

Tiscali Independent Business Associate

AGREEMENT TERMS AND CONDITIONS

Upon acceptance of the Agreement by Tiscali and in consideration of Tiscali granting to the Business Associate the non-exclusive right and privilege to purchase and promote Tiscali Products, and Services and the Tiscali business opportunity, the Business Associate (including any joint Business Associate) hereby agrees to the following terms and conditions:

1. The Business Associate will use his/her active and best efforts at all times to promote Tiscali Products, Services and to promote the Tiscali business opportunity. The Business Associate understands that Tiscali Business Associates are not guaranteed any specific amount of earnings and that any earnings and success will depend upon the sale of Tiscali Products, the acquisition of customers for Tiscali Services and the acquisition of customers by other Tiscali Business Associates in the Business Associate's organisation.
2. The Business Associate shall have the non-exclusive right to promote Tiscali Products and the Services which Tiscali markets for itself or on behalf of other product/service providers, including Tiscali UK Limited subject to the terms and conditions in each case established by Tiscali or by said providers from time to time and in accordance with the Agreement. The Business Associate acknowledges that the Business Associate's relationship is with Tiscali and not with any provider company with whom Tiscali transacts or conducts business. The Business Associate understands that certain Services offered by Tiscali may be available at prices or rates established by Tiscali or the providers of such Products and Services from time to time and that those Products and/or Services and prices and rates may be subject to change without prior notice.

Upon notification to the Business Associate, Tiscali may at its discretion amend the Agreement. The Business Associate's continued engagement in promoting Tiscali Products and Services, promoting the Tiscali business opportunity, or both, after notice of any revisions to the Agreement including in particular the Policies and Procedures and the Pay Plan shall constitute his/her agreement to such revisions and legally binding amendment of the Agreement including the Policies and Procedures and the Pay Plan.

3. No purchase or investment is necessary to become a Business Associate. The Business Associate acknowledges that purchase of any Products, Services, promotional or sales aid literature or attendance at any Tiscali sponsored training is entirely optional. If, however, Products or Services are purchased, the Business Associate agrees to pay for such Products or Services in a timely manner as prescribed by Tiscali or the Service provider as applicable.
4. The Business Associate shall be remunerated in accordance with the Pay Plan as amended from time to time.
5. The Business Associate is an independent contractor and the Agreement does not create a franchise or an employer/employee, partnership, or joint venture relationship. The Business Associate shall have no legal right or authority to bind Tiscali to any obligation or to make representations or warranties on behalf of Tiscali. The Business Associate shall be responsible for the filing of all necessary tax returns and paying all applicable taxes due in relation to the Business Associate's Tiscali business. Further, as an independent contractor the Business Associate agrees to:
 - (a) abide by any and all laws, rules and regulations, pertaining to the Agreement (and in particular the Trading Schemes Regulations 1997) and/or pertaining to the promotion of Tiscali Products and/or Services; and
 - (b) abide by all DSA codes of conduct in force in any country where the Business Associate is conducting his/her Tiscali business during the term of the Agreement; and

- (c) at the Business Associate's expense, make, execute or file, all reports and obtain all licences (including if applicable, VAT registration) as are required by law or public authority with respect to the Agreement, the sale of Tiscali Products and/or the promotion of Tiscali Services and the Tiscali business opportunity.

In the event that Tiscali is required to pay VAT on any payments due to the Business Associate under the Pay Plan or otherwise Tiscali reserves the right or otherwise (subject to any necessary approvals) to self bill for such sums, in which event VAT shall only be paid to the Business Associate if the Business Associate is registered for VAT and provides Tiscali with a copy of his/her VAT registration certificate. The Business Associate agrees that he/she will accept all self billed invoices issued by Tiscali during the term of the Agreement.

