

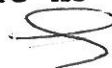
**AFFILIATION AGREEMENT**

( " Agreement " )

The undersigned:

1. **EUnet Communications Services B.V.**, a limited liability company organized under the laws of the Netherlands, having its principal place of business at Singel 540, (1017 AZ) Amsterdam , represented by Mr Wim Vink, Managing Director, (hereinafter referred to as "**EUnetCS**")
  
2. The Companies listed in **Schedule I** hereto, hereinafter collectively referred to as the "**Affiliates**" and each individually referred to as an "**Affiliate**") and EUnetCS and the Affiliates collectively as the "**Parties**")

**WHEREAS:**

- (i) The Affiliates each operate services in the field of computer communication and inter-networking, including, inter alia, Internet Protocol connectivity, name services, help desk services and support for network news, electronic mail and messaging service, World Wide Web and related services, and EUnetCS provides similar services at an international level and wholesale and related services to the Affiliates as well as direct sales to other companies situated in any country where no Affiliate is located;
- 

- (ii) The Affiliates each act as a supplier of the EUnet services in their respective territories;
- (iii) The Parties each recognise the principal value of the creation of an international business affiliation for the orderly participation in EUnet's business and technology operation by all Parties (as currently existing and as it may be developed and expanded in future), enabling a consistent high quality service level offered to end-users;
- (iv) The Parties therefore desire to create an international business affiliation and working alliance to bring to fruition the marketing and selling of the EUnet services and related products to their respective customers and for that purpose to enter into certain agreements as hereinafter contained;

**DECLARE TO AGREE AS FOLLOWS:**

**Article 1 - Business Affiliation**

1.1 As of the date hereof, the Parties hereto form an international business affiliation for the purposes and subject to the provisions of this Agreement, and upon the terms and conditions contained herein ("**Business Affiliation**").

1.2 The objects and purposes of the Business Affiliation are to co-operate in the providing of the services stated in recital (i) hereof and, for greater certainty described in more detail in **Schedule II** hereto as the same may be amended from time to time

by EUnetCS after consultation with the EUnet Committee ("**Services**"), and/or to use the know-how necessary for the operation and/or commercial exploitation of the Services, as the same may be supplemented or up-dated from time to time, ("**Know How**"), and conduct such other business as may be necessary, proper or expedient in relation thereto, including, without limitation, sales, marketing, business development and technical and operational co-operation and development ("**Business**").

- 1.3 Each Party will make available to the Business Affiliation its know-how, labour, skill, foresight and industry in order to promote and carry out the Business.
- 1.4 In the event that an Affiliate develops a service, (i) such Affiliate will offer such service to the Business Affiliation for inclusion in the Services and transfer to EUnetCS all rights necessary or expedient to effect such inclusion, and (ii) EUnetCS and such Affiliate will enter into good faith negotiations on reimbursement to such Affiliate of the costs and expenses incurred in developing such service, if and when so included.

Article 2 - EUnet Committee

- 2.1 The Parties will form a committee in which each Party will be represented by one person ("**EUnet Committee**"). The EUnet Committee will consult with, and make recommendations to, EUnetCS and the Affiliates on such matters of interest to the Business Affiliation as may be proposed by any of

the Parties.

- 2.2 The EUnet Committee will meet ("**Committee Meeting**") as often as it may from time to time determine and at EUnetCS's request. The EUnet Committee shall not meet less than once every year. If and when requested by the EUnet Committee or EUnetCS, the EUnet Committee will permit franchisees of the Services to attend its meetings. Written notice, setting out venue, time and agenda, will be provided timely in advance of each Committee Meeting.
- 2.3 EUnetCS will provide administrative support to, and chair, the Committee Meeting and will cause written minutes to be prepared of all Committee Meetings and all actions taken by it.
- 2.4 Where this Agreement provides that in respect of a decision, action, service, determination or recommendation by EUnetCS (hereinafter referred to as an "**Act**"), such Act is to take place "after consultation with the EUnet Committee" the Parties will apply the following procedure in respect of such Act:
- (i) prior to performing such Act, EUnetCS will give notice to the EUnet Committee of its intention to perform such Act (hereinafter referred to as: "**Notice**") and will request the EUnet Committee to render a recommendation in respect of such Act within a period specified in the Notice;

laid down in by-laws of the EUnet Committee.

