

TERMS AND CONDITIONS OF THE NOTES

EURO 18,500,000.00 Tiscali S.p.A. CONVERTIBLE NOTES DUE 2020

“Tiscali conv 2016-2020”

(ISIN Code: IT [])

*The following is the text of the Terms and Conditions (the **Conditions**) of the Notes which will be endorsed on each Note.*

1. DEFINITIONS

For the purposes of these Conditions, capitalised terms not otherwise defined herein shall, unless the context otherwise requires, have the following meanings:

Business Day means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in Milan (Italy).

Business Day Convention means, if any date referred to in these Conditions which is specified to be subject to adjustment in accordance with a Business Day Convention would otherwise fall on a day which is not a Business Day, then such date shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such date shall be brought forward to the immediately preceding Business Day.

Conversion Ratio subject to the Conversion Price Adjustment set out in Condition 6(e), means the ratio between (a) the principal amount of the Notes subject to conversion and (b) the Conversion Price. If, upon conversion, a Noteholder is entitled to obtain a non-integer number of Conversion Shares, such Noteholder shall be granted in exchange for the Notes to be converted a number of Conversion Shares equal to the closest whole number (by excess or defect, as the case may be), without being entitled to fractions of Conversion Shares.

Conversion Price means Euro 0.06 per share.

Conversion Shares means the newly issued ordinary shares of the Issuer, with regular exercise (*godimento regolare*) to be attributed by the Issuer to the Noteholders upon conversion of the relevant Notes at the Conversion Ratio, considering that as of the date of signing of the Conditions one Note can be converted into no. 8,333,333 shares (subject to further adjustment in accordance with the provisions set forth below, if any).

Day Count Fraction means, with respect to an Interest Period, the actual number of days in the Interest Period in respect of which payment is being made divided by 360.

Final Maturity Date means the date falling on 30 September 2020.

Initial Subscribers means, jointly, Rigensis Bank AS and Otkritie Capital International Limited.

Insolvency Law means Royal Decree 267/1942, Law Decree 26/1979, Legislative Decree 270/1999, Law Decree 347/2003, Law Decree 233/1986 and any other law applicable in Italy or in any other relevant jurisdiction relating to bankruptcy, insolvency, winding up, liquidation, reorganisation or relief of debtors

Insolvency Proceeding means any procedure, agreement or plan provided for by Insolvency Law or to which Insolvency Law applies, such as, without limitation, bankruptcy, insolvency, winding up, liquidation, reorganisation or relief of debtors, *fallimento*, *concordato preventivo*, *accordi di ristrutturazione* under article 182-bis Royal Decree 267/1942, *piano attestato* under article 67 par. III, lett. d) Royal Decree 267/194, *amministrazione straordinaria* and *liquidazione coatta amministrativa*.

Interest Payment Date means the date falling on 31 March and 30 September of each year (or, if any such date is not a Business Day, the immediately following Business Day, starting from and including 31 March 2017 and up to and including the Final Maturity Date.

Interest Period means each semi-annual period starting from (but excluding) an Interest Payment Date and ending on (but including) the immediately following Interest Payment Date, starting from (and including) 31 March 2017 until the Final Maturity Date, *provided that* the first Interest Period shall begin on (and include) the Issue Date and end on (but exclude) 31 March 2017.

Issue Date means [•] 2016, with respect to the Notes to be subscribed by the Initial Subscribers, and the date of subscription by the relevant Noteholders, with respect to the remaining Notes.

Major Change in the Shareholding means the aggregate percentage of the voting share capital of the Company owned directly and/or indirectly (including by way of controlled entities) by all the Relevant Shareholders falling at any time below 15 (fifteen) per cent. of the voting share capital of the Company.

Material Adverse Effect means an effect, event, matter or circumstance (or any series of any thereof) which is materially adverse to:

- (a) the business, assets or financial condition of the Issuer or any company of the group to which the Issuer belongs to so as to prejudice the ability of the Issuer to perform and comply with its payment obligations under the Notes; or
- (b) the validity, legality or enforceability of the documents regarding the Notes or the rights of any Noteholder under the Notes.

