

**SECURITIES AND EXCHANGE COMMISSION**

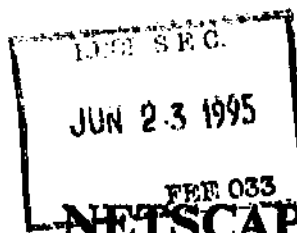
Washington, D.C. 20549

**Form S-1****REGISTRATION STATEMENT**

Under

**THE SECURITIES ACT OF 1933****EXECUTED COPY**

95 14 4214

**NETSCAPE COMMUNICATIONS CORPORATION**

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)7372  
(Primary Standard Industrial  
Classification Code Number)94-3200270  
(I.R.S. Employer  
Identification Number)501 East Middlefield Road  
Mountain View, CA 94043  
(415) 254-1900(Address, including zip code, and telephone number, including  
area code, of Registrant's principal executive offices)Peter L.S. Currie  
Vice President and Chief Financial Officer  
Netscape Communications Corporation  
501 East Middlefield Road  
Mountain View, CA 94043  
(415) 254-1900

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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(415) 813-5600Approximate date of commencement of proposed sale to the public:  
As soon as practicable after the effective date of this Registration Statement.If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box. ☐If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ \_\_\_\_\_If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ \_\_\_\_\_If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common Stock, \$.0001 par value .....	\$56,350,000	\$19,431.03

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(a).

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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# NETSCAPE COMMUNICATIONS CORPORATION

## Cross-Reference Sheet

**Pursuant to Item 501(b) of Regulation S-K Showing Location in  
Prospectus of Information Required by Items of Form S-1**

<u>Form S-1 Item Number and Heading</u>	<u>Location in Prospectus</u>
1. Forepart of the Registration Statement and Outside Front Cover Page of Prospectus .....	Outside Front Cover Page
2. Inside Front and Outside Back Cover Pages of Prospectus .....	Inside Front Cover Page
3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges .....	Prospectus Summary; The Company; Risk Factors
4. Use of Proceeds .....	Prospectus Summary; Use of Proceeds
5. Determination of Offering Price .....	Outside Front Cover Page; Underwriters
6. Dilution .....	Dilution
7. Selling Security Holders .....	Not Applicable
8. Plan of Distribution .....	Outside and Inside Front Cover Pages; Underwriters
9. Description of Securities to be Registered .....	Prospectus Summary; Dividend Policy; Capitalization; Description of Capital Stock
10. Interests of Named Experts and Counsel .....	Not Applicable
11. Information with Respect to the Registrant .....	Outside and Inside Front Cover Pages; Prospectus Summary; The Company; Risk Factors; Use of Proceeds; Dividend Policy; Capitalization; Dilution; Selected Consolidated Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations; Business; Management; Certain Transactions; Principal Stockholders; Description of Capital Stock; Shares Eligible for Future Sale; Legal Matters; Experts; Consolidated Financial Statements
12. Disclosure of Commission Position on Indemnification for Securities Act Liabilities .....	Not Applicable

#### **EXPLANATORY NOTE**

This Registration Statement contains two forms of prospectuses: one to be used in connection with an offering in the United States (the "U.S. Prospectus") and the other to be used in connection with a concurrent international offering (the "International Prospectus"). The two prospectuses are identical except for the front cover and inside front cover pages. The form of U.S. Prospectus is included herein and is followed by the differing front cover and inside front cover pages to be used in the International Prospectus. The pages for the International Prospectus included herein are labelled "Alternative Page for International Prospectus."

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

**PROSPECTUS (Subject to Completion)**  
**Issued June 23, 1995**

**3,500,000 Shares**



**NETSCAPE**

**COMMON STOCK**

*Of the 3,500,000 Shares of Common Stock offered, 3,000,000 Shares are being offered initially in the United States and Canada by the U.S. Underwriters and 500,000 Shares are being offered initially outside of the United States and Canada by the International Underwriters. See "Underwriters." All of the Shares of Common Stock offered hereby are being sold by the Company.*

*Prior to this offering, there has been no public market for the Common Stock of the Company. It is currently estimated that the initial public offering price will be between \$ and \$ per share. See "Underwriters" for a discussion of the factors to be considered in determining the initial public offering price.*

**THIS OFFERING INVOLVES A HIGH DEGREE OF RISK. SEE "RISK FACTORS" COMMENCING ON PAGE 5.**

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**PRICE \$ A SHARE**

	Price to Public	Underwriting Discounts and Commissions (1)	Proceeds to Company (2)
Per Share .....	\$	\$	\$
Total (\$) .....	\$	\$	\$

(1) The Company has agreed to indemnify the U.S. Underwriters and the International Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

(2) Before deducting expenses payable by the Company estimated at \$750,000.

(3) The Company has granted the U.S. Underwriters an option, exercisable within 90 days of the date hereof, to purchase up to an aggregate of 525,000 additional Shares at the price to public less underwriting discounts and commissions for the purpose of covering over-allotments, if any. If the U.S. Underwriters exercise such option in full, the total price to public, underwriting discounts and commissions and proceeds to Company will be \$ and \$ , respectively. See "Underwriters."

The Shares are offered, subject to prior sale, when, as and if accepted by the Underwriters named herein and subject to approval of certain legal matters by Morrison & Foerster, counsel for the Underwriters. It is expected that delivery of certificates for the Shares will be made on or about , 1995, at the office of Morgan Stanley & Co. Incorporated, New York, N.Y., against payment therefor in New York funds.

