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INDUSTRY CODE

SIXTH EDITION - EFFECTIVE 1 JANUARY 2016

LIVE PERFORMANCE AUSTRALIA TICKETING CODE OF PRACTICE

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PART A: INTRODUCTION

1. RELATIONSHIP TO THE CONSUMER CODE

The Live Performance Australia Ticketing Code of Practice (**Code**) operates as a best practice guide for the Australian live performance industry. It applies to the purchase and use of Tickets and related matters.

The Code consists of two companion documents:

- (a) this **Industry Code**, which provides guidelines for industry participants including regarding Complaint handling procedures, ticket proceeds handling protocols, advertising, ticket pricing and other industry practices; and
- (b) the **Consumer Code**, which provides information for Consumers regarding their rights, as well as the process by which the Code is monitored and reviewed.

This Industry Code also sets out practical guidance for meeting the obligations and procedures set out in the Consumer Code.

The Consumer Code may be accessed at the *LPA website*.

Any questions regarding the Code may be directed to LPA.

2. CONSUMER LAWS

The Code should be read in conjunction with the Consumer Laws.

Nothing in this Code excludes or restricts any rights or remedies a Consumer may have under the Consumer Laws.

3. DISPLAY AND PROVISION OF THE CONSUMER CODE

Members must, as far as practicable, make Consumers aware of the existence and application of the Consumer Code.

Members must:

- (a) make a copy of the Consumer Code available on the Member's public website;
- (b) refer to the Consumer Code in the context of Complaint handling procedures.

Members must also engage in appropriate activities, as requested by LPA from time to time, to promote awareness among Members and the general public of the Consumer Code and its operation.

4. STAFF TRAINING

Members must take reasonable steps to ensure that their employees, agents and contractors are aware of and comply with the Code.

Members must take reasonable steps to ensure that their employees, agents and contractors are aware of the procedures for handling Complaints and resolving disputes set out in the *LPA Complaints Handling and Dispute Resolution Policy*, and are able to explain those procedures to contractors, service providers and the general public.



5. MONITORING AND REVIEW

The Monitoring and Review process for the Consumer and Industry Codes is set out in section 9 of the Consumer Code. Key aspects are summarised below.

CODE REVIEWER

LPA appoints a Code Reviewer for a minimum period of three years.

The Code Reviewer must be independent from LPA and Members and have the necessary specialist expertise, including in competition and consumer law, to perform the following functions:

- (a) to conduct the review and report on compliance with the Code referred to below;
- (b) as part of the functions under paragraph (a), to deal with Complaints from Members or members of the public, when appropriate, as set out in section 7; and
- (c) to conduct the review and report on improvements to the Code referred to below.

REVIEW AND REPORT ON COMPLIANCE

Every two years, in consultation with LPA and Members, as appropriate, the Code Reviewer undertakes a review and prepares a report on the level of Members' compliance with the Code. Members are required to complete a survey regarding compliance which forms the basis of the Code Reviewer's report.

REVIEW AND REPORT ON IMPROVEMENTS

Every three years, in consultation with LPA and Members, as appropriate, the Code Reviewer undertakes a review of the operation of the Code and prepares a report on any recommended improvements or changes to the Code.

For the purposes of the triennial review, the Code Reviewer:

- (a) invites written submissions on the operation of the Code and on any amendments that are considered necessary or desirable to improve the operation of the Code; and
- (b) undertakes such other consultations as the Code Reviewer considers appropriate.

The Code Reviewer allows a period of at least one month for the making of submissions.



PART B: COMPLAINTS HANDLING AND DISPUTE RESOLUTION

6. COMPLAINTS RESOLUTION PROCEDURES

Each Member must develop and publicise procedures for:

- (a) dealing with Complaints from Consumers; and
- (b) resolving disputes between the Member and Consumers.

The procedures must apply to any Complaint about a matter covered by the Consumer Code which adequately identifies the nature of the Complaint and the identity of the person complaining.

The procedures must comply with the requirements of *Australian Standard AS ISO 10002-2006 Customer Satisfaction – Guidelines for Complaints Handling in Organizations*.

PRINCIPLES

In developing their Complaints handling and dispute resolution procedures, Members must have regard to the following principles.