Article 3 - General rights and obligations of  
EUnetCS

- 3.1 EUnetCS will pursue business opportunities by promoting the Business for the benefit of the Business Affiliation.
- 3.2 EUnetCS is authorised by each of the Affiliates, on its behalf, after consultation of the EUnet Committee, to enter into transactions in order to carry out and implement the objects and purposes of the Business Affiliation, including, without limitation, strategic and co-operative arrangements with other parties and networks regarding interconnection and traffic exchange, marketing, technical, business and other co-ordination and participation in other international membership organisations.
- 3.3 EUnetCS will provide, at the request of an Affiliate, and to the extent considered reasonable by EUnetCS and after consultation with the EUnet Committee, or in the framework of a general program designed by EUnetCS for the Affiliates, advice and assistance to such EUnet Affiliate on matters relating to marketing and sales and its development as well as technical and operational co-ordination and development.
- 3.4 In addition to the advice and assistance referred in Article 3.3, EUnetCS will provide, at the request of an Affiliate, and to the extent considered

reasonable by EUnetCS and after consultation with the EUnet Committee, technical services, including international connectivity, traffic routing, name service, network news service and related technical functions and support, as well as operational support, including on-site staffing support at the EUnet international operating centre in Amsterdam maintained by EUnetCS.

- 3.5 Annually, EUnetCS will make its annual accounts and budget available to each of the Affiliates.

**Article 4 - General rights and obligations of each of the Affiliates**

- 4.1 Each Affiliate will exploit the EUnet Services and conduct the Business in accordance with the commercial methods and other standards as from time to time are devised or amended by EUnetCS after consultation with the EUnet Committee and for the first time described in **Schedule III** to this Agreement. Quality measures will be jointly developed by the Parties. Except as expressly otherwise approved in writing by EUnetCS, each Affiliate will market the Services and conduct the Business solely under the Trade Names and the Trade Marks and more in general in a manner consistent with EUnetCS's directions as the same may be promulgated and amended from time to time after consultation with the EUnet Committee and each Affiliate will ensure that EUnet's logo will be printed on all stationery and publications being used by such Affiliate in connection with the

Services and the Business.

- 4.2 Each Affiliate agrees to include in the Services sold to customers certain standardised services which conform to uniform technical standards and service specifications in respect of which a standard pricing structure and recommended prices will be published by EUnetCS after consultation with the EUnet Committee ("**Standardised Services**"). The Standardised Services will be made available for each Affiliate against the prices published from time to time by EUnetCS after consultation with the EUnet Committee.
- 4.3 Each Affiliate will share its Know-how and updates thereof and disclose the same to EUnetCS, who will in turn disclose the same to the other Affiliates as soon as practically possible after the execution of this Agreement or the time of disclosure as the case may be.
- 4.4 Each Affiliate will diligently promote and make every effort to increase the sales of the Services and to promote the reputation of the Services, Trade Names and the Trade Marks, and will refrain from any act, deed, statement or publication which may, in the reasonable opinion of EUnetCS, after consultation with the EUnet Committee, harm the goodwill attached to the Services or the Business.
- 4.5 Except as permitted under this Agreement, no Party will without the prior written consent of EUnetCS, which will only be granted or withheld after

consultation with the EUnet Committee, grant to any third party any right of whatever kind or nature with respect to the whole or any part of the Services or Know-how.

- 4.6 Each Affiliate will have the right and the obligation, at the request of EUnetCS, to regularly and actively participate in technical and marketing meetings, including amongst others, workshops and business development meetings, arranged by or on behalf of EUnetCS in close co-operation with the EUnet Committee.
- 4.7 In exploiting the Business, each Affiliate will comply with all applicable laws and regulations applicable thereto or to the marketing and selling thereof. Each Affiliate will obtain at its own expense such consent, licenses and permissions as may be necessary for the exploitation of the Services and Know-how.
- 4.8 Each Affiliate will regularly provide to its customers the customer support services and other services consistent with standard EUnet practice, as the same will be set forth in **Schedule IV**. Each Affiliate will at all times respond to customer requests for assistance within the time limits as the same will be set forth in **Schedule IV**, and will at all times meet the performance criteria as the same will be set forth in **Schedule IV** Any standards set forth in such Schedule may be amended, supplemented or updated by EUnetCS after consultation with the EUnet Committee.