**MORGAN STANLEY & CO.**  
 Incorporated

**HAMBRECHT & QUIST**

, 1995



No person is authorized in connection with any offering made hereby to give any information or to make any representation other than as contained in this Prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized by the Company or any Underwriter. This Prospectus does not constitute an offer to sell or a solicitation of an offer to buy by any person in any jurisdiction in which it is unlawful for such person to make such an offering or solicitation. Neither the delivery of this Prospectus nor any sale made hereunder shall under any circumstances imply that the information contained herein is correct as of any date subsequent to the date hereof.

Until \_\_\_\_\_, 1995 (25 days after the commencement of this offering), all dealers effecting transactions in the Common Stock, whether or not participating in this distribution, may be required to deliver a Prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a Prospectus when acting as Underwriters and with respect to their unsold allotments or subscriptions.

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The Company intends to furnish to its stockholders annual reports containing consolidated financial statements audited by an independent public accounting firm and quarterly reports for the first three quarters of each fiscal year containing interim unaudited financial information.

The Company has applied for registration of the following trademarks: Netscape, Netscape Navigator and the Company's logo. This Prospectus also includes product names and other trade names and trademarks of the Company and of other organizations.

**IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK OF THE COMPANY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

*Except as otherwise noted herein, all information in this Prospectus assumes (i) a two-for-one stock split of the Common Stock, (ii) the conversion of each outstanding share of Preferred Stock into two shares of Common Stock, which will occur automatically upon the closing of the offering, (iii) an increase in the authorized number of shares of Common Stock from 30,000,000 to 100,000,000, (iv) an increase in the authorized number of shares of undesignated Preferred Stock from 2,000,000 to 5,000,000, and (v) no exercise of the Underwriters' over-allotment option. See "Description of Capital Stock" and "Underwriters."*

**[ARTWORK TO BE FILED BY AMENDMENT]**

## PROSPECTUS SUMMARY

*The following summary is qualified in its entirety by the more detailed information and the consolidated financial statements and notes thereto appearing elsewhere in this Prospectus.*

### THE COMPANY

Netscape Communications Corporation is a leading provider of open client, server and integrated applications software that enables information exchange and commerce over the Internet and private Internet Protocol networks. The Company's products are designed to deliver high levels of performance, ease of use and security. These products allow individuals and organizations to execute secure financial transactions across the Internet, such as the buying and selling of merchandise, publications, software and information. In addition, through the use of the Company's software, organizations can extend their internal information systems and enterprise applications to geographically dispersed facilities, remote offices and mobile employees.

To reach a diverse and worldwide audience, Netscape delivers its suite of products and services through multiple distribution channels. The Company offers its products via a direct sales force, telesales and the Internet as well as through original equipment manufacturers, systems integrators, value added resellers and software retailers. To accelerate the acceptance of the Company's products and facilitate the adoption of the Internet as a commercial marketplace, Netscape has also initiated or is pursuing strategic relationships with leading telecommunications, commerce and computing companies with complementary resources and technologies. These companies include Apple Computer, Inc., Delphi Internet Services Corporation, Digital Equipment Corporation, First Data Corporation, MasterCard International, Inc., MCI Telecommunications Corporation, Novell, Inc., RSA Data Security, Inc., Silicon Graphics, Inc. and Sun Microsystems, Inc.

### THE OFFERING

Common Stock offered	
U.S. offering .....	3,000,000 shares
International offering .....	500,000 shares
Total .....	3,500,000 shares
Common Stock to be outstanding after the offering .....	30,502,244 shares(1)
Use of proceeds .....	For general corporate purposes, including working capital and capital expenditures
Proposed Nasdaq National Market symbol .....	NSCP

### SUMMARY CONSOLIDATED FINANCIAL INFORMATION

	Period from Inception (April 4, 1994) to December 31, 1994	Quarter Ended March 31, 1995	
<b>Consolidated Statement of Operations Data:</b>			
Revenues .....	\$ 695,871	\$ 4,737,591	
Gross profit .....	476,781	4,402,690	
Total operating expenses(2) .....	9,001,556	7,119,731	
Operating loss .....	(8,524,775)	(2,717,041)	
Net loss .....	(8,469,845)	(2,699,023)	
	<b>March 31, 1995</b>		
	<b>Actual</b>	<b>Pro Forma(3)</b>	<b>As Adjusted(4)</b>
<b>Consolidated Balance Sheet Data:</b>			
Working capital (deficit) .....	\$(2,587,063)	\$14,712,937	\$56,277,937
Total assets .....	12,312,523	29,612,523	71,177,523
Deferred revenue .....	7,244,626	7,244,626	7,244,626
Long-term obligations .....	2,352,411	2,352,411	2,352,411
Total stockholders' equity (deficit) .....	(271,484)	17,028,516	58,593,516

- (1) Based on shares of Common Stock outstanding at May 31, 1995. Excludes 5,084,800 shares of Common Stock issuable upon exercise of outstanding options at May 31, 1995, with a weighted average exercise price of \$0.16 per share. See "Capitalization," "Management — Stock Plans" and Note 6 of Notes to Consolidated Financial Statements.
- (2) Total operating expenses for the quarter ended March 31, 1995 include \$861,512 in amortization of deferred compensation related to stock option grants. See Note 6 of Notes to Consolidated Financial Statements.
- (3) The pro forma balances reflect the issuance of 2,000,000 shares of Series C Preferred Stock in April 1995 for net cash proceeds of approximately \$17,300,000.
- (4) Adjusted to reflect the issuance of 2,000,000 shares of Series C Preferred Stock in April 1995 for net cash proceeds of approximately \$17,300,000 and the sale of the shares of Common Stock offered hereby (at an assumed initial public offering price of \$13.00 per share and after deducting the estimated underwriting discounts and commissions and estimated offering expenses) and the application of the net proceeds therefrom. See "Use of Proceeds," "Capitalization" and "Underwriters." See Note 10 of Notes to Consolidated Financial Statements.