The procedures should:

- (a) accord with the standards set out in the Code;
- (b) define the categories of Complaints and disputes they cover and explain the way in which each will be dealt with;
- (c) recognise the need to be fair to both the Complainant and the Member to whom the Complaint relates;
- (d) specify by position who, in the first instance, will handle Complaints on behalf of the Member; and
- (e) indicate time frames for the handling of Complaints and disputes.

Members should:

- (a) make information regarding how to make a Complaint readily accessible to Consumers;
- (b) provide reasonable assistance to Complainants in the formulation and lodgement of Complaints;
- (c) deal with all Complainants in a polite and courteous manner;
- (d) deal with Complaints fairly and reasonably having regard to all the circumstances;
- (e) deal with Complaints as soon as practicable, making every effort to reach a prompt settlement;
- (f) provide a written response to a Complainant, when the Complaint was made in writing;
- (g) ensure that adequate resources are made available for the purpose of responding to Complaints and resolving disputes; and
- (h) maintain a register of the number and type of Complaints received, how they were resolved and the time taken to resolve them, and report this information to the Code Reviewer on request.



7. ESCALATION OF COMPLAINTS

LPA COMPLAINTS OFFICER

MEMBERS

In the event that the Complaint cannot be settled between the Member and the Complainant, the Member must report the Complaint to the LPA Complaints Officer at complaints@liveperformance.com.au.

If the Complaint is subsequently resolved or withdrawn, the Member must inform the LPA Complaints Officer as soon as is reasonably practicable.

COMPLAINANTS

If a Complainant is unsuccessful in resolving a Complaint through the Member's Complaints handling procedures or if the Complainant believes the Member has breached the Code, then the Complainant may refer the Complaint to the LPA Complaints Officer, who will deal with the Complaint in accordance with the Code and the *LPA Complaints Handling and Dispute Resolution Policy*.

The Complaint and the Member's response will be promptly considered by the LPA Complaints Officer who will contact the Complainant and the Member and attempt to resolve the matter.

The vast majority of Complaints should be resolved by this stage. However if the Complaint:

- (a) cannot be resolved by the LPA Complaints Officer; or
- (b) the LPA Complaints Officer makes a decision in respect of the Complaint and either the Member or the Complainant notifies the LPA Complaints Officer that it is not satisfied with that decision, then the LPA Complaints Officer will promptly refer the matter to the Code Reviewer and provide the Code Reviewer with all written material relating to the Complaint which is held by the LPA Complaints Officer.

CODE REVIEWER

If a matter is referred to the Code Reviewer, the Code Reviewer must:

- (a) request from the Complainant any further information and documentation (in addition to that provided by the LPA Complaints Officer) as to the specific breaches alleged to assist in determining the nature of the Complaint;
- (b) provide the relevant Member with full details of the Complaint and allow the Member a reasonable period to provide a response and any further information and documentation (in addition to that provided by the LPA Complaints Officer) as to the specific breaches alleged to assist in determining the nature of the Complaint;
- (c) to the extent that the Member's response makes allegations against the Complainant, provide full details of that response to the Complainant and allow the Complainant reasonable time within which to reply;
- (d) appoint 1 or more persons, but no more than 3 persons (one of whom may be the Code Reviewer) (**Independent Reviewer**) as deemed necessary by the Code Reviewer, to conduct an independent determination of the Complaint; and
- (e) provide all the information and materials referred to above to the Independent Reviewer.

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The person/s comprising the Independent Reviewer must:

- (a) be independent of the Member and the Complainant;
- (b) not have any commercial interest in the outcome of the Complaint;
- (c) be recruited from outside the live performance industry;
- (d) be suitably qualified to hear and resolve complaints; and
- (e) have an understanding of Competition and Consumer Law.

INDEPENDENT REVIEWER

On completion of the above, the Independent Reviewer must:

- (a) allow the Complainant and/or the Member to make oral representations to the Independent Reviewer if:
 - (i) the Independent Reviewer considers it necessary or desirable for oral representations to be made; or
 - (ii) the Complainant or the Member asks to make oral representations.
- (b) consider the views of both the Complainant and the Member;
- (c) form a view on the merits of the Complaint, specifically:
 - (i) whether the Complaint is wholly or partly justified;
 - (ii) whether the Complaint is wholly or partly unjustified; or
 - (iii) whether some other view is appropriate and if so, what view and for what reason;
- (d) inform the Complainant and the Member of that view, making such recommendations as may be appropriate in the circumstances; and
- (e) where applicable, formulate a recommendation for the Executive Council on disciplinary measures in accordance with section 8.

