other words, the venue won’t have to pay them if it cancels the event before a certain date (say, 28 days before the event) but after that it will have to pay a certain percentage, generally sliding up to 100% for a cancellation that takes place very close to the date of the event. Venues can expect some negotiation on this point from ‘name’ performers – some will expect to be paid 100% anytime within, say, 60 days of the event. Many performers will not be willing to commit to an event if they are not offered such terms – if the venue cancels the event, they will not be able to replace that lost revenue readily and so they expect to be compensated.

## **Cancellation by the performer**

Obviously, a venue will not wish to pay a percentage of the fee to a performer that cancels their performance. Indeed, performers should only be able to cancel in limited circumstances – on evidence of illness for example. It is simply not possible to run a venue when it is possible that a performer that might not turn up.

## **Standards for the performance**

The UAE has strict rules about the content of performances and the performer must be made aware of those. This can readily be done contractually. For example if the performer includes any action, word or material in the performance that is, for example, lewd in nature or refers to drugs or

drunkenness then the venue might have a contractual right to retain a percentage of the fee. Similarly noise levels can be set contractually – but ensure that it is clear to all parties where the noise measurement will be taken. Noise levels are significantly different at the front door than they are next to the speakers.

## **Fees**

Deals vary from venue to venue but many venues in this region operate with a revenue share deal. This may mean that the performer takes the door money and perhaps a share of the bar takings once a certain minimum is reached. These terms need to be extremely clear to all parties – money is the root of most arguments and if the performer does not understand the terms, then you can expect that argument to begin.

Name performers will usually require a flat fee to appear and may also demand a percentage of their performance fee up front, before they perform. Very well known acts will often demand the whole fee before they perform.

If there is a revenue share deal, then the venue must be clear in setting contractual controls about the venue's maximum capacity. It is very tempting for a performer to take in an extra 25 people if they are getting the money from each person. A fine however, if levied by the authorities, will be addressed to the venue. In that regard, the agreement can require that fines be repaid if they are caused by the actions of the performer – whether for overcrowding or excessive noise or for conduct whilst on stage.

## **Extras**

Performers will assume that certain things will be provided by the venue at no cost – water, parking, electricity. Some performers expect a little more – soft cotton towels, champagne, M&Ms with the blue ones removed. Generally however these long and detailed riders will only be requested by name performers. For standard performers, it is important to be clear about what will be supplied. This extends to sound and lighting equipment as well as extras. The venue may already contain sound and lighting equipment but some performers might augment that equipment with their own gear. The agreement should be clear about who is supplying which part and, importantly, who is responsible for looking after each part. Performers using the venues equipment may wish to know who will be operating it. The performer will want to know that the operator is professional and properly trained as neither the performer nor the audience will tolerate incompetence in sound or lighting at any event.

Promotional tickets and the management of the guest list can regularly lead to disagreement – usually antagonizing the party that is getting the ticket money. If your venue capacity is not large, then a guest list with 50 'friends' is going to take away from your potential revenue. Similarly, if the performer is taking the ticket money, they may be upset if the venue provides 20 free passes to a local radio station.

## **Force Majeure**

In most regions, this clause has limited application to the live performance industry but in this region it can be extremely important. Public mourning periods are always unexpected and, without a clear force majeure clause (and perhaps an appropriate insurance policy as well) a venue can be liable for a large percentage of the performers fees if they have to cancel an event at the last minute. Outdoor venues are more susceptible – there may be issues with weather and again, this should be properly covered under a force majeure clause.

## **Marketing**

This vital part of event planning needs to be clearly allocated to the relevant party well before the event takes place. The venue should expect the performer to, at the very least, promote the event to their Facebook page, Twitter following and email database. However, the performer may expect the venue to provide more traditional media advertising such as radio spots and magazine listings. A poorly attended event usually leads to fingers being pointed in relation to poor (or poorly targeted) marketing. Addressing this in the agreement will avoid such a situation.

Larger events may benefit from the inclusion of a specific capped amount that the venue will spend in advertising. The performer does need to know that there is not an endless marketing budget but will also be more comfortable knowing that there is at least some budget allocation for this important item.

### **Non compete**

Some venues want to retain a performer for longer than one night – they may seek to create a regular event around that performer. If this is the case then the venue must consider a clause that prohibits the performer from taking that same performance or event name and putting it on elsewhere. If you do this, the performer can reasonably ask for a commitment to the event – 6 months perhaps. This is also a case where the marketing must be clearly set out so that the venue, the performer and the event all get the best opportunity to be successful.

### **Merchandise**

Live performers often want to sell merchandise (such as t-shirts and CDs) at their events. It provides them with extra income and promotion. Venues do sometimes take a small commission on these sales, although this is rare in this region. It is important that the agreement is clear about the location and size of the merchandising stand as well as indicating who is responsible for staffing the stand and securing the goods that are displayed on the stand.

Recording the performance.

Some performers will want to be able to record the performance at the event and this should clearly be at their cost and risk. If the venue wishes to create images of the performance for promotion of the venue, it will need the specific permission of the performer within the agreement. It is likely that the performer will want to restrict the way that the venue uses the images – perhaps only for the promotion of the venue and maybe for a limited number of months. If the venue is creating live footage of a performance, it needs to address the complex issue of underlying music rights that will arise when it records and subsequently uses that footage.

### **Conclusion**

It is possible that an exchange of emails will suffice when a venue takes on a performer but this is not always prudent. Experience has shown that a simple pro-forma contract will stop miscommunication, avoid heated arguments after the event and ensure that the public does not view the event, however large or small, as having been poorly executed. It is a reliable way to ensure that events in hotel venues operate smoothly and, more importantly, return a profit.