## THE COMPANY

Netscape Communications Corporation ("Netscape" or the "Company") is a leading provider of open client, server and integrated applications software that enables information exchange and commerce over the Internet and private Internet Protocol ("IP") networks. The Company's products are designed to deliver high levels of performance, ease of use and security. These products allow individuals and organizations to execute secure financial transactions across the Internet, such as the buying and selling of merchandise, publications, software and information. In addition, through the use of the Company's software, organizations can extend their internal information systems and enterprise applications to geographically dispersed facilities, remote offices and mobile employees.

The Internet is a global web of computer networks which International Data Corporation ("IDC") estimates had approximately 38 million users worldwide at the end of 1994. IDC estimates that today approximately 73%, or 28 million, of these users are in organizations connecting private IP networks to the Internet to access e-mail and newsgroups. By 1999, IDC estimates that there will be nearly 200 million users of the Internet. Of these users, IDC estimates that 125 million users will have full Internet access, which, in addition to e-mail and newsgroups, includes file transfer capabilities and access to graphic and multimedia information on the World Wide Web (the "Web").

The Internet provides organizations with new means to conduct business. Commercial uses of the Internet include business-to-business and business-to-consumer transactions, product marketing, advertising, entertainment, electronic publishing, electronic services and customer support. The Company believes that organizations will also increasingly use the Internet and private IP networks to improve communications, distribute information, lower operating costs and re-engineer operations.

The Company's goal is to make its software the de facto standard for navigating, publishing information and executing transactions on the Internet and private IP networks. The Netscape Navigator, introduced in December 1994, was the first commercially available client for the Web to include built-in security capabilities, which facilitate commercial transactions over the Internet. The Company's products enable the creation, editing, organization and retrieval of documents that contain audio and video clips, graphical images and formatted text. These products are also designed to provide enhanced security for the controlled access of confidential information on the Internet and private IP networks and the execution of financial transactions. The Company's core development group includes key members of the engineering teams that developed the original Mosaic Web client at NCSA and the original Web server software at CERN and NCSA, as well as leading software security specialists.

To reach a diverse and worldwide audience, Netscape delivers its suite of products and services through multiple distribution channels. The Company offers its products via a direct sales force, telesales and the Internet as well as through original equipment manufacturers, systems integrators, value added resellers and software retailers. To accelerate the acceptance of the Company's products and further facilitate the adoption of the Internet as a commercial marketplace, Netscape has initiated or is pursuing strategic relationships with leading telecommunications, commerce and computing companies with complementary resources and technologies. These companies include Apple Computer, Inc., Delphi Internet Services Corporation, Digital Equipment Corporation, First Data Corporation, MasterCard International, Inc., MCI Telecommunications Corporation, Novell, Inc., RSA Data Security, Inc., Silicon Graphics, Inc. and Sun Microsystems, Inc.

The Company was incorporated in Delaware in April 1994. Netscape's home page can be located on the Web at <http://home.netscape.com>. The Company's principal executive office is located at 501 East Middlefield Road, Mountain View, California 94043 and its telephone number is (415) 254-1900. Except as otherwise noted herein, all references to "Netscape" or the "Company" shall mean Netscape Communications Corporation, a Delaware corporation and its Japanese subsidiary, Netscape Communications (Japan), Ltd.

## RISK FACTORS

*In evaluating the Company's business, prospective investors should consider carefully the following factors in addition to the other information presented in this Prospectus.*

**Limited Operating History; Accumulated Deficit.** The Company was founded in April 1994 and commenced shipment of its initial product in December 1994. Accordingly, the Company has only a limited operating history upon which an evaluation of the Company and its prospects can be based. The Company's prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in their early stage of development, particularly companies in new and rapidly evolving markets. To address these risks, the Company must, among other things, respond to competitive developments, continue to attract, retain and motivate qualified persons, and continue to upgrade its technologies and commercialize products and services incorporating such technologies. There can be no assurance that the Company will be successful in addressing such risks. The Company has incurred net losses since inception and expects to continue to operate at a loss for the foreseeable future. As of March 31, 1995, the Company had an accumulated deficit of \$11.2 million. Although the Company has experienced revenue growth in recent periods, such growth rates will not be sustainable and are not indicative of future operating results. There can be no assurance that the Company will achieve or sustain profitability. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

**Potential Fluctuations in Quarterly Results.** As a result of the Company's limited operating history, the Company does not have historical financial data for a significant number of periods on which to base planned operating expenses. Accordingly, the Company's expense levels are based in part on its expectations as to future revenues and to a large extent are fixed. However, the Company typically operates with no backlog. As a result, quarterly sales and operating results generally depend on the volume and timing of and ability to fulfill orders received within the quarter, which are difficult to forecast. The Company may be unable to adjust spending in a timely manner to compensate for any unexpected revenues shortfall. Accordingly, any significant shortfall of demand for the Company's products and services in relation to the Company's expectations would have an immediate adverse impact on the Company's business, operating results and financial condition. In addition, the Company plans to increase its operating expenses to fund greater levels of research and development, increase its sales and marketing operations, develop new distribution channels and broaden its customer support capabilities. To the extent that such expenses precede or are not subsequently followed by increased revenues, the Company's business, operating results and financial condition will be materially adversely affected.

