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CONNECT

Informazione Regolamentata n. 0260-17-2021	Data/Ora Ricezione 20 Maggio 2021 19:23:02	MTA
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Societa' : TISCALI  
Identificativo : 147562  
Informazione  
Regolamentata  
Nome utilizzatore : TISCALIN07 - Ilenia Loi  
Tipologia : REGEM  
Data/Ora Ricezione : 20 Maggio 2021 19:23:02  
Data/Ora Inizio : 20 Maggio 2021 19:23:05  
Diffusione presunta  
Oggetto : Regolamento Prestito obbligazionario  
Tiscali Conv 2021

*Testo del comunicato*

Vedi allegato.

## Schedule 1

### TERMS AND CONDITIONS FOR THE CONVERTIBLE NOTES

#### Up to Euro 21,000,000 convertible notes

#### Issued by

#### Tiscali S.p.A.

with a share capital of EUR 51,655,159.37, having its registered office at Cagliari (CA), Località Salletta – SS 195 KM 2.300, SNC CAP 09122, Italy, and registered with the registry of Cagliari - Orsitano Chamber of Commerce under number 02375280928, REA n. CA - 191784, represented by Renato Soru, duly empowered

#### 1. Definitions

In these terms and conditions (“**Convertible Notes Terms**”), definitions are recalled from the Investment Agreement (as defined below) unless otherwise provided, the following means:

“ <b>Affiliate</b> ”	shall mean a person or entity that directly or indirectly Controls, is Controlled by, or is under common control with, another person or entity;
“ <b>Business Day</b> ”	means a day when banks in Italy and Switzerland are open for general banking business (other than over the Internet only);
“ <b>Commitment Period</b> ”	means a period starting from the approval of the issuance of the first tranche by the Issuer’s Board of Directors and ending on the date falling 21 (twenty-one) months later and renewable, at the Issuers’s option, on a once-off basis for a further 21 (twenty-one) months period;
“ <b>Control</b> ”	has the meaning given to it under Article 2359 of the Italian Civil Code and Article 93 of the Italian Consolidate Financial Law (D. Lgs 58/98);
“ <b>Conversion</b> ”	means the conversion to New Shares according to the Agreement;
“ <b>Conversion Date</b> ”	means the date when Conversion is requested by Conversion Notice;
“ <b>Conversion Notice</b> ”	shall have the meaning set forth in these Convertible Notes Terms;
“ <b>Conversion Period</b> ”	means the period during which Conversion may be made, up to the maturity of the Convertible Notes (provided that the Conversion Period may be shortened as set out herein);
“ <b>Conversion Price</b> ”	shall mean 95% (ninety five percent) of the second lowest VWAP observed over the Pricing Period.
“ <b>Daily VWAP</b> ”	means the daily Volume Weighted Average Price as published by Bloomberg LP (or would Bloomberg cease to exist or publish it, by any other financial news and data service provider of reference publishing reliable data on the Shares being understood that the VWAP shall be calculated according to the exactly same methods used by Bloomberg), which is a trading benchmark calculated by dividing the total value trading (sum of price time trade size) by the total volume (sum of trade sizes) taking into account every qualifying transaction. Depending on the

condition codes of the transaction and the condition codes included in the Bloomberg defined VWAP calculation, a transaction may or may not be deemed qualifying. Historical values may also be adjusted on receipt of qualifying delayed trades;