RECORDS

LPA will maintain a register of Complaints referred to the LPA Complaints Officer which will include details of:

- (a) the Member involved;
- (b) the Complainant;
- (c) the nature of the Complaint;
- (d) how the Complaint was resolved;
- (e) the time taken to resolve the Complaint; and
- (f) the sanction issued (if any).

If the Code Reviewer considers it appropriate, the Code Reviewer may include details of the Complaints referred to the LPA Complaints Officer in the compliance report prepared by the Code Reviewer in accordance with section 9 of the Consumer Code.

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8. DISCIPLINARY MEASURES

If the Executive Council or the Independent Reviewer determines that a Member has breached the Code, the Executive Council may impose one or more of the following disciplinary measures:

- (a) a written warning stating that if the Member commits any further breach of the Code the Executive Council will order that the Member's name be removed from the Register of Members in accordance with Rule 10 of the AEIA Rules;
 - (b) an order directing the Member to correct an aspect of business practice within a set period of time. After such time, if no corrective action has been taken, the Executive Council may order that the Member's name be removed from the Register of Members in accordance with Rule 10 of the AEIA Rules;
 - (c) an order that the Member's name be removed from the Register of Members in accordance with Rule 10 of the AEIA Rules; or
 - (d) any other penalty determined by the Executive Council, provided that it is consistent with the AEIA Rules.
- LPA must notify the Member and the Complainant (if applicable) in writing of the Executive Council's decision in respect of each breach and the reasons for that decision.

9. APPEALS

The Member may appeal to the Executive Council within 21 days of receipt of the Executive Council's notice of decision under section 8.

If the Member appeals within the 21 day period, the decision under appeal does not take effect until the appeal is determined.

The appeal must be considered by a General Meeting in accordance with Rules 10(d) and 10(e) of the AEIA Rules.

In considering an appeal, the General Meeting will consider all information submitted to the Executive Council in connection with the breach of the Code and may seek further information or clarification on any relevant issue, setting out the timetable for such information to be provided and when the final determination of the appeal will take place.

LPA must notify the Member in writing of the General Meeting's decision in respect of each breach and the reasons for that decision.

To the extent permitted by law, the decision of the General Meeting is final and following the decision, LPA will not consider any further submissions in relation to that appeal.

10. OTHER REMEDIES

The process set out in this Part B does not prevent any Member or Complainant from seeking any other legal remedy that they are entitled to seek under any applicable law, including the Consumer Laws. If a Member or a Complainant commences action to seek some other form of legal remedy during the course of any dispute resolution procedure set out in this Code, then the dispute resolution procedure under this Code will end, unless the Member and Complainant agree otherwise.



PART C: INDUSTRY PROTOCOL FOR TICKET PROCEEDS RECEIVED IN ADVANCE OF EVENT

11. TRUST ACCOUNT

Consumers have an interest in Ticket Proceeds, being the money paid for their tickets, until such time as the Event is held.

In order to ensure that this money is available for Consumers in the case that the Event does not proceed or in the case of insolvency of a relevant party, the Authorised Seller or Presenter in receipt of Ticket Proceeds must comply with the requirements set out in this Part C.

BEFORE EVENT

Ticket Proceeds must be held in trust for Consumers until the Event has been held.

As soon as practicable after receipt, all Ticket Proceeds must be deposited into a Trust Account that has been opened specifically for that purpose.

No other monies may be deposited into the Trust Account or mixed with the Ticket Proceeds, but:

- (a) the Trust Account may be a general account containing Ticket Proceeds in relation to multiple Events, provided that a separate ledger account is maintained in respect of each Event;
- (b) other money that is collected as part of the Ticket transaction (for example donations or prepayments for programs or car parking) may be paid into the Trust Account, provided that there are clear policies and procedures regarding:
 - (i) the types of monies that may be deposited into the Trust Account;
 - (ii) how and when transfers of these monies may be made out of the Trust Account; and
 - (iii) how regularly reconciliations will be performed.

The Trust Account may be operated solely by the Authorised Seller or Presenter or, where practicable, may be jointly controlled by two or more of those parties.