If the Business Associate having been registered, becomes de-registered for VAT voluntarily or due to his/her turnover falling below the VAT threshold applicable at the relevant time or otherwise, he/she shall notify Tiscali in writing of the fact of such de-registration within fourteen (14) days of the de-registration taking effect. If Tiscali is obliged or liable to make any payment of VAT to the tax authorities as a result of the failure of the Business Associate to notify Tiscali of de-registration for VAT then the Business Associate acknowledges and agrees that Tiscali shall be entitled to recover from him/her the amount of such VAT by deduction from the Business Associate's account with Tiscali or by any other means available to Tiscali from time to time.

- 6. Any verbal or written statements made by the Business Associate, as an independent contractor, with regard to Tiscali's Products, Services and the Tiscali business opportunity must be based strictly on the written information issued by Tiscali, for example, in current Business Associate and sales promotion literature and in accordance with the Policies and Procedures.

The Business Associate is liable for all statements he/she may make which deviate from such information issued by Tiscali and hereby indemnifies Tiscali from any loss, damages, claims, costs including legal fees or court costs or fines arising from unauthorised representations made by the Business Associate.

- 7. The Agreement will take effect from the date of acceptance by Tiscali for a period of one (1) year after such acceptance occurs or such other date as Tiscali may, in its discretion, specify from time to time. Tiscali reserves the right in its sole discretion to accept or reject an application to become a Business Associate. The Business Associate is required to renew the Agreement annually prior to the expiration date set by Tiscali. On renewal the Business Associate annual administration fee of £20.00 including VAT per annum, (to include Tiscali's administration and processing of the Business Associate's renewal and Tiscali providing information, newsletters and support throughout the following year), (such amount to be subject to revision for subsequent years) is payable through the online renewal procedure. Tiscali may at its option accept late renewal applications but otherwise anyone wishing to renew after expiry must re-apply to become a Business Associate under the same sponsor, with the loss of any downline.

Notwithstanding acceptance of this Agreement by Tiscali, this Agreement remains conditional on the Business Associate obtaining three (3) customers within 30 days of the date of acceptance by Tiscali. If the Business Associate does not fulfil this condition: (i) this Agreement shall immediately terminate and Tiscali shall not be required to provide notice in writing to Business Associate; and (ii) Tiscali shall have no obligation to make any payments to the Business Associate whatsoever for revenues to Tiscali arising from customers obtained by the Business Associate during the 14 day period.

Tiscali may terminate this Agreement by providing thirty (30) days' notice in writing to Business Associates if Tiscali elects to discontinue promotion of Tiscali Products and Services via Network Marketing. Where Tiscali terminates for this reason, Tiscali shall continue to make payment of Residual Usage Commission and Matching Residual Usage Commission (as defined in the Pay Plan) for a period of twelve (12) months from the date of termination based on revenue to Tiscali from customers acquired by the Business Associate and those acquired by his Team prior to the date of termination of this Agreement.

8. Tiscali's business opportunity is built upon Product and Service sales to the ultimate consumer. The Business Associate agrees that the fulfilment of published Product and Service sales and customer acquisition requirements set out in the Pay Plan as amended from time to time as well as sponsor support responsibilities and compliance with the terms of the Agreement is a condition of qualification for bonuses, commissions or rank advancements.
9. A Business Associate position and/or any rights ensuing therefrom may be sold or otherwise transferred by the Business Associate, subject to prior written approval from Tiscali, such approval not to be unreasonably withheld and in accordance with the Policies and Procedures. The seller of a Business Associate position may not re-apply or purchase another Tiscali Business Associate position for a period of six (6) months from the date of any such sale or transfer.
10. Tiscali will accept individual persons and partnerships as Business Associates but not limited liability companies. Business Associates may use a trading name for the conduct of their Tiscali business. Spouses shall be held under the same Business Associate Agreement as joint Business Associates. A Business Associate may not hold more than one Business Associate position at any time except in accordance with the Pay Plan or with the express written consent of Tiscali.
11. The Agreement may be terminated by the Business Associate without penalty and with or without cause or reason at any time upon not less than fourteen (14) days written notice or by Tiscali at its sole discretion by seven (7) days notice in writing effective immediately for any breach of its provisions or violation of any of the terms of the Agreement, the procedure for such termination to be in accordance with the provisions set out in the Policies and Procedures.

