

[Type the company name]

TicketSwitch

Affiliate Programme Agreement

TicketSwitch



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TicketSwitch Affiliate Programme Agreement

BETWEEN:

- (1) **TICKETSWITCH LIMITED** (TSW) (registered no. 3566465) whose registered office is at 39 Moreland Street London EC1V 8BB; and
- (2) **[[Company]]** whose registered office is **[[Company Address]]** (the "Affiliate").

IT IS AGREED as follows:

TicketSwitch hereby grants to the Affiliate the non-exclusive, non-transferable rights for the duration of this Agreement to advertise promote and market the sale of tickets in accordance with the terms of this agreement, and the affiliate hereby accepts its appointment as an online affiliate of TicketSwitch subject to and upon the terms of this Agreement.

AS WITNESS the hands of the duly authorised representatives of the parties to this Agreement the day and year first above written.

Signed for and on behalf of
TICKETSWITCH LIMITED

.....
(Sign above)

Print name.....

Dated.....

Signed for and on behalf of

.....
(Print name of Affiliate)

.....
(Sign above)

Print name.....

Dated.....

Special Terms

Affiliate Website

-

Commencement Date

-

Commission

- 33% of TicketSwitch income on the sale of a ticket. All commission is VAT inclusive.

Term

- 12/24/36 months from the Commencement Date [delete as applicable].

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the following meanings, unless the context otherwise requires:

| | |
|---------------------------|---|
| "Affiliate Website" | the Affiliate's website(s) described in the Special Terms; |
| "Affiliate Ticket Portal" | the website described in the Special Terms, to be created by TSW in accordance with Clause 2; OR the XML feed or XML core provided by TSW for use by the affiliate |
| "associated company" | any company which at the relevant time is: (a) a holding company of the relevant company; or (b) a subsidiary or subsidiary undertaking of the relevant company; or (c) a subsidiary or subsidiary undertaking of any such holding company; the expressions "holding company", "subsidiary" and "subsidiary undertaking" having the meanings given to them by the Companies Act 1985; |
| "Commencement Date" | the date when this Agreement commences, as set out in the Special Terms; |
| "Customer" | a person who buys a Ticket via the Affiliate Ticket Portal; |

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|--------------------------------|---|
| "Customer Data" | any data relating to a Customer (including Personal Data) collected during the Customer's use of the Affiliate Ticket Portal or the purchase of Tickets; |
| "Customer Terms of Purchase" | the terms and conditions for the purchase of Tickets by Customers via the Affiliate Ticket Portal, as published by TSW on the Affiliate Ticket Portal from time to time; |
| "Intellectual Property Rights" | all patents, unpatented inventions, design rights, copyrights (including, without limitation, rights in computer software), rights in databases, topography rights, trademarks, service marks, trade names, rights in trade secrets, know-how, performance rights, publishing rights, sound recordings, broadcasting rights, translation rights and all other intellectual property rights of any nature whatsoever, and all rights of a similar nature or having similar effect, throughout the world whether registered or unregistered and including all applications and rights to apply for any of the same; |
| "Link Generation Website" | the website made available to the affiliate which allows the affiliate to generate URL links to specific events; |
| "Proprietary Materials" | Any work, content or materials of any nature and in any medium in which any Intellectual Property Rights are held by TSW or any Supplier, including without limitation any copyright works and any trademarks, logos, emblems, devices, trade names, and identifiers; |
| "Software" | any or all of the software used by TSW to interface the Affiliate Website and the Affiliate Ticket Portal, to operate the Affiliate Ticket Portal, the XML Feed and XML Core software, or to provide any of the other services described in this Agreement; |
| "Special Terms" | the provisions of this Agreement contained in the section headed 'Special Terms'; |
| "Supplier" | a supplier of Tickets to a Customer via the Affiliate Ticket Portal; |