The Company has in the past and expects in the future to experience significant fluctuations in quarterly operating results that may be caused by many factors, including demand for the Company's products, introduction or enhancement of products by the Company and its competitors, market acceptance of new products, mix of distribution channels through which products are sold, mix of products and services sold, and general economic conditions. As a result, the Company believes that period-to-period comparisons of its results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance. Due to all of the foregoing factors, it is likely that in some future quarter the Company's operating results will be below the expectations of public market analysts and investors. In such event, the price of the Company's Common Stock would likely be materially adversely affected. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

**Developing Market; Unproven Acceptance of the Company's Products.** The market for the Company's software and services has only recently begun to develop, is rapidly evolving and is characterized by an increasing number of market entrants who have introduced or developed products and services for communication and commerce over the Internet and private IP networks. As is typical in the case of a new and rapidly evolving industry, demand and market acceptance for recently introduced products and services are subject to a high level of uncertainty. The industry is young and has few proven products. Moreover, critical issues concerning the commercial use of the Internet (including security, reliability, cost, ease of use and access, and quality of service) remain unresolved and may impact the growth of Internet use. While the Company believes that its software products offer significant advantages for commerce and communication over the Internet and private IP networks, there can be no assurance that commerce and communication over the Internet or private

IP networks will become widespread, or that the Company's products for commerce and communication over the Internet or private IP networks will become widely adopted for these purposes.

In particular, client software may be subject to price erosion due to free client software distributed by online services providers, Internet access providers and others. In addition, it is likely that computer operating systems companies will bundle client software with their operating systems at little or no additional cost to users, which would also cause the price of the Company's client products to decline. Further, market acceptance of the Company's server and integrated application software products is substantially dependent upon the adoption of the Internet and private IP networks for commerce and communications. The adoption of the Internet for commerce and communications, particularly by those individuals and enterprises which have historically relied upon alternative means of commerce and communication, generally requires the acceptance of a new way of conducting business and exchanging information. In particular, enterprises that have already invested substantial resources in other means of conducting commerce and exchanging information may be particularly reluctant to adopt a new strategy that may make their existing personnel and infrastructure obsolete. In addition, there can be no assurance that individual PC users in business or at home will adopt the Internet for online commerce or communication.

Because the market for the Company's products and services is new and evolving, it is difficult to predict with any assurance the future growth rate, if any, and size of this market. There can be no assurance that the market for the Company's products and services will develop, that the Company's products or services will be adopted, or that individual PC users in business or at home will use the Internet or private IP networks for commerce and communication. If the market fails to develop, develops more slowly than expected or becomes saturated with competitors, or if the Company's products do not achieve market acceptance, the Company's business, operating results and financial condition will be materially adversely affected. See "Business — Industry Background."

**Competition.** The market for Internet-based software and services is new, intensely competitive, rapidly evolving and subject to rapid technological change. The Company expects competition to persist, intensify and increase in the future. Almost all of the Company's current and potential competitors have longer operating histories, greater name recognition, larger installed customer bases and significantly greater financial, technical and marketing resources than the Company. The additional competition could materially adversely affect the Company's business, operating results or financial condition. The Company's current and potential competitors can be divided into several groups: Microsoft Corporation ("Microsoft"), browser software vendors, Web server software and service vendors, PC and Unix software vendors and online service providers.

Microsoft has licensed browser software from Spyglass Inc. ("Spyglass"), and has announced its intention to improve and bundle the browser with its Windows 95 operating system. Microsoft's browser will access the Microsoft Network, its announced online service, and will also offer Internet access. While the anticipated penetration of this software into Microsoft's installed base of PC users will increase the size and usefulness of the Internet, it could also have a material adverse impact on Netscape's ability to sell client software. In addition, Microsoft may choose to develop Web server software as a complement to its product line and to support the Microsoft Network. This could have a materially adverse impact on Netscape's ability to sell server software or integrated applications. Microsoft has a longer operating history, a much larger installed base and number of employees and dramatically greater financial, technical and marketing resources, access to distribution channels and name recognition than the Company.

In addition, International Business Machines Corporation ("IBM") has incorporated client software in its OS/2 operating system, and the Company believes that other PC operating system vendors, including Apple Computer, Inc. ("Apple"), will also eventually incorporate some Web client functionality into their operating systems as standard features. This may also be true of Unix operating systems vendors, such as Sun Microsystems, Inc. ("Sun"), Hewlett-Packard Company ("HP"), IBM, Digital Equipment Corporation ("Digital"), The Santa Cruz Operation, Inc. ("SCO") and Silicon Graphics, Inc. ("SGI"). If these companies incorporate Web client functionality into their software products, they could subsequently offer this functionality at little or no additional cost to customers. Further, in the event that client products incorporated into operating systems by Microsoft or other Unix or PC software vendors gain market acceptance, these

organizations will be better positioned than the Company to sell Web server and applications software products. In addition, software companies which have server products in other product categories may choose in the future to enhance the functionality of existing products or develop new products which incorporate support for Hypertext Transfer Protocol ("HTTP"). For example, Lotus Development Corporation ("Lotus," whose potential acquisition by IBM has recently been announced) may extend Notes in this manner, and Novell, Inc. ("Novell") may provide add-ons to Netware for Web publishing. In addition, Oracle Corporation ("Oracle"), Sybase, Inc. ("Sybase") and Informix Software, Inc. ("Informix") may incorporate Web server functionality into their database products. Additional competition could come from client/server applications and tools vendors, other database companies, multimedia companies, document management companies, networking software companies, network management companies and educational software companies. There can be no assurance that the Company will be able to compete successfully against current or future competitors or that competitive pressures faced by the Company will not materially adversely affect its business, operating results and financial condition. See "Business — Competition."