4.9 The rights of the Affiliate as contained in this Agreement will be exclusive to the extent that EUnetCS shall not without the prior written approval from the Affiliate concerned, enter into an affiliation agreement or similar agreement with any third party situated in the Territory for as long as the Affiliate shall not be in breach with any provision of this Agreement (including, with limitation, non-compliance with the standards and limits referred to in Section 4.8).

**Article 5 - Sales Projections**

For the purpose of aggregation, analysis and planning, each Affiliate will (i) communicate to EUnetCS annual sales projections in respect of each calendar year at least 2 (two) months prior to the beginning of such year, and (ii) will provide such regular sales reports as may be requested by EUnetCS after consultation with the EUnet Committee. Each Affiliate will accept the advice and recommendations by EUnetCS in respect of the format of such projections and reports.

**Article 6 - Prices / Fees**

6.1 The recommended prices for Services which are part of a common price offering will be determined by EUnetCS after consultation with the EUnet Committee for each calendar year at the latest 12 (twelve) weeks prior to the end of the previous calendar year. The resale prices so determined are not binding on the Affiliates.

- 6.2 Each Affiliate will pay to EUnetCS an affiliation fee, a service fee and related levies in accordance with the EUnet Pricing Policy, attached as **Schedule VII** to this Agreement, which may be revised annually by EUnetCS.

**Article 7 - Books and records**

- 7.1 Each Party will keep, or cause to be kept, books of account in which each transaction will be entered fully and accurately. The books of account will be kept in accordance with generally accepted accounting principles and practises and will be applied in a consistent manner by each Party to all transactions.
- 7.2 Each fiscal year, each Affiliate will submit to EUnetCS a general report on the Business, specifying the Services provided to its customers in such fiscal year and the service fee due to EUnetCS based on its audited financial statements for the fiscal year concerned. Each Affiliate will upon request provide to EUnetCS such information as may reasonably be required to substantiate the validity and content of such Affiliate's reports to EUnetCS.

**Article 8 - Confidentiality**

- 8.1 In this Section 8, "**Confidential Information**" means: the information obtained by one party (the "**first party**") directly or indirectly by reason of the relationship established by this Agreement,

concerning the electronic information delivery and transmission processes, specifications, research and research results, business methods, strategic business or marketing plans and business relations of the other party. Confidential Information will include Know-how. Information will not be considered to be Confidential Information: (i) if it is known to the first party at the time of disclosure to it; (ii) if it is publicly known or available to the public through no fault of the first party; (iii) if it is acquired by the first party from a third party who has a legal right to make the disclosure; or (iv) if the other party consents in writing to the first party's disclosure of this information to a third party or third parties.

8.2 Each Affiliate will only use Confidential Information for the purpose of the exploitation of the Services and Know-how and the Business, and will keep confidential and will not reveal any part of the Confidential Information to any third party except (i) with the prior written consent of EUnetCS after consultation with the EUnet Committee, or (ii) as may be required by law. Each Affiliate will impose a similar confidentiality obligation upon its employees. In deviation of the first sentence of this Article 8.2, an Affiliate may reveal part of the Confidential Information to a third party on the condition that such third party (i) will be a value added re-seller engaged in the business of such Affiliate permitted under this Agreement, and (ii) will be restricted in the use and disclosure of such Confidential Information to at least the same extent as such Affiliate hereunder, by means of a

confidentiality agreement in a form and substance acceptable to EUnetCS.

**Article 9 - Non-competition**

No Party will, during the term of this Agreement, be engaged or involved in any manner, directly or indirectly, for its own account or for the account of others, in any enterprise carrying out activities or rendering services similar to or otherwise competing with the Services and Know-how or the Business other than as an Affiliate in conformity with the terms and conditions of this Agreement, or as permitted under this Agreement, or as permitted by EUnetCS after consultation with the EUnet Committee on a case-by-case basis.