<b>“Event of Default”</b>	shall have the meaning set forth the Investment Agreement;
<b>“Investor</b>	it has the meaning set forth in the Investment Agreement.
<b>“Investor Group”</b>	shall mean the Investor and its Affiliates;
<b>“Issuer”</b>	has the meaning set forth in the Investment Agreement;
<b>“Material Adverse Change”</b>	shall mean any event related to the Issuer having an effect on the value of the business, operations, properties, or financial condition of the Issuer that is material and adverse to the Issuer and its Affiliates, taken as a whole and/or any condition, circumstance or situation that would prohibit or materially and significantly impact the ability of the Issuer to enter into and perform any of its obligations under these Convertible Notes Terms in any material respect or may be materially or the validity, enforceability and effectiveness of the obligations that the Issuer is liable for under these Convertible Notes Terms;
<b>“MTA”</b>	means the Mercato Telematico Azionario, organized and managed by Borsa Italiana S.p.A. being the market in which the Shares are listed;
<b>“Monte Titoli”</b>	means Monte Titoli S.p.A., the company managing the centralized deposit system for dematerialized securities pursuant to the CONSOB Regulation dated 22 February 2008, jointly issued by the Bank of Italy and the CONSOB.
<b>“Monte Titoli Account Holder”</b>	means any authorised financial intermediary institution entitled to hold accounts on behalf of its customers with Monte Titoli;
<b>“New Shares”</b>	means the Shares issued to the Investor following Conversion;
<b>“Pricing Period</b>	shall mean a period of 6 (six) Trading Days expiring on the Trading Day immediately preceding the Conversion Notice by the Investor;
<b>“Subscription Dates”</b>	the dates on which the tranches are subscribed for by the Investor;
<b>“Subscription Request”</b>	means the request in the form as <u>Schedule 2</u> pursuant to which the Issuer requests that the Investor shall subscribe for a tranche;
<b>“Subscription Price”</b>	means 95.5% of the nominal value of each Convertible Note;
<b>“Convertible Note Terms”</b>	means these Convertible Notes Terms;
<b>“Trading Day”</b>	means any day on which the Shares are traded on AIM Italia, provided that “Trading Day” shall not include (i) any day on which the Shares are scheduled to trade on such market for less than 4.5 hours (it being specified for the avoidance of doubt that any day during which there would be no effective trading would be considered as a Trading Day if this is not due to a suspension requested by the Issuer or by Borsa Italiana) or (ii) any day that the Shares are suspended from trading at the request of the Issuer

or Borsa Italiana during the final hour of trading on such market unless such day is otherwise designated as a Trading Day in writing by the Investor;

## 2. Bond Amount, Interest Rate, Maturity, etc.

- (a) The Convertible Notes are issued up to a total amount of EUR 21,000,000 (twenty-one million Euros) (“**Commitment**”), each note having a nominal value of EUR 100,000 (one hundred thousand) (“**Convertible Notes**”) to be subscribed by the Investor over the course of a period of 21 (twenty-one) months starting from the resolution of the Board of Directors of the Issuer concerning the issuance of the first tranche (“**Commitment Period**”). The Convertible Notes will be issued in seven (7) tranches of an aggregate value of EUR 3,000,000 (three million Euros).
- (b) Convertible Notes are a zero coupon.
- (c) The first tranche of Convertible Notes will be issued starting from 2 (two) Business Days following the approval of the issuance of the first tranche by the Issuer’s Board of Directors, subject to the fulfilment of the condition precedents provided by Clause 5.1 e Clause 5.2 of the Investment Agreement, while for the remaining tranches of Convertible Notes, the Issuer will have the option, at its sole discretion, to activate the residual tranches of Convertible Notes of the Total Commitment on a once-off basis before the Commitment Period elapsed.
- (d) The Convertible Notes shall have a maturity falling on the 21th months following the issuance of the first tranche of the Convertible Notes.
- (e) The Issuer assumes liability for payment of the Convertible Notes and undertakes to effect payment and Conversion pursuant to these Convertible Notes Terms and the Investment Agreement.
- (f) The Convertible Notes constitute direct, unconditional and unsecured obligations of the Issuer and, in the event of winding-up, insolvency, dissolution or liquidation, will rank at any time:
  - (i) pari passu with any other present and future unsecured creditor of the Issuer;
  - (ii) junior, and shall be subordinate, to the indebtedness of the Issuer pursuant to the Senior Loan with Intesa Sanpaolo S.p.A. and Banco BPM S.p.A.,

in each case except as otherwise provided by mandatory provisions of applicable law.