The Terms and Conditions must make it clear that Consumers will be entitled to a refund in the case that the Event does not proceed.

CANCELLATION OR REFUND

Where the Event is cancelled or a refund is otherwise required and the Ticket Proceeds are not being held by the Authorised Seller, an amount sufficient to satisfy all refund obligations must be returned to the Authorised Seller by the party holding the Ticket Proceeds (after deduction of any commission, booking fees or other amounts to be paid by the Authorised Seller). The Authorised Seller must use that money to make those refunds.

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AFTER EVENT

After an Event is held, the Ticket Proceeds may be distributed to the Presenter, Venue Manager, Authorised Seller or other parties in accordance with the settlement arrangements set out in the relevant agreement(s) between them.

12. INVESTMENT POLICY

Authorised Sellers must have an investment policy which sets out how the Authorised Seller invests Ticket Proceeds and must make that investment policy available to other parties who have a commercial interest in the Ticket Proceeds (not Consumers) on request.

Care should be taken not to trigger the financial services licensing provisions of the *Corporations Act 2001* (Cth). For example, the provisions dealing with custodial or depository services might apply if the Ticket Proceeds are held in anything other than a basic deposit product (for example, a savings account, interest bearing account or particular term deposit).

13. AUDITING PROCEDURE

A party who has a commercial interest in the Ticket Proceeds (i.e. not a Consumer) but is not a co-signatory to the Trust Account must have the right, acting reasonably, to request an audit or other form of legally binding assurance at any time to verify that the sum of money in the Trust Account matches the Ticket Proceeds recorded in the Ticket Proceeds holder's ledger.

The auditor used should be agreed between the parties. The cost of any audit should be borne by the party requesting the audit.

14. AGREEMENTS

All ticketing arrangements and agreements in respect of an Event (for example, the agreement between the Presenter and the Venue Manager, the agreement between the Presenter and the Authorised Seller, the agreement between the Venue Manager and the Authorised Seller and/or the ticketing arrangements of a self-ticketing Presenter) must ensure implementation of the requirements outlined in this Part C above.

15. ADVANCE ACCESS TO TICKET PROCEEDS

In limited circumstances, it may be reasonable for Ticket Proceeds to be provided to a Presenter or Venue Manager prior to the Event being held.

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Advance access to Ticket Proceeds may only be provided in the circumstances outlined in this section 15 below.

BANK GUARANTEE

The proposed recipient of the Ticket Proceeds has provided to the holder of the Ticket Proceeds a guarantee from a bona fide financial institution in a form that is sufficient to secure an amount equal to the Ticket Proceeds advanced.

GOVERNMENT FUNDING

The proposed recipient of the Ticket Proceeds:

- (a) is a Member in receipt of recurrent government funding (at least triennial); and
- (b) has provided the holder of the Ticket Proceeds with written assurance that it will satisfy all refund obligations immediately if and when required.

GOVERNMENT VENUES

The recipient of the Ticket Proceeds is a government venue which has an explicit guarantee that the government will cover any refunds if and when required.

OTHER

The recipient of the Ticket Proceeds has:

- (a) demonstrated the ability to satisfy all refund obligations if and when required; and
- (b) provided a written assurance (in a form acceptable to both the holder of the Ticket Proceeds and the Authorised Seller if a different party) to satisfy all refund obligations immediately if and when required.

OBLIGATIONS OF RECIPIENT

The directors and management of the recipient of the Ticket Proceeds must undertake appropriate risk management to ensure that there are sufficient funds to cover refunds immediately if and when required at any time, including adherence to a risk averse investment policy where appropriate.

All other relevant parties are entitled to request reasonable evidence of appropriate risk management practices.

16. BREACH

The failure by any Member to comply with this Part C of the Industry Code will be regarded as a serious breach and may be subject to the disciplinary measures set out in section 8.



PART D: ADVERTISING AND TICKETING

17. ADVERTISING MATERIAL

Advertising and promotional material in respect of Events must be clear and accurate and must comply with Consumer Laws.

Advertising and promotional material must give details, so far as is practicable, of:

(a) Main attraction(s) or performer(s)

In some areas of the live performance industry, it is standard practice to use understudies where the principal performer is unavailable for reasons outside the Presenter's control, or where the performer is not required by his or her contract to perform. Presenters are not required to notify Consumers through websites or advertising of changes to the main attraction or performers or the use of understudies. However, Consumers must be advised of the use of any understudies at the Event.