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|----------------------------|---|
| "Term" | the initial period of this Agreement as stated in the Special Terms; |
| "Territory" | the territory described in the Special Terms; |
| "Ticket" | any form of ticket or voucher or similar item issued in order to provide admission to an event or a venue (and includes a Ticket-inclusive Package where the context allows); and |
| "Ticket-inclusive Package" | a Ticket sold in conjunction with any other product or service (including but not limited to travel, accommodation, food or drink) |
| "Ticket Inventory" | such Tickets as are made available for sale via the Affiliate Ticket Portal from time to time. |
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- 1.2 References to statutory provisions shall be construed as references to those provisions as amended, consolidated, extended or re-enacted from time to time.
- 1.3 References to the singular shall include the plural and vice versa, and references to one gender shall include all genders. References to a "person" shall be construed so as to include any individual, firm, company or other body corporate, government, state or agency of the state, joint venture, association or partnership (wherever and however incorporated or established and whether or not being of separate legal personality).
- 1.4 References to a clause, sub-clause or Schedule are references to that clause or sub-clause of or Schedule to this Agreement. Clause and Schedule headings are for convenience only and shall not affect the construction of this Agreement.

General Terms

2. OBLIGATIONS

The Affiliate shall:

- 2.1 promote and market the availability of the tickets, including promotion and marketing on the affiliate website; and
- 2.2 provide and operate the affiliate website and advertise, market and promote the availability of tickets in compliance with all applicable laws and regulations, hold any

necessary licences, permits or consents for that purpose, and provide and conduct all such activities in compliance with all such licences, permits and consents.

TicketSwitch shall:

- 2.3 create the affiliate ticket portal;
- 2.4 host and maintain the affiliate ticket portal;
- 2.5 provide the affiliate with access to the TicketSwitch link generation website and on-line reporting website;
- 2.6 ensure that the suppliers are contractually obliged to deliver tickets purchased by customers in accordance with the customer terms of purchase;
- 2.7 ensure that the affiliate ticket portal provides a secure online payment system for customers incorporating full 256-bit encryption and appropriate SSL certification;
- 2.8 seek to maintain the relationship which it has with its suppliers of tickets; and
- 2.9 provide and operate the affiliate ticket portal in compliance with all applicable laws and regulations, hold any necessary licences, permits or consents for that purpose, and provide and operate the affiliate ticket portal in compliance with all such licences, permits and consents.

3. FEES

- 3.1 TicketSwitch shall pay a commission to the affiliate on the sale of each ticket at the rates set out in the Special Terms.
- 3.2 The Commission due to the Affiliate pursuant to Clause 3.1 will be calculated by TicketSwitch on a calendar monthly basis and within 7 days of the end of each month TicketSwitch shall send a statement of the Monthly Commission due to the Affiliate and shall at the same time pay the Monthly Commission as shown on the Monthly Statement to the Affiliate in accordance with the payment details set out in the Payment Schedule.
- 3.3 The Commission is inclusive of VAT, which will be paid by TicketSwitch, with a supporting self-billing invoice, within 30 days after the issue of the monthly statement. Payment will be made by BACS to an account nominated in Schedule 3 (if commission amounts to more than or equal to 250GBP in any one calendar month), or by cheque to a payee (if commission amounts to less than 250GBP in any one calendar month). Monthly commission payments that do not amount to 100GBP will be accumulated and paid when the accumulated commission value reaches 100GBP.
- 3.4 If required to do so by any tax authority of competent jurisdiction, TicketSwitch shall pay any withholding tax levied on the amounts to be remitted to the Affiliate and shall provide to the Affiliate at the time of making Commission payments pursuant to Clause 3.2 any documentation available to TicketSwitch to enable the Affiliate to claim a rebate or deduction for such withholding tax paid.

4. INTELLECTUAL PROPERTY

- 4.1 Subject to any Intellectual Property Rights of the affiliate licensed to TicketSwitch, the Affiliate acknowledges that all Intellectual Property Rights in the affiliate ticket portal and the Software are held by TicketSwitch.
- 4.2 The Affiliate agrees that, save as expressly provided hereunder, no proprietary rights or any other rights whatsoever are assigned, granted or otherwise pass to the Affiliate under this Agreement.
- 4.3 The Affiliate agrees that it is only permitted to use Proprietary Materials supplied to the Affiliate by TicketSwitch for the purposes of promoting the opportunity for Customers to purchase Tickets via the affiliate ticket portal.
- 4.4 The Affiliate hereby indemnifies and shall hold TicketSwitch fully indemnified from and against any and all actions, proceedings, losses, damages, liabilities, obligations, costs, claims, charges and expenses suffered or incurred by TicketSwitch of whatsoever nature arising out of or in connection with any breach by the Affiliate of the provisions of this Clause 4.