## 3. Assignment and absence of admission to trading of the Convertible Notes

- (a) Convertible Notes will be issued in bearer and dematerialised form and will be wholly and exclusively deposited with Monte Titoli in accordance with Article 83-*bis* and ff. of the Consolidated Financial Act and the jointly resolution of CONSOB and Bank of Italy of 13 August 2018 (“**Joint Resolution**”). The Convertible Notes will not be admitted to trading.
- (b) Convertible Notes will be held by Monte Titoli on behalf of the respective holders until redemption for the account of the relevant Monte Titoli Account Holder.
- (c) Title to the Convertible Notes will be evidenced by one or more book entries in accordance with the provisions of: (i) Article 83-*bis* and ff. of the Consolidated Financial Act; and (ii) the Joint Resolution. No physical document of title will be issued in respect of the Convertible Notes.

- (d) Requirement for the transfer (i) once the Convertible Notes are issued, the Notes will be freely transferable securities by each Convertible Note holder, with no need to obtain any prior consent in writing by the Issuer, provided that (a) the transferee shall accede to the Investment Agreement, otherwise the transfer shall not be valid and the effective and the former holder shall continue to be the sole holder of the Convertible Notes *vis-à-vis* the Issuer, (b) the transferee should only be (i) only Affiliates of the Investor which are not registered under the laws of the United States, Canada, Japan, or any other jurisdiction in which the circulation of the Notes would be restricted or would require the publication of an information memorandum/offering circular, or would be subject to any other type of permission and/or authorization from any competent authority and (ii) “Qualified Investor”. For these purposes “Qualified Investor” or “Professional Client” means any credit entity, financial institution, company belonging to a group of companies of a financial entity, pension fund, securitization fund incorporated or that may be incorporated in the future in Italy or abroad, as well as any other person or entity that meets (on the date of sale, transfer or assignment of the Notes) the condition of “qualified investor” as per the definition set out in Article 2 of Regulation (EU) 2017/1129 of the European Parliament and of the Council, of 14 June 2017 (or any other law or regulation that may develop this concept under applicable laws of the Issuer’s jurisdiction), including the qualified investor (*investitore qualificato*), as defined under Article 100 of Legislative Decree No. 58 of 24 February 1998. The Convertible Notes have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the Securities Act) or any U.S. State securities laws and may not be offered or sold in the United States, or any other country where the offer or the sale is prohibited, or to, or for the account or the benefit of, U.S. persons as defined in Regulation S under the Securities Act, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable securities laws of any state or other jurisdiction of the United States.
- (e) The sale, transfer or assignment of the Convertible Notes is to be notified to the Issuer at least three (3) Business Days prior to its effective date, by registered mail with acknowledgment of receipt or by email or hand to the Issuer’s corporate address.
- (f) Any transferee that becomes a Convertible Note holder, by whatever means and for whatever reason, shall have the benefit of, and be subject to, all of the rights and obligations arising under the Investment Agreement. Any transfer shall not be effective until the new holder has not acceded to the Investment Agreement.

## 5. Conversion

- (a) The Investor is entitled to request the Conversion of a Convertible Note during the period as from the subscription of the Convertible Notes until the maturity of the Convertible Notes, by delivering to the Issuer a Conversion Notice (“**Conversion Notice**”).
- (b) Each Conversion Notice shall be submitted by the Investor for an amount at least equal to Euro 3,000,000 (three million Euro).
- (c) Conversion must always cover the entire nominal value of the Convertible Notes for which request for Conversion is made, unless the Investor receives the Shares pursuant to the Share Loan.
- (d) The Conversion Price shall correspond to 95% (ninety five percent) percent of the second lowest VWAP observed over the 6 (six) Trading Days expiring on the Trading Day immediately preceding the Conversion Notice by the Investor.