(b) Support act(s) or performer(s), where known

When Events are ticketed well in advance, support acts may not have been finalised at the time of booking or may change. For a series of Events, different support acts may be used at different times during the series. Consumers must be made aware of the identity of the support acts, where known. If this is not known, Consumers must be made aware of where they can obtain the information prior to the Event. Consumers must be made aware of any changes to the advertised support act(s) or performer(s) at the Event.

(c) Presenter, where possible

Consumers need this information to know who to contact to confirm if a Ticket seller is an Authorised Seller or to make a Complaint.

(d) Venue(s) configuration and seating arrangements

Where the normal configuration of the Venue is significantly varied for a particular Event, the configuration to be used must be disclosed in promotion material (for example, if the Venue is changed from a stage facing the audience to "in the round").

(e) Any restricted viewing limitations

This information must also be made clear to the Consumer prior to the purchase of a Ticket.

(f) Scheduled Event date(s)

Presenters are not required to notify Consumers of potential date(s) for an Event which may be released subsequent to the initial advertised dates, depending on demand.

(g) Authorised Sellers

The Authorised Sellers for the Event including any advance booking facilities.

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18. FAIR ACCESS TO TICKETS

Presenters and Authorised Sellers must seek to maximise fair access to Tickets by prospective Consumers by:

- (a) providing information about pre-sale arrangements and how Consumers can access such arrangements;
- (b) disclosing the particular categories of seats or seating areas that prospective Consumers may purchase prior to the public onsale date;
- (c) managing anticipated demand on the public onsale date by:
 - (i) providing adequate booking facilities; and
 - (ii) disclosing Ticket purchase limits or other anti-Ticket scalping strategies being applied to Ticket purchases.

19. EVENT INFORMATION

Authorised Sellers must provide Consumers who have purchased Tickets with information regarding:

- (a) the name and address of the Venue;
- (b) the date of the Event;
- (c) the commencement time of the Event (the time the first act commences and/or the time the doors open); and
- (d) any specific conditions of entry for the Event or the Venue.

20. PRICE REPRESENTATIONS

PRICING CLARITY

All price representations must comply with Consumer Laws.

All price representations made to Consumers, whether on the Ticket, in advertising or other marketing material or at the point of sale, must be clear, accurate and not misleading to a Consumer.

The Australian Consumer Law prohibits engagement in misleading or deceptive conduct and the making of false or misleading representations.

The Australian Consumer Law also requires all price representations to reflect the total price payable as a single figure, inclusive of any mandatory charges which the Consumer must pay to acquire the Ticket, including booking or transaction fees, credit card charges and GST.

Where there are optional charges, or compulsory charges that cannot be calculated at the time the price representation is made (for example, a delivery charge that varies depending on the means of delivery selected), the existence and amount of these charges must also be clearly indicated, disclosed or displayed up front with any price representation. The amount of that charge must then be incorporated into the total minimum price representation as soon as it is calculable.

The practice known as 'drip pricing' must be avoided (i.e. where a price is advertised at the beginning of a purchasing transaction and then additional fees and charges are incrementally disclosed throughout the transaction).

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The Australian Consumer Law further prohibits ‘bait advertising’, where goods or services are advertised at a particular price but they are not available at that price or only in very limited quantities. If Tickets are advertised at a particular price, they must be available at that price for a reasonable period of time and in reasonable quantities.

Disclaimers, conditions and limitations (particularly in small print) are unlikely to be sufficient to prevent an advertisement from being misleading or in breach of other relevant Consumer Laws. Generic phrases such as “Additional fees and charges may apply” or “Conditions apply” should be avoided.

Further guidance regarding pricing clarity is available on the *LPA website*.

The Australian Competition and Consumer Commission provides online training on Misleading conduct & advertising and Pricing & unfair selling practices.

PRICE ON TICKET

The law does not require the sale price of the Ticket to be printed on the Ticket but most industry participants choose to do this.

Where Tickets do not display any price, it is recommended that a mark or code is printed on the Ticket to indicate that the Ticket is authorised by the Presenter for sale either as part of a package or special offer or via an Authorised Seller.

