

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** is made 30 september 2005

### **BETWEEN:**

- (1) **UNIDT B.V.**, a company organised and existing under the laws of the Netherlands, having its office at (1101BR) Haaksbergweg 41 in Amsterdam, the Netherlands, registered in the Chamber of Commerce of the Netherlands with number 34107219, herein represented by its president Mr M. van Veluw (**UNIDT**);
- (2) **PUBLIC ROOT Limited**, a company organised and existing under the laws of England and Wales, having its offices at CT196HQ 80 Sidney Street in Folkstone, Kent, United Kingdom, herein represented by its director Mr P.J.S.I. Scheepers (**Public Root**);

### **WHEREAS:**

- (A) UNIDT and Public Root have entered into an agreement of 15 January 2005 (hereafter: the **Agreement**) in which Public Root granted UNIDT exclusive rights to market and sell applications for and renewals of top level domainnames;
- (B) UNIDT takes the position that its sales efforts so far have been seriously undermined by causes attributable to Public Root which have been preventing it from effectively marketing and selling said top level domainnames, and as a result of which it has suffered damages and is exposed to claims from third parties;
- (C) UNIDT takes the position that its damages and its exposure to claims from third parties will increase unless it either (i) immediately ends its relation with Public Root or (ii) the organisation of Public Root and its affiliates is completely reorganised with immediate effect;
- (D) Public Root takes the position that it is not capable of such a reorganisation in light of certain internal problems within the current organisation nor of remedying the other causes which are preventing UNIDT from effectively marketing and selling said top level domainnames;
- (E) The Parties wish to avoid legal proceedings and the costs, uncertainties and management time this would entail, and to settle their dispute amicably in this full and final Settlement Agreement ("*vaststellingsovereenkomst*" in the sense of article 7:900 of the Dutch Civil Code) between them;
- (F) Public Root is willing to accommodate an end to the parties' current commercial relationship and to do so in a way which would allow UNIDT to recoup some of the losses it has suffered by being allowed a transitional period in which it could exclusively sell and market domainname services to customers from its existing marketing portfolio;
- (G) To avoid negative consequences for certain existing customers of Public Root, UNIDT is prepared to service these customers free of charge on an alternative domainname system to be set up by UNIDT, any of its affiliates, or a third party to be designated by UNIDT;
- (H) Now parties wish to terminate and settle their existing commercial relationship as set out herein without any further rights and obligations other than as set out in this Settlement Agreement;

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS**

**Agreement** means the agreement between UNIDT and Public Root which was signed on 15 January 2005;

**Claim** means each and any claim, counter-claim, cause or right of action or proceedings of whatever nature and howsoever arising, in any jurisdiction, whether (presently) known or unknown to the parties, under any laws and whether arising before, on or after the date of this Settlement Agreement;

**Communication Plan** means the Communication Plan that is attached to this Settlement Agreement as **Annex 1**.

**Damages** means any direct or indirect loss, liability, obligation, damage, deficiency, cost, expense, fine or penalty, including reasonable judicial and extra-judicial fees of lawyers, attorneys, accountants and other appointed experts, any other reasonable defence cost, reasonable cost of investigation or other response actions, and consequential damages, loss of goodwill, loss of turnover and loss of profits;

**Liabilities** mean any and all Claims or Damages arising from the termination of the Agreement;

**Legacy Customers** means currently existing customers of Public Root for which Public Root is resolving the top-level domainnames which were gained before the parties entered into the Agreement;

**Outstanding Fees** means the amount of fees as calculated in **Annex 2** to this Settlement Agreement;

**Transitional Period** means the period between signing of this Settlement Agreement and 1 April 2006.

**2. TERMINATION OF THE AGREEMENT**

2.1 Public Root acknowledges and agrees that the Agreement between UNIDT and Public Root is terminated as of the date of this Settlement Agreement under the terms and conditions as set out in this Settlement Agreement.

2.2 In consideration of the premises and mutual covenants herein contained, the parties mutually waive all claims and rights, interest which they may have or might have against each other in connection with the Agreement, and the parties mutually grant each other full and final release of any and all such claims.