- (e) Upon Conversion, new Shares will be issued by the Issuer in an amount equal to the outstanding nominal value of the notes value of the Convertible Notes divided by the Conversion Price (for sake of clearness the number of Shares to be issued per Convertible Note is determined by dividing the nominal value of each Convertible Note by the Conversion Price), unless the Investor receives the Shares pursuant to the Share Loan. If this amount is not evenly divisible by the Conversion Price, the surplus amount is waived by the Investor in connection with the Conversion.
- (f) Conversion Notice by the Investor is made by submitting an application form in of Schedule 3 of the Investment Agreement, duly completed and signed, to the Issuer at the addresses specified in the Investment Agreement ("**Conversion Notice**"). Should Conversion Notice, not have been received by the Issuer within the Conversion Period, the right to Conversion will lapse.
- (g) The notice of Conversion is binding and may not be revoked.
- (h) Within 5 (five) hours after the Investor have sent the Conversion Notice, the Issuer should verify the Conversion Price and promptly send, if any, to the Investor an adjustment request of the Conversion Price, provided that the Conversion Notice must be considered as accepted and validly received and effective if 5 (five) hours have elapsed without the Issuer having made a formal adjustment request to revise the Conversion Price.
- (i) The Investor is obliged to request the Conversion of each Convertible Note held no later than at the expiration of the Conversion Period and the Investor hence irrevocably undertakes to request Conversion of all outstanding Convertible Notes prior to the expiration of the Conversion Period. To the extent the Investor would fail to request Conversion prior to the date falling 10 (ten) Business Days prior to the expiration of the Conversion Period the Issuer shall be entitled to request Conversion during the last 10 (ten) Business Days of the Conversion Period.
- (j) Upon maturity of the outstanding Convertible Notes, the Convertible Notes will be irrevocably converted into New Shares. Such Conversion shall be made through the Issuer (or any person designated by the Issuer) completing a Conversion Notice on behalf of the Investor. A copy of such Conversion Notice shall immediately be sent to the Investor.
- (k) Issuance of New Shares and delivery of the New Shares in the Investor's custodian account indicated by the Investor will be made by the Issuer within 5 (five) Trading Day excluding the date of receipt of a Conversion Notice. The Issuer shall be liable for, and shall indemnify the Investor against, any losses resulting from a delay over the aforementioned 5 (five) Trading Days period.
- (l) In order to deliver the New Shares to be received by the Investor following the various Conversions the Issuer shall, through the facilities of Monte Titoli, the Italian central securities depository deliver, or procure to be delivered, no later than on the fifth Business Day following the receipt of the Conversion Notice, the New Shares to the securities account of the Investor notified to the Issuer.
- (m) Upon Conversion of the Convertible Notes, if the Investor does not receive the New Shares, the Issuer shall pay to the Investor an amount in cash equal to (i) the Conversion Ratio multiplied by (ii) the difference (if positive) between (a) the closing price of the Share 5 (five) Trading Days after the Conversion Notice date and (b) the closing price of the Share on the day immediately prior to the date on which the relevant Shares are effectively received by the Investor, for each Conversion of the Convertible Notes. The aforesaid amount shall be paid by the Issuer to the Investor not later than three (3) Trading Days following the date when the relevant Shares are effectively received by Investor, unless the Investor receives the Shares pursuant to the Share Loan.

## **6. Dividend on New Shares**

Shares created through Conversion convey right to dividend as from the first record date for dividends that occurs following effectuation of Conversion and registration of such shares into the Issuer's share ledger.

## **7. Notices**

Notices concerning the Convertible Notes shall be sent through Monte Titoli.

## **8. Interpretation**

In case of any discrepancy between the provisions of these terms and conditions and the Investment Agreement the provisions of the Investment Agreement prevail.

## **9. Variation of the Convertible Notes Terms**

The Issuer shall be entitled to vary these terms and conditions to the extent required by legislation, decisions of courts of law or authorities. The Convertible Notes holders shall be notified of any variations without unnecessary delay.

## **10. Limitation of Liability**

With respect to the actions incumbent on the Issuer, the Issuer shall not be held liable for damage arising as a result of Italian or foreign legislation, any action of an Italian or foreign authority, acts of war, strikes, blockades, boycotts, pandemic, lockouts, or similar circumstances.

If the Issuer is hindered from taking any measure due to a circumstance referred to in the first paragraph, the taking of such measure may be postponed until such hinder no longer exists.

## **11. Taxes**

All payments under the Convertible Notes will be made without deduction or withholding of any applicable taxes, unless so required by any applicable law. Any stamp taxes or securities transfer taxes will be borne by the Issuer.