5. TERM AND TERMINATION

- 5.1 This Agreement shall start on the acceptance date and shall continue unless and until terminated by either party giving written notice.

6. EFFECTS OF TERMINATION

- 6.1 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities of either party accrued at the date of termination.
- 6.2 Upon termination of this Agreement for any reason the Affiliate shall forthwith:
- 6.2.1 cease to promote, market and advertise the Tickets;
 - 6.2.2 cease to use any Proprietary Materials or Intellectual Property Rights of TicketSwitch on the Affiliate Website;
 - 6.2.3 remove any links from the Affiliate Website to the affiliate ticket portal; and
 - 6.2.4 cease to use all Proprietary Materials.
- 6.3 Upon termination of this Agreement for any reason TicketSwitch shall:
- 6.3.1 cease to provide the affiliate ticket portal; and
 - 6.3.2 have no responsibility to make any further payments of Monthly Commissions to the Affiliate, save for any payments already accrued and due before the termination date.
- 6.4 Save as otherwise expressly provided herein, upon termination or expiry of this Agreement, neither party shall have any further obligation to the other under this

Agreement. Termination shall not affect the operation of Clauses 4 (Intellectual Property), 7 (Liability and Indemnities) 11 (Law and Jurisdiction) which shall survive termination.

7. LIABILITY AND INDEMNITIES

7.1 Neither party shall be liable to the other party for any loss of profits, revenue, business, custom, contracts, data, opportunity or goodwill, or any type of indirect, consequential or special loss or damage of any nature whatsoever (including losses or damages suffered or incurred as a result of an action brought by a third party) howsoever arising and such liability is hereby excluded to the fullest extent permitted by law.

7.2 The limitations in this Clause 7 shall not apply to any indemnities given by either party under this Agreement.

8. FORCE MAJEURE

8.1 The obligations of each party under this Agreement shall be suspended during any period that, and to the extent that, such party is prevented or hindered from complying with those obligations by any cause beyond its reasonable control including but not limited to link failures, power difficulties, telephone outages, network overload, default or failure of a third party (including a public telecommunications operator), government actions, failure in the supply of a third party's access line, strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

8.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause. The party whose obligations have been suspended shall use its reasonable endeavours to overcome the cause of the suspension and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party.

9. MISCELLANEOUS

9.1 Each party agrees to execute and deliver all such other documents and do all such acts and things (as appropriate) as may be reasonably necessary or desirable to fulfil the provisions of this Agreement or to carry into effect the intentions of the parties as expressed herein.

9.2 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

9.3 TicketSwitch may assign, sub-contract, or in any other manner transfer to any third party the benefit and/or burden of this Agreement which is either an associated company or a company which has acquired the business of TicketSwitch.

- 9.4 This Agreement is personal to the Affiliate and accordingly the Affiliate shall not without the prior written consent of TicketSwitch, (not to be unreasonably withheld), sub-contract, assign, transfer, charge or deal in any manner with all or any part of its rights and obligations under this Agreement nor purport to do any of the same.
- 9.5 Nothing in this Agreement shall or shall be deemed or construed to create any partnership or joint venture between the parties hereto, nor to constitute either party or any of its officers or employees as the agent or legal representative of the other party for any reason whatsoever except only as and to the extent specifically stated in this Agreement and, except as so stated, neither party is granted any right or authority to act for, or to incur, assume or create any obligation, responsibility or liability, express or implied, in the name of or on behalf of the other party or to bind the other party in any manner whatsoever.
- 9.6 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter in relation to the same or any subsequent breach.
- 9.7 If at any time any provision of this Agreement is held to be illegal, invalid or unenforceable by a Court of competent jurisdiction that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.
- 9.8 This Agreement may not be enforced by any person who is not a party hereto and the parties confirm that this Agreement is not intended to confer any benefit on any person which may be enforced by that person unless they are a party hereto. This Agreement may be varied by the parties in accordance with its terms without the consent of any person who is not a party hereto. The rights granted to third parties under the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law.
- 9.9 The entering into of this Agreement by TicketSwitch shall not in any manner whatsoever inhibit or restrict the right or ability of TicketSwitch to promote or provide its services whether by way of any one or more agreements in similar form to this Agreement or in any other manner WHATSOEVER.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different parties in different counterparts each of which when executed and delivered is an original, but all such counterparts shall be deemed to constitute one and the same instrument.

11. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of the English Courts.