Except where the obligation on the Business Associate is specified to apply after termination of the Agreement in respect of non-competition in accordance with the Agreement, the Business Associate shall be released from all future contractual liabilities towards Tiscali on termination of the Agreement at any time.

12. The Business Associate has the right within a period of fourteen (14) days, of entering into the Agreement to cancel the Agreement without penalty by written notice of termination and to return any Products (including training and promotional materials, business manuals and kits) purchased within that period and which remain unsold provided that such unsold Products are in the condition in which they were in at the time of purchase, (whether or not their external wrappings have been broken) and to require Tiscali to refund an amount equal to one hundred per cent (100%) of any monies paid in respect of such Products. After termination, he/she must wait six (6) months from the date of termination of the Agreement before re-applying to become a Business Associate.
13.
 - (a) Where the Business Associate terminates the Agreement more than fourteen (14) days after entering into it, the Business Associate shall have the right to return to Tiscali any Products the Business Associate has purchased within a period of ninety (90) days prior to such termination and which remain unsold and to receive from Tiscali the price (inclusive of VAT) which the Business Associate paid for the Products, less
 - (i) in the case of any Products, the condition of which has deteriorated due to an act or default on the part of the Business Associate, an amount equal to the diminution in their value resulting from such deterioration; and
 - (ii) a reasonable handling charge of ten per cent of the price.
 - (b) Where Tiscali has terminated the Agreement, the Business Associate shall have the right to return to Tiscali any Products the Business Associate has purchased within a period of ninety (90) days prior to such termination and which remain unsold and to receive from Tiscali the price (inclusive of VAT) which the Business Associate paid for the Products

together with any costs incurred by the Business Associate for returning the Products to the Company; any such refund shall be on terms whereby the Products not already held by Tiscali will be delivered within twenty-one (21) days of such termination at Tiscali's expense to the address set out in the Application and Agreement Form or as notified by Tiscali to the Business Associate from time to time.

- (c) Any such refund shall be on terms whereby the purchase price is payable upon delivery of the Products or if the Products are already held by Tiscali forthwith.

Further, where either party terminates the Agreement more than fourteen (14) days after entering into the Agreement the Business Associate shall have the right to return to Tiscali any Products the Business Associate has purchased more than ninety (90) days but within one (1) year prior to such termination and which remain unsold and to receive from Tiscali ninety per cent (90%) of the price (inclusive of VAT) paid by the Business Associate for the purchase of those Products less (i) an amount equal to any commission, bonuses or other benefits (in cash or in kind) received by the Business Associate in respect of those Products, (ii) any amounts due from the Business Associate to Tiscali on any account and (iii) a reasonable handling charge, provided that such Products have not been purchased or acquired by the Business Associate in breach of the Agreement, the Business Associate returns such Products to Tiscali in an unused commercially resaleable condition not more than fourteen (14) days after the date of termination, and Tiscali did not clearly inform the Business Associate that the items were seasonal, discontinued or special promotion products which were not to be subject to the provisions of this clause 13.

14. Tiscali shall be entitled to request proof of ownership, e.g. sale receipts for the Products that the Business Associate requires Tiscali to buy back in accordance with the Agreement.
15. The Business Associate understands and agrees that bonuses or commissions paid to the Business Associate on Products returned by or Services refunded to Business Associates in his/her team, within the preceding one hundred and twenty (120) days shall be repayable by the Business Associate and may be deducted from his/her account with Tiscali at any time where a Business Associate in his/her team terminates his/her Business Associate Agreement or it is terminated by Tiscali.

The Business Associate agrees that payments of refunds will be made in the same form as the original payment and in accordance with Tiscali termination procedure in force from time to time.