**Article 10 - Information on shareholders and restrictions on business relationships**

10.1 Each Affiliate shall inform EUnetCS forthwith of any person or entity engaged in any manner in any business which may be deemed to be in direct competition with EUnetCS or if any Affiliate shall acquire any shareholder interest in such Affiliate or shall enter into any financial, economic, technical or operational form of co-operation with such person or entity.

10.2 Each Affiliate shall refrain from entering into any business relationship, whether or not similar to this Affiliation Agreement, with any party engaged in any business which may be deemed to be in direct competition with EUnetCS or the Services, Know-how or

the Business.

**Article 11 - No Partnership**

This Agreement will not constitute a partnership between the Parties hereto for any purpose whatsoever. None of the Parties will jointly, take or hold legal title to, nor have any limited right in, any asset. Except as provided for in Article 3.2, no Party will have the right, power and authority to represent, bind, commit or act in the name or for the account of the Business Affiliation or any other Party, to spend and receive monies on behalf of the Business Affiliation or any other Party, or to assume obligations or responsibility on behalf of the Business Affiliation or any other Party.

**Article 12 - Liability**

No Party will in any circumstances be liable for any, indirect or consequential damage sustained by another Party. No Party will be liable for any indebtedness or obligations of any other Party incurred by such other Party before or after the commencement of the Business Affiliation and each Party will fully indemnify and will hold the Business Affiliation and the other Parties harmless from all such indebtedness or obligations.

**Article 13 - Force Majeure**

Except for the failure to make payment when due, neither Party will be liable to the other for reason of any failure in the performance of this Agreement as a result of circumstances beyond the control of such Party, including,

without limitation, unavailability of third party communications facilities or energy sources, acts of governmental authorities, fires, strikes, delays and transportation, riots or war ("**Force Majeure**"). In the event of Force Majeure, the obligations of the parties are postponed and/or suspended. If the event of Force Majeure lasts longer than 30 (thirty) days in respect of a Party, EUnetCS, after consultation with the EUnet Committee, will be entitled to unilaterally terminate that part of the Agreement which has not been performed in respect of such Party, without being obligated to pay such Party any compensation for damage.

**Article 14 - Term and termination**

14.1 In this Article 14, "**Terminate**", "**Termination**" or "**Terminated**" means that all rights granted under this Agreement are revoked and cancelled in their entirety, but that upon and after Termination, the obligation remains to settle all accounts and additional amounts as may be later determined to be owing, and to comply with and be bound by all applicable provisions of this Agreement, particularly including, but not limited to, the non-competition and confidential information covenants. In the event of a Termination in respect of a Party, the survival of the provisions of Articles 9 and 10 shall be limited to a period of one year to be computed as of the effective date of such Termination.

14.2 In respect of each Affiliate that is a signatory hereto, this Agreement shall become effective on the later of the execution of this Agreement (i) by such

Affiliate, and (ii) by EUnetCS, and will continue in effect for an indefinite period of time, unless Terminated in respect of a Party by such Party giving to all other Parties at least [twelve] months prior written notice or Terminated pursuant to Article 14.3 or 14.4.

14.3 In the event that an Affiliate will be in default of the performance of its obligations, services or duties hereunder, will be in breach of any provision hereof, or its acts or behaviour impair the goodwill associated with the Services or the Business, and in any such case fails to remedy the same within one month of being requested by EUnetCS to do so, EUnetCS will have the right (without prejudice to any other right or remedy available under this Agreement or otherwise but without any liability), after consultation with the EUnet Committee, to Terminate this Agreement in respect of such Affiliate immediately upon giving written notice thereof, and liability of any and all Parties hereto for the performance of any obligation under any provision hereof will cease and be Terminated as of the giving of such notice, unless expressly provided to the contrary in this Agreement.

14.4 EUnetCS will likewise have the right (without prejudice to any other right or remedy available under this Agreement or otherwise but without any liability), after consultation with the EUnet Committee, to Terminate this Agreement in respect of any Affiliate to which Article 9 or 10.1 shall have become applicable, regardless of whether or not the information referred to in that Article shall have



been given to EUnetCS. Upon Termination as aforesaid liability of any and all parties hereto for the performance of any obligation under any provision hereof will cease and be Terminated as of the giving of such notice, unless expressly provided to the contrary in this Agreement.