Noteholders means the ultimate holders of the Notes from time to time as registered in the Noteholders' ledger.

Qualified Investors means a qualified investor (“*investitore qualificato*”), pursuant to Article 100 of the Financial Act, Article 34-ter paragraph 1(b) of Consob Regulation 11971 of 14 May 1999 (*Regolamento Emittenti*) and a private professional client (“*cliente professionale privato*”) pursuant to Article 26 paragraph 1(d) of Consob Regulation No. 16190 of 29 October 2007 (*Regolamento Intermediari*).

Relevant Authorized Intermediary means the authorized intermediary, participant in Monte Titoli, where each Noteholder has deposited its Notes.

Relevant Capital Increase, means the capital increase of the Issuer approved by the Issuer's shareholder meeting and authorizing the issue of the Conversion Shares.

Relevant Date means each date on which any payment under the Notes first becomes due by the Issuer.

Relevant Jurisdiction means Italy or any political subdivision or any authority thereof or therein having power to tax any other jurisdiction or any political subdivision or any authority thereof or therein having power to tax to which the Issuer, as the case may be, becomes subject in respect of the issuance of the Notes and the payment obligations related thereto.

Relevant Shareholders means:

- (a) Otkritie Disciplined Equity Fund SPC;
- (b) Investment Construction Technology (ICT) Group Ltd;
- (c) ICT Holding (BVI) Ltd; and/or
- (d) Mr. Alexander Nesis.

Subscription Period means the period available for the subscription of the Notes and running from the Issue Date of the Notes until 31 January 2017.

Trading Day means any day in which Milan Stock Exchange is open for trading.

2. ISSUE, FORM, DENOMINATION AND TITLE

(a) *Issue*

The Euro 18,500,000.00 Tiscali S.p.A. Convertible Notes due 30 September 2020 (the *Notes* and each a *Note*), so-called “Tiscali conv 2016-2020” are issued in one or more fungible tranches by Tiscali S.p.A., a share company (*società per azioni*) incorporated under the laws of Italy, with registered office in Cagliari (Italy), Sa Illetta, SS 195, Km 2.300, VAT and Italian taxpayers’ code No. 02375280928 (the *Issuer*).

The Notes are issued by the Issuer on the relevant Issue Dates at 100 per cent. of their principal amount (the *Issue Price*) and will give to each Noteholder the same rights as from the relevant Issue Date.

The Noteholders will be entitled to subscribe the Notes during the entire Subscription Period.

(b) *Form*

The Notes are issued in bearer dematerialised form and will not be represented by paper certificates. The transfer and exchange of the Notes will take place exclusively through an electronic book-entry system managed by Monte Titoli S.p.A. (*Monte Titoli*). Accordingly, all Notes shall be deposited by their owners with an intermediary participant in Monte Titoli. The intermediary will in turn deposit the Notes with Monte Titoli.

To transfer an interest in the Notes, the transferor and the transferee are required to give instructions to their respective intermediaries. If the transferee is a client of the transferor’s intermediary, the intermediary will simply transfer the Notes from the transferor’s account to the account of the transferee. If, however, the transferee is a client of another intermediary, the transferor’s intermediary will instruct the centralised clearing system to transfer the Notes to the account of the transferee’s intermediary, which will then register the Notes on the transferee’s account.

Each intermediary maintains a custody account for each of its clients. This account sets out the financial instruments of each client and the records of all transfers, interest payments, charges or other encumbrances on such instruments. The account holder or any other eligible party may submit a request to the intermediary for the issue of a certified account statement.

In such circumstances, it will not be possible for a Noteholder to obtain physical delivery of certificates representing the Notes.

(c) *Denomination*

The Notes are issued in the denominations of Euro 500,000.00 each.

(d) *Corporate capital and shares*

As of the first Issue Date, the corporate capital of the Issuer (i) is equal to Euro [•], fully paid up and (ii) is divided into no. [•] ordinary shares without nominal value.

(e) *Resolution of extraordinary shareholders' meeting of the Issuer*

The issue of the Notes has been resolved upon by [•] of the Issuer on [•]. Such resolution has been registered in the competent Companies' Register on [•].