**3. TRANSITIONAL PERIOD**

3.1 During the Transitional Period, UNIDT shall be exclusively entitled to market and sell services to customers from its existing marketing portfolio.

3.2 During the Transitional Period, Public Root and any of its affiliates and agents shall abstain from any commercial efforts to market or sell any applications for and renewals of top level domainnames to any customers from UNIDT's existing marketing portfolio.

3.3 The parties shall adhere to the Communication Plan. Where necessary, the parties shall liaise with each other during the Transitional Period to ensure a co-ordinated and consistent approach to the market. Public Root shall comply with reasonable requests from UNIDT which it may have from

time to time in order to ensure that it is able to effectively exercise its rights hereunder during the Transitional Period.

#### **4. LEGACY CUSTOMERS**

4.1 UNIDT shall ensure that the top-level domainnames of Legacy Customers will be resolved free of charge by an alternative domainname system to be set up by UNIDT, any of its affiliates, or a third party to be designated by UNIDT.

#### **5. SETTLEMENT OF OUTSTANDING FEES**

5.1 In settlement of the Outstanding Fees, UNIDT will pay Public Root an amount of USD 25975 ( twenty five thousand and nine hunderd and seventy five dollar ) within 7 days of the date of this Settlement Agreement.

5.2 The parties acknowledge and agree that following the payment of Outstanding Fees there will be no outstanding amount due by UNIDT or any of its affiliates to Public Root.

#### **6. LIABILITY AND INDEMNIFICATION**

##### **6.1 General**

- (a) Nothing contained in this Settlement Agreement shall make UNIDT or any of its affiliates liable for anything done or omitted by Public Root up to the Termination Date or thereafter.
- (b) Public Root shall indemnify UNIDT and its affiliates and keep UNIDT and its affiliates indemnified against any and all Damages arising out of anything done or omitted by Public Root from now untill the Termination Date.
- (c) If either party becomes aware of any Claim that will be made, has been made or is likely to be made against UNIDT for anything done or omitted by Public Root up to the Termination Date or thereafter, such party will inform the other party immediately thereof in writing.

##### **6.2 Employees**

- (a) Public Root shall indemnify UNIDT and its affiliates and keep UNIDT and its affiliates indemnified in respect of any and all Damages arising out of any Claim(s) made by (former and/or current) employees of Public Root or any of its affiliates.
- (b) If either party becomes aware of any Claim that will be made, has been made or is likely to be made against Public Root or UNIDT by any (former and/or current) employees of Public Root or its affiliates, such party will inform the other party immediately thereof in writing.

##### **6.3 Third Parties**

- (a) Nothing contained in this Settlement Agreement shall make UNIDT or any of its affiliates liable towards any third party that has (had) a relationship with Public Root.
- (b) Public Root shall indemnify UNIDT and its affiliates and keep UNIDT and its affiliates indemnified against any and all Damages arising from Claim(s) made by any third party that has (had) a relationship with Public Root or its affiliates, including but not limited in relation to (long term) contracts or obligations of Public Root, customers or suppliers of Public Root.
- (c) If either party becomes aware of any Claim that will be made, has been made or is likely to be made against UNIDT by any third party that has (had) a relationship with Public Root, such party will inform the other party immediately thereof in writing.

## **7. CONFIDENTIALITY**

- 7.1 During and after the term of this Settlement Agreement, without UNIDT's prior written consent thereto, Public Root shall not disclose and shall ensure that its employees and agents shall not disclose to any third party or use any information relating to, inter alia, the Agreement, the business, pricing, policies or practices of UNIDT or any of its affiliated legal entities, except to the extent that Public Root can prove that such information can not reasonably be regarded as confidential or that disclosure is required by applicable law or for the performance of this Settlement Agreement.
- 7.2 The fact of termination of the Agreement, the existence of this Settlement Agreement and its terms shall be held in confidence by each of the parties and shall not be disclosed to any other person except:
- (a) to the auditors and to the legal advisers of that party to whom the confidentiality obligations set out in this Settlement Agreement shall extend; or
  - (b) where that party is under a legal or regulatory obligation to make such disclosure, but limited to the extent of that legal obligation; or
  - (c) to the extent that it is already in the public domain (other than as a result of a party's breach of this Settlement Agreement); or
  - (d) with the prior written consent of the other party to this Settlement Agreement.
- 7.3 The parties agree to take all reasonable steps to make their employees and agents aware of the terms of clause 6.1 and to instruct them to observe those terms.
- 7.4 If none of the exceptions at clause 6.2 (a) to (d) apply and a party is asked about this Settlement Agreement, the party shall respond with the following statement and no more: "The parties have resolved this matter to their mutual satisfaction".