*New Product Development and Technological Change.* Substantially all of the Company's revenues have been derived, and substantially all of the Company's future revenues are expected to be derived, from the license of its software and sale of its associated services. Accordingly, broad acceptance of the Company's products and services by customers is critical to the Company's future success, as is the Company's ability to design, develop, test and support new software products and enhancements on a timely basis that meet changing customer needs and respond to technological developments and emerging industry standards. There can be no assurance that the Company will be successful in developing and marketing new software products and enhancements that meet changing customer needs and respond to such technological changes or evolving industry standards. The Company's current products are designed around certain standards, including, for example, security standards, and current and future sales of the Company's products will be dependent, in part, on industry acceptance of such standards. Other companies, like Microsoft and IBM are proposing alternative standards, the adoption of which could have a material adverse effect on the Company's business, operating results or financial condition. In addition, there can be no assurance that the Company will not experience difficulties that could delay or prevent the successful development, introduction and marketing of new products and enhancements, or that its new products and enhancements will adequately meet the requirements of the marketplace and achieve market acceptance. The Company will be substantially dependent in the near future upon its server and integrated application software products that are still being developed or have been recently released. In particular, the Company has not yet commercially released the Netscape Publishing System, the Netscape Community System or the Netscape IStore integrated applications software products, the Netscape News Server or the Netscape authoring tools. Further, because the Company has only recently commenced shipment of its products, there can be no assurance that, despite testing by the Company and by current and potential customers, errors will not be found in the Company's products, or, if discovered, successfully corrected in a timely manner. If the Company is unable to develop on a timely basis new software products, enhancements to existing products or error corrections, or if such new products or enhancements do not achieve market acceptance, the Company's business, operating results and financial condition will be materially adversely affected. See "Business — Products" and "— Research and Development."

*Evolving Distribution Channels.* The Company's distribution strategy is to develop multiple distribution channels. The Company has historically sold its products through direct sales and OEMs. The Company expects to increasingly utilize OEMs and has only recently begun utilizing systems integrators, VARs and software retailers (collectively, "Resellers"). The Company expects that any material increase in sales through Resellers as a percentage of total revenues, especially in the percentage of sales through OEMs and VARs, will adversely affect the Company's average selling prices and gross margins due to the lower unit prices that are typically charged when selling through indirect channels. Moreover, there can be no assurance that the Company will be able to attract Resellers that will be able to market the Company's products effectively and will be qualified to provide timely and cost-effective customer support and service. In addition, the Company's agreements with Resellers typically do not restrict Resellers from distributing competing products, and in many cases may be terminated by either party without cause. Further, in some cases the Company has granted exclusive distribution rights which are limited by territory and in duration. Conse-

quently, the Company may be adversely affected should any Reseller fail to adequately penetrate its market segment. The inability to recruit, or the loss of, important Resellers, or their inability to penetrate their respective market segments, could materially adversely affect the Company's business, operating results or financial condition. See "Business—Marketing and Distribution."

The Company plans to expand its field sales force and its telesales organization. There can be no assurance that such internal expansion will be successfully completed, that the cost of such expansion will not exceed the revenues generated, or that the Company's sales and marketing organization will be able to successfully compete against the significantly more extensive and well-funded sales and marketing operations of many of the Company's current or potential competitors. The Company's inability to effectively manage its internal expansion could have a material adverse effect on the Company's business, operating results or financial condition.

In addition to expanding its direct sales channels, the Company will continue to distribute its products electronically through the Internet. Distributing the Company's products through the Internet makes the Company's software more susceptible than other software to unauthorized copying and use. The Company currently allows potential customers to electronically download its client and server software for a free trial period. There can be no assurance that, upon expiration of the evaluation period, the Company will be able to collect payment from users that retain a copy of the Company's software. If, as a result of changing legal interpretations of liability for unauthorized use of the Company's software or otherwise, users were to become less sensitive to avoiding copyright infringement, the Company's business, operating results and financial condition would be materially adversely affected.

*Management of Growth.* The rapid execution necessary for the Company to fully exploit the market window for its products and services requires an effective planning and management process. The Company's rapid growth has placed, and is expected to continue to place, a significant strain on the Company's managerial, operational and financial resources. As of June 5, 1995, the Company had grown to 213 employees from 102 employees on January 16, 1995, and the Company expects this rapid growth to continue. The Company recently hired James L. Barksdale as its new President and Chief Executive Officer in January 1995 and Peter L.S. Currie as its Vice President and Chief Financial Officer in April 1995. In addition, most of the Company's development and engineering staff was only recently hired. To manage its growth, the Company must continue to implement and improve its operational and financial systems and to expand, train and manage its employee base. For example, the Company is currently in the process of building its internal maintenance and support organization. The Company is also in the process of evaluating and purchasing a major new management information system. There can be no assurance that the Company will be able to purchase or successfully implement this system on a timely basis. Further, the Company will be required to manage multiple relationships with various customers and other third parties. Although the Company believes that it has made adequate allowances for the costs and risks associated with this expansion, there can be no assurance that the Company's systems, procedures or controls will be adequate to support the Company's operations or that Company management will be able to achieve the rapid execution necessary to fully exploit the market window for the Company's products and services. The Company's future operating results will also depend on its ability to expand its sales and marketing organizations, implement a VAR channel to penetrate different and broader markets and expand its support organization commensurate with the increasing base of its installed products. If the Company is unable to manage growth effectively, the Company's business, operating results and financial condition will be materially adversely affected. See "Business — Research and Development" and "— Employees."