On [•], the extraordinary shareholders' meeting of the Issuer resolved upon a share capital increase of the Issuer for an amount equal to a maximum amount of Euro [•] and the issue of maximum no. [•] Conversion Shares (or such different number of shares which will result pursuant to the Conversion Ratio), reserved for the purposes of the conversion of the Notes in accordance with these Conditions.

3. STATUS OF THE NOTES

The Notes are direct, unconditional and unsecured obligations of the Issuer and will rank at any time *pari passu* with any other present and future unsecured creditor of the Issuer but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.

4. INTEREST

(a) *Interest rate, Interest Payment Dates and Interest Periods*

The Notes bear interest on their principal amount outstanding at the fixed rate of 7.0 per cent. per annum (the **Interest Rate**) from (and including) the Issue Date.

The amount of interest payable in respect of each Note for any Interest Period shall be calculated by applying the Interest Rate to the nominal amount of each Note, multiplying the product by the relevant Day Count Fraction (not adjusted in accordance with the Business Day Convention) and rounding the resulting figure in accordance with Condition 13 (Rounding).

Interest on the Notes is payable in arrears on each Interest Payment Date (or, if such day is not a Business Day, on the next succeeding Business Day), the first payment date being the Interest Payment Date occurring on 31 March 2017

Unless previously redeemed, converted or cancelled, each Note shall cease to bear interest on the date on which all amounts due in respect of such Note are received by or on behalf of the relevant Noteholder.

(b) *Default Interest*

If the Issuer fails to timely pay any sums due in respect of the Notes, then, during the period comprised between (a) the relevant due date (included) of such unpaid amount and (b) the date (included) on which the Issuer performs in full its relevant payment obligation, the relevant unpaid amount shall automatically bear, and the Issuer shall pay in respect of any such unpaid amount, additional interest at a fixed rate equal to 2 per cent. per annum (the *Default Interest*).

(c) *Calculation*

Whenever it is necessary to compute an amount of interest in respect of the Notes for any period (including any Interest Period), such interest shall be calculated on the basis of actual days elapsed in a 365-day year (or, if any portion of an Interest Period falls in a leap year, the sum of (i) the actual number of days in any portion of such period falling in a leap year divided by 366 and (ii) the actual number of days in that portion of such period falling in a non-leap year divided by 365).

5. TRANSFERABILITY

The Notes shall only be transferred to Qualified Investors.

The Initial Subscribers shall not be entitled to transfer the Notes to more than 8 (eight) Qualified Investors.

The Noteholders (other than the Initial Subscribers) shall be entitled to transfer their Notes, in whole but not in part, only to Qualified Investors.

6. REDEMPTION, CONVERSION AND CANCELLATION

(a) *Redemption at the Final Maturity Date*

Unless previously redeemed, converted or cancelled as provided below, the Notes will be redeemed at their principal amount, together with any accrued and unpaid interest, on the Final Maturity Date.

(b) *Early Redemption*

The Issuer may early redeem, in full or in part, the Notes, together with any accrued and unpaid interest but without any penalty, fee or break cost, at any time following 30 September 2017.

The early redemption right shall be exercised by giving to the Representative of the Noteholders a three months prior written notice.

The early redemption right shall be exercised for a minimum amount of Euro 1,000,000.00 of the principal amount outstanding of the Notes, to be allocated on all the outstanding Notes *pro-rata* and *pari passu*.

(c) *Automatic conversion in full*

Unless previously redeemed or converted, all of the Notes outstanding as at the Final Maturity Date shall be automatically converted into Conversion Shares pursuant to the Conversion Ratio (the ***Automatic Conversion***).

The Automatic Conversion shall be effective within 5 Business Days from the Final Maturity Date.

On the Final Maturity Date any accrued and unpaid interest shall be paid by the Issuer to the Noteholders in full in immediately available funds on such date.

In the event of Automatic Conversion, the Issuer shall deliver the relevant Conversion Shares in favour of the Noteholders, in the account indicated by the Noteholders in writing, by no later than ten Trading Days from the Final Maturity Date.