14.5 Notwithstanding Article 14.3 and 14.4, if:

- (i) an Affiliate will be in material breach of any of its obligations under this Agreement;
- (ii) an Affiliate abandons the exploitation of the Services or Know-how (any act of a Affiliate, or any failure to act, which would reasonably appear to constitute abandonment may be considered to be evidence thereof);
- (iii) an Affiliate is declared bankrupt and/or requests (temporary) moratorium,
- (iv) in the event this Agreement or any part of it shall be subject to governmental or supra-governmental penalties or be held invalid under the laws of the country in which the Affiliate concerned is situated,

then EUnetCS, after consultation with the EUnet Committee, will be entitled by notice in writing to afore-mentioned party to Terminate this Agreement forthwith without any liability.



14.6 Upon Termination of this Agreement, an Affiliate will not have any right to goodwill or any other compensation of whatever nature.

14.7 Upon Termination of this Agreement, an Affiliate will cease to be a member of, or be represented in, the EUnet Committee and shall as of the date of such Termination cease to make use of any of the Trade Names or Trade Marks not registered in the name of such Affiliate in the Territory.

**Article 15 - Successors and assigns**

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. Neither Party will assign this Agreement or its respective rights, duties or obligations hereunder to any third party or parties without the prior written consent of the other Parties hereto.

**Article 16 - Waiver**

The failure of either Party at any time to require performance by the other of any provision of this Agreement will in no way affect such Party's right to enforce such provision, nor will the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.

**Article 17 - Severability**

Any provision or part of this Agreement prohibited by applicable law will be ineffective to the extent of such

prohibition without invalidating the remaining provisions or parts hereof. If any provision of this Agreement is held invalid by arbitration or by court, such finding will not invalidate the remaining terms in this Agreement.

**Article 18 - Headings**

The preamble, recitals and Schedules are incorporated in and are a part of this Agreement. Section headings are for convenience of reference only and will not limit or restrict the meaning of the section to which they relate.

**Article 19 - Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings, correspondence, negotiations, commitments, representations and undertakings of the parties relating to the subject matter hereof.

All modifications to this Agreement must be mutually agreed upon in writing.

**Article 20 - Governing law and jurisdiction**

This Agreement will, in all respects, be governed by and interpreted in accordance with the laws of the Netherlands.

Subject to EUnetCS's right to commence an action against an Affiliate in a competent court in the country where such Affiliate has its offices, any disputes arising out of or in connection with this Agreement will be finally and exclusively resolved before the competent Court of

Amsterdam, the Netherlands, subject to appeal.

**Article 21 - Definitions**

"Business"

means: the business described in Article 1.2 of this Agreement;

"Business Affiliation"

means: the international business affiliation created between and among the Parties to the Agreement;

"EUnet Committee"

means: the Committee of the Business Affiliation described in Article 2 of this Agreement.

"Know-how"

means: the know-how necessary for the operation and/or commercial exploitation of the Services, as the same may be supplemented or up-dated from time to time;

"Services"

means: the services stated in recital (i) hereof and, for greater certainty described in more detail in **Schedule II** hereto as the same may be amended from time to time by EUnetCS after consultation with the EUnet Committee;

*Follows Vink*

"Standardised Services" means: the standardised services referred to in Article 4.1.

"Territory" shall for each Affiliate mean the territory set forth against such Affiliate's name in Schedule I;

"Trade Marks" means: the trade marks listed in Schedule V hereto or owned or used by EUnetCS from time to time;

"Trade Names" means: the trade names listed in Schedule VI hereto or owned or used by EUnetCS from time to time.

Signed in [AMSTERDAM], on [5 July 98]  
(place) (date)

  
\_\_\_\_\_  
EUnet Communications Services B.V.

By: Mr Wim Vink

Title: Managing Director

SCHEDULES

- I Parties and Territories
- II Services
- III Commercial Methods
- IV Customer Support, Response times and Performance criteria
- V Trade Marks
- VI Trade Names
- VII Pricing Policy

*[Handwritten signature]*