*Security Risks and System Disruptions.* Despite the implementation into the Company's products of the Secure Sockets Layer ("SSL"), the Company's security architecture based on encryption and authentication technology licensed from RSA Data Security, Inc. ("RSA"), the Company's products may be vulnerable to break-ins and similar disruptive problems caused by Internet users. Such computer break-ins and other disruptions would jeopardize the security of information stored in and transmitted through the computer systems of end users of the Company's products, which may result in significant liability to the Company and may also deter potential customers. Persistent security problems continue to plague public and private data networks. Recent break-ins reported in the press and otherwise occurred at General Electric Co. ("GE"), Sprint Corporation ("Sprint"), and IBM, as well as the computer systems of NETCOM On-Line Communication Services, Inc. ("NETCOM") and the San Diego Supercomputer Center, and have included incidents



involving hackers bypassing firewalls by posing as trusted computers and involving the theft of confidential information. Alleviating problems caused by third parties may require significant expenditures of capital and resources by the Company and may cause interruptions, delays, or cessation of service to the Company's customers; such expenditures or interruptions could have a material adverse effect on the Company's business, operating results or financial condition. Moreover, the security and privacy concerns of existing and potential customers, as well as concerns related to computer viruses, may inhibit the growth of the Internet marketplace generally, and the Company's customer base and revenues in particular. The Company attempts to limit its liability to customers, including liability arising from a failure of the security feature contained in the Company's products, through contractual provisions. However, there can be no assurance that such limitations will be enforceable. The Company currently does not have product liability insurance to protect against these risks and there can be no assurance that such insurance will be available to the Company on commercially reasonable terms. See "Business — Security Risks."

In addition, the Company maintains secure Web servers which contain confidential information of the Company and its customers. The Company's operations are dependent in part upon its ability to protect its network infrastructure against damage from physical break-ins, natural disasters, operational disruptions and other events. Any damage or failure that causes interruptions in the Company's operations could materially adversely affect the Company's business, operating results or financial condition. In addition, physical break-ins could result in the theft or loss of confidential or critical business information of the Company or its customers. See "Business — Facilities."

*Government Regulation and Legal Uncertainties.* The Company is not currently subject to direct regulation by any government agency, other than regulations applicable to businesses generally, and there are currently few laws or regulations directly applicable to access to or commerce on the Internet. However, due to the increasing popularity and use of the Internet, it is possible that a number of laws and regulations may be adopted with respect to the Internet, covering issues such as user privacy, pricing and characteristics and quality of products and services. For example, the Exon Bill (which was recently approved by the Senate) would prohibit distribution of obscene, lascivious or indecent communications on the Internet. The adoption of any such laws or regulations may decrease the growth of the Internet, which could in turn decrease the demand for the Company's products and increase the Company's cost of doing business or otherwise have an adverse effect on the Company's business, operating results or financial condition. Moreover, the applicability to the Internet of existing laws governing issues such as property ownership, libel and personal privacy is uncertain. Further, due to the encryption technology contained in the Company's products, such products are subject to U.S. export controls. There can be no assurance that such export controls, either in their current form or as may be subsequently enacted, will not limit the Company's ability to distribute products outside of the United States or electronically. While Netscape takes precautions against unlawful exportation, the global nature of the Internet makes it virtually impossible to effectively control the distribution of the Company's products. In addition, federal or state legislation or regulation may further limit levels of encryption or authentication technology. Any such export restrictions or new legislation or regulation could have a material adverse impact on the Company's business, operating results or financial condition. See "Business — Marketing and Distribution."

*Dependence on the Internet.* Although some sales of the Company's products will depend upon growth of private IP networks, sales of the Company's products will depend in large part upon a robust industry and infrastructure for providing Internet access and carrying Internet traffic. The Internet may not prove to be a viable commercial marketplace because of inadequate development of the necessary infrastructure, such as a reliable network backbone or timely development of complementary products, such as high speed modems. Because global commerce and online exchange of information on the Internet and other similar open wide area networks are new and evolving, it is difficult to predict with any assurance whether the Internet will prove to be a viable commercial marketplace. There can be no assurance that the infrastructure or complementary products necessary to make the Internet a viable commercial marketplace will be developed, or, if developed, that the Internet will become a viable commercial marketplace. If the necessary infrastructure or complementary products are not developed, or if the Internet does not become a viable commercial marketplace, the

Company's business, operating results and financial condition will be materially adversely affected. See "Business — Industry Background."

**Dependence on Key Personnel.** The Company's performance is substantially dependent on the performance of its executive officers and key employees, most of whom have worked together for only a short period of time. Given the Company's early stage of development, the Company is dependent on its ability to retain and motivate high quality personnel, especially its management and highly skilled development teams. The Company does not have "key person" life insurance policies on any of its employees. The loss of the services of any of its executive officers or other key employees could have a material adverse effect on the business, operating results or financial condition of the Company.

The Company's future success also depends on its continuing ability to identify, hire, train and retain other highly qualified technical and managerial personnel. Competition for such personnel is intense, and there can be no assurance that the Company will be able to attract, assimilate or retain other highly qualified technical and managerial personnel in the future. The inability to attract and retain the necessary technical and managerial personnel could have a material adverse effect upon the Company's business, operating results or financial condition. See "Business — Employees" and "Management."