## **8. DURATION AND EXPIRY**

- 8.1 This Settlement Agreement shall be effective as from the date hereof until the Termination Date at which date it shall expire automatically ("*van rechtswege*").
- 8.2 Termination of this Settlement Agreement shall not affect any rights or liabilities arising under this Settlement Agreement prior to such termination.
- 8.3 Clauses 2, 4, 6, 7, 8, 9, 10, 11 and 12 shall survive this Settlement Agreement and remain in force even after expiry or termination of this Settlement Agreement.
- 8.4 The parties waive their respective rights to rescind or cancel this Settlement Agreement on the basis of sections 6:265 or 6:228 of the Dutch Civil Code.

## **9. ANNOUNCEMENTS AND PRESS RELEASES**

- 9.1 Public Root and UNIDT shall only make public announcements and publish press releases with the prior written consent of the other party and in accordance with the Communication Plan.

## **10. NOTICES**

- 10.1 All notices required or permitted to be sent by the terms of this Settlement Agreement shall be sent either by registered mail or by fax to the addresses mentioned below:

UNIDT Europe B.V.  
Attn. Mr M. van Veluw, President  
Haaksbergweg 41  
1101 BR Amsterdam  
The Netherlands

Public Root Ltd.  
Attn. Mr P.J.S.I. Scheepers, Director  
80 Sidney Street  
CT196HQ Folkstone, Kent  
United Kingdom

## **11. GOVERNING LAW AND ARBITRATION**

- 11.1 This agreement shall be governed by and shall be construed in accordance with the laws of the Netherlands.
- 11.2 All disputes, controversies or differences which may arise out of or in relation to this Settlement Agreement shall be referred to and finally resolved by arbitration in accordance with the Rules of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The decision of the arbitrators shall be final and binding upon the parties. The place of arbitration shall be Amsterdam, the Netherlands. The arbitral procedure shall be conducted in Dutch.

## **12. MISCELLANEOUS**

- 12.1 Each party shall bear its own costs in connection with the negotiation, execution and implementation of this Settlement Agreement.
- 12.2 This Settlement Agreement shall be binding on the parties, their successors and assigns and the name of a party appearing herein shall be deemed to include the names of any such successor or assign.
- 12.3 Each party confirms that this Settlement Agreement sets out the entire agreement and understanding between the parties in relation to its subject matter. Each of the parties acknowledges that, in entering into this Settlement Agreement, it has not relied on any oral or written representation, warranty, or other assurance (except as provided for or referred to in this Settlement Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, provided always, that nothing in this clause limits or excludes any liability for fraud.
- 12.4 This Settlement Agreement and annexes shall not be amended in any way other than by agreement in writing, signed by both parties hereto after the date of this Settlement Agreement.
- 12.5 Nothing in this Settlement Agreement shall create or be deemed to create a relationship between the parties of employment, agency, partnership or joint venture.
- 12.6 This Settlement Agreement is personal for Public Root and Public Root shall not assign (parts of) the agreement nor the benefit thereof, nor any rights granted therein to any person, without the prior consent in writing of UNIDT which will not be unreasonably withheld.
- 12.7 If any provision of this Settlement Agreement shall be finally held illegal or unenforceable, such a provision shall be severed and the remaining provisions of this Settlement Agreement shall remain in full force and effect and the parties shall agree upon a reasonable replacement for such a provision.

12.8 This Settlement Agreement has been prepared in the English language which shall be the controlling version.

**SIGNATORIES**

**SIGNED by:** )  
For and on behalf of )  
**UNIDT B.V.** )

**SIGNED by:** )  
For and on behalf of )  
**PUBLIC ROOT LIMITED** )