## **12. General information**

Pursuant to Article 3 of its by-laws, the Issuer's corporate purpose involves, inter alia, - the design, planning, installation, maintenance and management, using any technique, means or system, of telecommunications installations and networks, owned by the company or third parties, whether they be fixed, mobile or satellite based, for the accomplishment and running, without geographic limits, of the communications services also emerging from the evolution of the technologies, including direct access to the public per Resolution AEG/2009/07/CONS.

The issuance of the first and the second tranche of the Convertible Notes will be resolved upon by the Board of Directors of the Issuer convened on 20 May 2021 and will be registered at the Companies' Register of Cagliari and in accordance with to the delegation provided by the resolution of the shareholders' meeting of the Issuer on 26 June 2018 as registered at the Companies' Register of Cagliari on 13 July 2018.

The issuance of the following tranches of the Convertible Notes will be resolved upon by the Shareholders' Meeting of the Issuer convened on 24 June 2021 and registered at the Companies' Register of Cagliari.

### **13. Governing Law and Jurisdiction**

These terms and conditions and any legal issues arising thereof, shall be governed by and construed in accordance with the laws of Italy.

Any dispute, controversy or claim arising out of, or in connection with, these terms and conditions, or the breach, termination or invalidity thereof, shall be submitted to the jurisdiction of the ordinary courts of Milan, Italy



## Schedule 2

### FORM OF SUBSCRIPTION REQUEST

[VIA EMAIL]

**Nice & Green S.A.**

Chemin du Joran 10, 1260 Nyon - Suisse

Attention to: Marc Cattelani and/or Benoît Villers

E-mail addresses: mcattelani@nicengreen.ch - bvillers@nicengreen.ch

Phone number: +41 223613795

Notice date: [•]

Copy to:

Nctm Studio Legale

Address: Via Agnello 12, Milano

Attn: Avv. Lukas Plattner

E-mail addresses: l.plattner@nctm.it

Facsimile number: 02725511501

Phone number: 02725511

Dear Sirs,

We refer to the agreement for convertible notes funding programme dated [•] between Tiscali S.p.A. and Nice & Green S.A ("**Agreement**").

All terms written with a capital initial letter shall have the definition ascribed to them in the Agreement.

The conditions set out in Clause [•] of the Agreement being satisfied (or waived by the Investor), we hereby submit a request, in accordance with Clause [•] of the Agreement, for the disbursement of a tranche of Convertible Notes amounting to a principal amount of [•] Euro (EUR [•]).

The relevant Subscription Price shall be wired on the Issuer's bank account opened with [•], whose details are as follows: IBAN: [•] BIC: [•]

Sincerely,

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Signed by [•] in his/her capacity  
as [•] of [•]

**Schedule 3**

**FORM OF CONVERSION NOTICE**

VIA EMAIL

**Tiscali S.p.A.**

Address: [•]

Attn: [•]

E-mail address: [•]

Phone number: [•]

Conversion Notice date: [•]

Copy to:

Nctm Studio Legale

Address: Via Agnello 12, Milano

Attn: Avv. Lukas Plattner

E-mail addresses: l.plattner@nctm.it

Facsimile number: 02725511501

Phone number: 02725511

**Request to Convert**

We refer to the agreement for convertible notes funding programme dated [•] between Tiscali S.p.A. and Nice & Green S.A (“**Agreement**”).

All terms written with a capital initial letter shall have the definition ascribed to them in the Agreement. We hereby request Conversion as per the specification below

1	EUR [•] Convertible Notes	Number [•]
2	Conversion Amount	[•] EUR
3	Trading Days constituting the Pricing Period	[•], [•], [•], [•], [•], [•]
4	Second Lowest Daily VWAP over the Pricing Period	[•] EUR
5	Conversion Price	[•] EUR
6	Number of Shares to be received	[•]

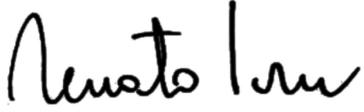
Sincerely,  
Nice&Green SA

\_\_\_\_\_  
Represented by [•]  
in his capacity as [•]”

Confirmed and accepted, as of the date first above written.

Your faithfully,

**Tiscali S.p.A.**



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Signed by Renato Soru  
in his capacity as Chief Executive Officer

Fine Comunicato n.0260-17

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