**Proprietary Rights.** In December 1994, the Company entered into an agreement with the University of Illinois (the "University") and Spyglass. Under the terms of the agreement, the University and Spyglass agreed not to assert any claim of trademark infringement arising out of the Company's prior use of the word "Mosaic" or other symbols or words used by the Company to market itself or its products. The University and Spyglass further agreed not to assert against the Company any claim of copyright infringement, trade secret misappropriation or related claims based on the Company's use of former University employees in the development of the Company's present and future products. As consideration for these covenants not to assert any such claims, the Company agreed to make certain payments to the University over a two-year period. If the Company does not make these payments within the specified time periods, the University or Spyglass could assert claims of intellectual property infringement against the Company. Such litigation could result in substantial costs and diversion of resources even if ultimately decided in favor of the Company. Further, although the Company believes that it has not infringed the intellectual property rights of the University or Spyglass, any such litigation and the outcome of such litigation could have a material adverse effect on the Company's business, operating results or financial condition. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business — Proprietary Rights."

The Company's success and ability to compete is dependent in part upon its proprietary technology. While the Company relies on trademark, trade secret and copyright law to protect its technology, the Company believes that factors such as the technological and creative skills of its personnel, new product developments, frequent product enhancements, name recognition and reliable product maintenance are more essential to establishing and maintaining a technology leadership position. The Company presently has no patents or patent applications pending. There can be no assurance that others will not develop technologies that are similar or superior to the Company's technology. The source code for the Company's proprietary software is protected both as a trade secret and as a copyrighted work. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use the Company's products or technology without authorization, or to develop similar technology independently. In addition, effective copyright and trade secret protection may be unavailable or limited in certain foreign countries, and the global nature of the Internet makes it virtually impossible to control the ultimate destination of the Company's products. The Company generally enters into confidentiality or license agreements with its employees, consultants and vendors, and generally controls access to and distribution of its software, documentation and other proprietary information. To license its products, the Company primarily relies on "shrink wrap" licenses that are not signed by the end-user and, therefore, may be unenforceable under the laws of certain jurisdictions. Despite the Company's efforts to protect its proprietary rights, unauthorized parties may attempt to copy aspects of the Company's products or to obtain and use information that the Company regards as proprietary. Policing unauthorized use of the Company's products is difficult. There can be no assurance that the steps taken by the Company will prevent misappropriation of its technology or that such agreements will be enforceable. In addition, litigation may be necessary in the future to enforce the Company's intellectual property rights, to protect the Company's

trade secrets, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on the Company's business, operating results or financial condition.

Unisys Corporation ("Unisys") recently announced its intention to require the payment of royalties for the use of compression technology associated with the Graphics Interchange Format ("GIF"), a popular file format based on compression technology patented by Unisys. The Company's products have the ability to decompress files, including files stored in GIF. While the Company has received notice of Unisys' intention to enforce such patent, the Company believes its technology falls outside the scope of such patent. However, the Company could incur additional costs and liability should its products be found to be within the scope of the Unisys patent. The assertion of these patent rights by Unisys, if successful, could result in additional costs to the Company or prevent the Company's products from enabling users to view files compressed in GIF. From time to time the Company has, in addition to the notice from Unisys, received, and may receive in the future, notice of claims of infringement of other parties' proprietary rights. Although the Company does not believe that its products infringe the proprietary rights of any third parties, there can be no assurance that infringement or invalidity claims (or claims for indemnification resulting from infringement claims) will not be asserted or prosecuted against the Company or that any such assertions or prosecutions will not materially adversely affect the Company's business, financial condition or results of operations. Irrespective of the validity or the successful assertion of such claims, the Company would incur significant costs and diversion of resources with respect to the defense thereof which could have a material adverse effect on the Company's business, financial condition or results of operations. If any claims or actions are asserted against the Company, the Company may seek to obtain a license under a third party's intellectual property rights. There can be no assurance, however, that under such circumstances, a license would be available on reasonable terms or at all.

*Risks Associated with International Expansion.* A key component of the Company's strategy is its planned expansion into international markets. In particular, the Company intends to establish foreign subsidiaries in Europe by the end of 1995. If the international revenues generated by these subsidiaries are not adequate to offset the expense of establishing and maintaining these foreign operations, the Company's business, operating results or financial condition could be materially adversely affected. To date, the Company has only limited experience in developing localized versions of its products and marketing and distributing its products internationally. There can be no assurance that the Company will be able to successfully market, sell and deliver its products in these markets. In addition to the uncertainty as to the Company's ability to expand its international presence, there are certain risks inherent in doing business on an international level, such as unexpected changes in regulatory requirements, tariffs and other trade barriers, difficulties in staffing and managing foreign operations, longer payment cycles, problems in collecting accounts receivable, political instability, fluctuations in currency exchange rates, seasonal reductions in business activity during the summer months in Europe and certain other parts of the world and potentially adverse tax consequences, which could adversely impact the success of the Company's international operations. There can be no assurance that one or more of such factors will not have a material adverse effect on the Company's future international operations and, consequently, on the Company's business, operating results and financial condition. See "Business — Marketing and Distribution."

*Concentration of Stock Ownership.* Upon completion of this offering, the present directors, executive officers and their respective affiliates will beneficially own approximately 69.5% of the outstanding Common Stock, assuming no exercise of the underwriters' over-allotment option and 68.4% of the outstanding Common Stock assuming full exercise of the underwriters' over-allotment option. As a result, these stockholders will be able to exercise significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. Such concentration of ownership may also have the effect of delaying or preventing a change in control of the Company. See "Description of Capital Stock — Antitakeover Effects of Provisions of the Certificate of Incorporation, Bylaws and Delaware Law" and "Principal Stockholders."