(d) *Voluntary conversion*

Each Noteholder shall have the right, in its absolute discretion, to convert the Notes, in whole or in part, into Conversion Shares in accordance with the Conversion Ratio at any time after 31 March 2017 until the Final Maturity Date, and shall give notice in writing thereof to the Issuer and to the Relevant Authorized Intermediary, (in accordance with Condition 12 or otherwise), substantially in the form annexed to these Conditions ("**Notice of Conversion**").

The minimum amount to be converted shall be Euro 500,000 which is equal to the principal amount of one Note and, if the amount to be converted is greater than Euro 500,000, then such amount shall be an integral multiple of Euro 500,000.

The Issuer undertakes, upon receipt of the Notice of Conversion by the relevant Noteholder, to deliver the relevant Conversion Shares in favour of the Noteholders, in the account indicated in the Notice of the Conversion, no later than ten Trading Days following receipt of the Notice of Conversion.

On the issue date of the relevant Conversion Shares any accrued and unpaid interest shall be paid by the Issuer to the Noteholders in full in immediately available funds on the immediately following Interest Payment Date.

(e) *Conversion Price adjustment*

Without prejudice to any right of the Noteholders pursuant to applicable law, if, during the period between the Issue Date and the earlier of the exercise of a conversion or the Final Maturity Date, the Issuer resolves upon:

- (i) any free-of-charge share capital increase through the issuance of new shares shall be adjusted by the Issuer so that the number of Conversion Shares allocated to each Noteholder as a result of a conversion, exercised after the completion of the transactions referred to in this paragraph (i), is increased by the number of new shares that would have been allocated to such Noteholder if the conversion had taken place prior to the completion of the transactions referred to in this paragraph (i), *it being understood* that, in connection with any share capital increase other than the ones set forth in the foregoing part of this paragraph (i), the Conversion Price shall not be subject to any upward or downward adjustment;
- (ii) any split and/or reverse split of shares of the Issuer or any issuance of shares (or of other securities entitling their holders to acquire shares in the Issuer), then the Conversion Price shall be adjusted by the Issuer and any adequate corporate action shall be approved so that the number of Conversion Shares allocated to each Noteholder as a result of a conversion, exercised after the completion of any of the transactions referred to in this paragraph (ii), is increased or decreased, respectively, so as to represent a percentage of the outstanding shares of the Issuer equal to that which would have been represented by the Conversion Shares allocated to such Noteholder as a result of a conversion exercised as at the Issue Date; and
- (iii) any (x) merger into one or more companies, other than a merger in which the Issuer is the surviving company, or (y) demerger, then the Conversion Price shall be adjusted by the Issuer so that each Noteholder is allocated a number of shares of the company or companies resulting from the merger or demerger equal to the number of shares in such company or companies that such Noteholder would have been allocated if the conversion had taken place prior to such merger or demerger, *provided* that, in the event of any such merger or demerger, any reference in these Conditions to the Issuer and the Conversion Shares shall also be deemed as a reference to the company or companies, and the shares in the company or companies, resulting from any such merger or demerger, as the case may be and *mutatis mutandis*.

In the event that, further to an adjustment of the Conversion Price as provided above, it is necessary for the Issuer to issue additional Conversion Shares, the Issuer shall take all necessary corporate steps to ensure such further issuance of Conversion Shares, in order to allow the Noteholders to exercise their respective conversion right pursuant to the Conversion Price so adjusted.

(f) *Cancellations*

All Notes which are (i) redeemed or (ii) converted will, as soon as practicable, be cancelled, and accordingly may not be held, reissued or resold.

7. PAYMENTS AND CALCULATIONS

(a) *Payments*

Payment of interest and repayment of principal in respect of the Notes will be made through book-entries transfer on the accounts held by the Noteholders with Monte Titoli.

No costs, fees or expenses will be charged to the Noteholders in relation to such payments.

(b) *Payments subject to applicable laws*

Payments in respect of principal and interest on the Notes are subject in all cases to any fiscal or other laws and regulations applicable in the place of payment, but without prejudice to the provisions of Condition 8.