16. The Business Associate will not use Tiscali or Tiscali's trade marks, trade name, slogans, symbols, and colour scheme without Tiscali's written permission except in the marketing of materials, sample Products and promotional materials provided or sold to the Business Associate by Tiscali.
17. If the Business Associate sponsors other Business Associates, the Business Associate understands and agrees that the Business Associate must use his/her best efforts to provide, on an on-going basis, bona fide support and training of sponsored Business Associates and their team, which shall mean such activities as ongoing contact, communication, encouragement and support of his/her organisation including, but not limited to, providing information and training to sponsored Business Associates in connection with the legislative and regulatory requirements to be complied with in the United Kingdom. Further if through the spill over mechanism a new Business Associate not personally sponsored by you is placed immediately below you in the Tiscali matrix in accordance with the Pay Plan, then you are required to ensure that you maintain ongoing contact and support to that new Business Associate. Tiscali reserves the right at any time to conduct a random audit of the level and type of ongoing contact and support provided by any Business Associate or to require any Business Associate to confirm in writing that he or she is receiving adequate contact and support from his or her sponsor or matrix upline.

In consideration of the granting of the Business Associate position, the Business Associate agrees that the Business Associate shall not during the term of the Agreement or for a period of ninety (90) days thereafter, take or encourage any action the purpose or effect of which would be to circumvent, breach, interfere with or diminish the value or benefit of Tiscali's contractual relationships with any Tiscali Business Associates. Without prejudice to the generality of the foregoing, the Business Associate shall not directly or indirectly contact, solicit, entice, sponsor or accept any of Tiscali's Business Associates into, or in any way

18. promote to any such Business Associates opportunities in competing marketing programmes of any direct sales company other than Tiscali or to cease being a Tiscali Business Associate.
19. Tiscali's Genealogies (being the information held by Tiscali relating to its Business Associates, which at Tiscali's option may include but are not limited to its relationships with each of its Business Associates, the sponsorship of each Business Associate, the Business Associate's Support team and teams and historical purchasing information for each Business Associate) contain confidential information which is highly sensitive and valuable to Tiscali's business and which shall at all times remain the property of Tiscali. In the event that Tiscali shall agree to disclose details of any of its Genealogies to the Business Associate:
 - (a) the Business Associate shall (to the extent such details are not publicly available other than by breach of the Agreement) at all times and without limit in time treat such details as confidential information in the nature of a trade secret and shall not use or disclose or permit the use or disclosure of such details to any other person (and shall take all reasonable steps to protect and maintain the security of the information) and shall use the details solely for the benefit of the Business Associate's Tiscali business and of Tiscali and for the stated purpose for which they were provided;
 - (b) the Business Associate shall return copies of any such information to Tiscali forthwith upon the termination of the Agreement for whatever reason.
20. The Business Associate Application and Agreement Form, these terms and conditions, the Policies and Procedures, the Roles and Responsibilities of Sponsors set out in the Business Pack and the Pay Plan (as amended from time to time) constitute the entire agreement between the Business Associate and Tiscali and no other additional promises, representations, warranties or agreements of any kind shall be valid unless in writing and issued by Tiscali.
21. No failure to exercise and no delay in exercising on the part of Tiscali, any right under the Agreement shall operate as a waiver thereof.
22. Any notice or other written communication given under or in connection with the Agreement may be delivered personally or sent by first class post to Tiscali at the address shown on the Business Associate Application and Agreement Form or such other address notified from time to time by such party to the other.
23. If at any time any term or provision in the Agreement shall be held to be illegal, invalid or unenforceable in whole or in part under any rule of law or enactment such term or provision or part shall to that extent be deemed not to form part of the Agreement but the enforceability of the remainder of the Agreement shall not be affected.
24. The terms and provisions of the Agreement and any dispute arising thereunder shall be governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.
25. The Contract (Rights of Third Parties) Act 1999 are hereby excluded and shall not apply to this Agreement.