PART E: OTHER MATTERS

21. PRIVACY

The handling and use of a Consumer's personal information is regulated by the *Privacy Act 1988* (Cth) (Privacy Act) and Members should ensure they comply with the Privacy Act when dealing with Consumer's personal information. LPA provides information and support to Members to assist them in complying with the Privacy Act. Guidance regarding the Australian Privacy Principles is available on the *LPA website*.

Information is also available on the *Office of the Australian Information Commissioner's* website.

22. ON-LINE DISCOUNT TICKET PROVIDERS

Online and last minute discount ticket providers may present difficulties for Venue Managers if they issue Tickets and/or ticket vouchers that are unfamiliar to Venue Managers' staff.

To avoid misunderstandings and Complaints, Members utilising on-line discount ticket providers should ensure that they have advised the Venue Manager accordingly and have provided adequate opportunity for the Venue Manager to brief its staff regarding the Tickets and/or ticket vouchers provided by the on-line discount ticket provider.

Members utilising on-line discount ticket providers must ensure that the on-line discount ticket provider complies with the Code and in particular with the requirements of section 11 above.



PART F: DEFINITIONS

In this Industry Code, the following terms have the meanings set out below:

AEIA

The Australian Entertainment Industry Association, being an organisation registered under the Fair Work (Registered Organisations) Act 2009 (Cth).

AEIA Rules

The *Rules of the Australian Entertainment Industry Association*, as amended from time to time and registered with the Fair Work Commission.

Australian Consumer Law

The Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Authorised Seller

A person or organisation who or which is authorised by the Presenter or Venue Manager to sell Tickets for an Event. In some cases, the Venue Manager will be the Authorised Seller.

Includes reference to a person authorised by the Presenter to sell Tickets as part of a package with travel, hospitality or accommodation benefits.

Code

The Live Performance Australia Ticketing Code of Practice comprising the Consumer Code and this Industry Code.

Code Reviewer

A person appointed by the Executive Council as referred to in the Consumer Code.

Complainant

A Consumer who makes a Complaint.

Complaint

A Complaint is a statement made to LPA or a Member that any product, service or situation is unsatisfactory or unacceptable.

Consumer

A person who purchases a Ticket to an Event.

Includes a person who holds a Ticket to an Event where this Code refers to matters occurring during an Event.

Includes a person who is intending to purchase a Ticket to an Event where this Code refers to matters occurring prior to the purchase of a Ticket.

Consumer Code

The Consumer Code component of the Live Performance Australia Ticketing Code of Practice.

Available on the *LPA website*.

Consumer Laws

The Australian Consumer Law and State and Territory consumer protection legislation.

Event

A live performance including but not limited to theatre, opera, dance, concert, festival, spectacular or arena event.

Does not include a sporting event.

Executive Council

The Council vested with the management of the AEIA, in accordance with Rule 11 of the AEIA Rules.

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Industry Code

The Industry Code component of the Live Performance Australia Ticketing Code of Practice.

Available on the *LPA* website.

LPA

Live Performance Australia (being the business name used by AEIA and under which AEIA operates).

General Meeting

A general meeting of Members, held in accordance with Rule 29 of the AEIA Rules.

Member

A financial member of AEIA in accordance with the *Fair Work (Registered Organisations) Act 2009* and the AEIA Rules.

Membership includes persons and organisations in the live performance industry who or which make Tickets available for sale, whether to the general public or otherwise.

Presenter

A person, organisation, promoter, producer or Venue Manager which presents Events.

Actions of a Presenter's staff are taken to be actions of the Presenter.

Terms and Conditions

The terms and conditions which apply to the sale of the Ticket and/or entry to the Event or Venue.

Ticket

A revocable licence granted to the Consumer to be admitted entry to an Event or to a Venue, subject to the applicable Terms and Conditions, evidenced by any ticket, voucher, coupon, card, badge, document or other form of identification device such as an electronic barcode, wristband, member's card or a credit card.

The right of admission to the Event may also include the right to be admitted to a designated area or a designated seat.

Ticket Proceeds

Money paid by Consumers for their Tickets.

Trust Account

The account for Ticket Proceeds opened and maintained in accordance with section 11 of this Industry Code.

Venue

The place where the Event is held.

Venue Manager

The owner, proprietor or manager of a Venue.

The actions of the Venue Manager's staff are taken to be actions of the Venue Manager.