(c) *Payments on a day other than a Business Day*

If the due date for payment of any amount in respect of any Note is not a Business Day, the Noteholder shall not be entitled to payment of the amount due until the next succeeding Business Day and shall not be entitled to any further interest or other payment in respect of any such delay.

(d) *Calculations*

All calculations in respect of the Notes will be made by the Issuer.

8. TAXATION

(a) *Payment without withholding*

All payments in respect of the Notes by or on behalf of the Issuer shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature (Taxes) imposed or levied by or on behalf of the Relevant Jurisdiction. In the event of any deduction or

withholding for or on account of any Taxes, which relates to any payment in respect of the Notes, the sum owed by the Issuer to any Noteholder shall be increased by a supplementary amount such that, after making any such deduction or withholding (including any deduction or withholding on such supplementary amount), the relevant payee receives (free from any obligation in respect of such deduction or withholding), an amount equivalent to that which would have been received, had such deduction or withholding not been required.

(b) *Additional Amounts*

Any reference in these Conditions to any amount in respect of the Notes shall be deemed also to refer to any additional amount which may be payable under this Condition or under any undertaking given in addition to, or in substitution for, this Condition.

9. PRESCRIPTION

Claims against the Issuer for payment in respect of the Notes shall be prescribed and become void unless made within ten years (in the case of principal) or five years (in the case of interest) from the appropriate Relevant Date.

10. EVENTS OF DEFAULT

(a) *Events of Default*

The Representative of the Noteholders shall, if so requested in writing by the holders of at least 66.6% in principal amount of the Notes then outstanding, declare that the Notes are, and they shall accordingly forthwith become, (i) due and repayable at their principal amount outstanding, together with any accrued and unpaid interests thereon, or (at Noteholders' sole discretion and to the extent permitted, taking into account the relevant Event of Default) (ii) converted in full, and not in part, into Conversion Shares in accordance with the Conversion Ratio, and shall give a 10 (ten) Business Days written notice thereof to the Issuer and to the Noteholders (in accordance with Condition 12 or otherwise), if any of the following events (*Events of Default*) shall have occurred:

- (i) the Issuer fails to repay any amount of principal or pay any amount of interest in respect of the Notes within 5 (five) Business Days of the due date for payment thereof and if such failure is continuing and is being unremedied for 5 (five) Business Days after receipt of written notice thereof from any Noteholder; or

- (ii) an Insolvency Proceeding is initiated against or by the Issuer or any of its subsidiaries in relation to the Issuer, any of its subsidiaries or, as the case may be, in relation to the whole or a substantial part of the undertaking or assets of the Issuer or any of its subsidiaries ; or
- (iii) the Issuer suspends or ceases to carry out all or a material part of its business;
- (iv) any financial indebtedness of the Issuer is declared due and payable and is placed on demand prior to its specified maturity, in each case as a result of an event of default or any provision having a similar effect (howsoever described), unless the aggregate amount of such financial indebtedness is lower than or equal to € 10,000,000; or
- (v) any public licence held by the Issuer has been cancelled, terminated or revoked, where such cancellation, termination or revocation has a Material Adverse Effect on the business of the Issuer; or
- (vi) the Issuer defaults in the performance or observance of any of its obligations under or in respect of the Notes, the Subscription Agreement or any other Transaction Document to which it is a party (other than any obligation specified under (i) above) which is in the Noteholders' reasonable opinion materially prejudicial to their interests and such default remains unremedied for 10 days after the Representative of the Noteholders (upon instructions of the Noteholders) has given written notice thereof to the Issuer requiring the same to be remedied (except where, in the sole opinion of the Noteholders' such default is not capable of remedy, in which case no term of 10 days will be given); or
- (vii) any of the representations and warranties given by the Issuer under the Subscription Agreement or any other Transaction Documents to which it is party is, or proves to have been, incorrect or erroneous in any material respect when made, or deemed to be made, or at any time thereafter, unless it has been remedied within 10 days after the Representative of the Noteholders has served notice requiring remedy (except where, in the sole opinion of the Noteholders' such default is not capable of remedy, in which case no term of 10 days will be given); or
- (viii) the resolution of the shareholders meeting approving the Relevant Capital Increase is challenged (*impugnata*) by an absent or a dissenting shareholder or by any person (including a public authority) with the right, under the applicable laws and regulations, to challenge a resolution of the shareholders meeting).

- (ix) without prejudice to clause 10(a)(x) below, the competent corporate body of the Issuer approves any of the actions set out in clauses 6(e)(ii) without the relevant adjustments to the Conversion Price; or
- (x) the competent corporate body of the Issuer approves without the prior consent of the holders of at least 66.6% in principal amount of the Notes then outstanding any action:
 - which may cause the Conversion Share to represent a percentage of the Issuer's (or of the company's or companies', resulting from any of the transactions set out in clause 6(e)(iii)) share capital lower than the percentage that such Conversion Share would have represented as at the Issue Date;
 - set out in clause 6(e)(iii)(y) (demerger); or
 - set out in clause 6(e)(iii)(x) (merger) and resulting in a Major Change in the Shareholding).

(b) *Information obligation in relation to Events of Default*

The Issuer shall promptly inform in writing the Representative of the Noteholders of the occurrence of any Event of Defaults.

11. REPRESENTATIVE OF THE NOTEHOLDERS. MEETINGS OF NOTEHOLDERS.

(a) *Representative of the Noteholders*

By no later than 30 Business Days from the Issue Date, the Noteholders shall appoint as their representative (the ***Representative of the Noteholders***) a firm authorized to carry out investment services in Italy or a professional designated by the Noteholders in accordance with the provisions of article 2417 of the Italian civil code. The Issuer may not raise any objections to the Representative of the Noteholders.

(b) *Duties of the Representative of the Noteholders*

The Representative of the Noteholders shall exercise the rights of the Noteholders and act as their agent in relation to the Notes, upon the instructions of Noteholders holding at least 66.6% in principal amount of the Notes then outstanding.

(c) *Indemnity of the Representative of the Noteholders*

All the Noteholders, on a *pro-rata* basis, shall indemnify and hold harmless the Representative of the Noteholders from and against, any and all claims, liabilities, losses, damages, costs and expenses arising out as a result of its activities under these Conditions.

(d) *Meetings of Noteholders*

Without prejudice to the provisions of Condition 5, the meetings of the Noteholders shall be held in accordance with the applicable provisions of Italian law, including, without limitation, Article 2415 of the Italian Civil Code, in Italy at the registered office of the Issuer, or in any other country within the European Union or the United States of America, including via teleconference. Such meetings shall be convened, pursuant to the above mentioned Article, by written notice to be sent at least two Business Days in advance. Any resolution duly passed at any such meeting shall be binding on all the Noteholders, whether present or not.

12. NOTICES

(a) *Notices to Noteholders*

Any notice regarding the Notes, as long as the Notes are held through Monte Titoli, shall be deemed to have been duly given if given through the systems of Monte Titoli.

(b) *Notices from the Noteholders*

Notices to be given by any Noteholder shall be in writing and given at the registered office of the Issuer. The Issuer shall provide written notice to the other Noteholders of any notice received by it in accordance with this Condition 12(b).

(c) *Other method of giving notice*

The Representative of the Noteholders shall be at liberty to sanction some other method of giving notice to or from the Noteholders if, in its opinion, such other method is reasonable having regard to market practice then prevailing.

13. ROUNDING

For the purpose of any calculation referred to in these Conditions, all percentages resulting from such calculations will be rounded, if necessary, to the nearest one thousandth of a percentage point (with 0.0005 per cent. being rounded up to 0.001 per cent.).

14. GOVERNING LAW AND JURISDICTION

(a) *Governing Law*

The Notes and any contractual or non-contractual obligations arising from or connected with the Notes are governed by, and shall be construed in accordance with, Italian law.

(b) *Jurisdiction*

The courts of Milan, Italy shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Notes.

Annex
Form of Notice of Conversion

[•]