*No Prior Public Market, Possible Volatility of Stock Price.* Prior to this offering, there has been no public market for the Company's Common Stock, and there can be no assurance that an active public market

for the Common Stock will develop or be sustained after the offering. The initial offering price will be determined by negotiation between the Company and the Underwriters based upon several factors. See "Underwriters" for a discussion of the factors to be considered in determining the initial public offering price. The market price of the Company's Common Stock is likely to be highly volatile and could be subject to wide fluctuations in response to quarterly variations in operating results, announcements of technological innovations or new products by the Company or its competitors, changes in financial estimates by securities analysts, or other events or factors. In addition, the stock market has experienced significant price and volume fluctuations that have particularly affected the market prices of equity securities of many high technology companies and that often have been unrelated to the operating performance of such companies. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted against such a company. Such litigation could result in substantial costs and a diversion of management's attention and resources, which would have a material adverse effect on the Company's business, operating results and financial condition. These broad market fluctuations may adversely affect the market price of the Company's Common Stock. See "Underwriters."

**Shares Eligible for Future Sale.** Sales of a substantial number of shares of Common Stock in the public market following this offering could adversely affect the market price for the Common Stock. See "Shares Eligible for Future Sale" and "Description of Capital Stock."

**Effect of Certain Charter Provisions; Antitakeover Effects of Certificate of Incorporation, Bylaws and Delaware Law.** The Board of Directors has the authority to issue up to 5,000,000 shares of Preferred Stock and to determine the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without any further vote or action by the stockholders. The rights of the holders of Common Stock will be subject to, and may be adversely affected by, the rights of the holders of any Preferred Stock that may be issued in the future. The issuance of Preferred Stock, while providing desirable flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire a majority of the outstanding voting stock of the Company. The Company has no present plans to issue shares of Preferred Stock. Further, certain provisions of the Company's Amended and Restated Certificate of Incorporation, including provisions that create a classified board of directors, and Amended and Restated Bylaws and of Delaware law could delay or make difficult a merger, tender offer or proxy contest involving the Company. See "Management — Executive Officers and Directors," "Description of Capital Stock — Preferred Stock" and "— Antitakeover Effects of Provisions of the Certificate of Incorporation, Bylaws and Delaware Law."

**Dilution.** Investors participating in this offering will incur immediate, substantial dilution. To the extent outstanding options to purchase the Company's Common Stock are exercised, there will be further dilution. See "Dilution."

### **USE OF PROCEEDS**

The net proceeds to the Company from the sale of 3,500,000 shares of Common Stock being offered hereby are estimated to be approximately \$41.6 million at an assumed initial public offering price of \$13.00 per share (approximately \$47.9 million if the Underwriters' over-allotment option is exercised in full). The principal purposes of this offering are to obtain additional capital, create a public market for the Company's Common Stock and facilitate future access by the Company to public equity markets. The Company expects to use the net proceeds from this offering for general corporate purposes, including working capital and capital expenditures. A portion of the proceeds may also be used to acquire or invest in complementary businesses or products or to obtain the right to use complementary technologies; however, there are no plans, negotiations or discussions with respect to any such transactions at the present time. Pending use of the net proceeds for the above purposes, the Company intends to invest such funds in short-term, interest-bearing, investment grade obligations.

### **DIVIDEND POLICY**

The Company has never paid cash dividends on its Common Stock or other securities. The Company currently anticipates that it will retain all of its future earnings for use in the expansion and operation of its business and does not anticipate paying any cash dividends in the foreseeable future.

## CAPITALIZATION

The following table sets forth (i) the total capitalization of the Company at March 31, 1995, (ii) the pro forma capitalization at March 31, 1995 assuming the conversion of each outstanding share of Preferred Stock, including 2,000,000 shares of Series C Preferred Stock issued in April 1995, into two shares of Common Stock, and (iii) the as adjusted capitalization at March 31, 1995 assuming the conversion of the Preferred Stock and reflecting the sale by the Company of 3,500,000 shares of Common Stock offered hereby at an assumed initial public offering price of \$13.00 per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses.

	March 31, 1995		
	Actual	Pro Forma	As adjusted
Long term obligations(1) .....	\$ 2,352,411	\$ 2,352,411	\$ 2,352,411
Total stockholders' equity (deficit):			
Preferred Stock, \$0.0001 par value, issuable in series; 7,608,222 shares authorized, 7,008,222 shares issued and outstanding, actual; 11,286,222 shares authorized, none issued and outstanding, pro forma; 5,000,000 shares authorized, none issued and outstanding, as adjusted ...	701	—	—
Common Stock, \$0.0001 par value; 20,000,000 shares authorized, 8,759,800 shares issued and outstanding, actual; 30,000,000 shares authorized, 26,776,244 shares issued and outstanding, pro forma; 100,000,000 shares authorized, 30,276,244 shares issued and outstanding, as adjusted(2) .....	876	2,678	3,028
Additional paid-in capital .....	12,612,953	29,911,852	71,476,502
Deferred compensation .....	(1,717,146)	(1,717,146)	(1,717,146)
Accumulated deficit .....	(11,168,868)	(11,168,868)	(11,168,868)
Total stockholders' equity (deficit) .....	(271,484)	17,028,516	58,593,516
Total capitalization .....	<u>\$ 2,080,927</u>	<u>\$ 19,380,927</u>	<u>\$ 60,945,927</u>

(1) See Notes 4 and 5 of Notes to Consolidated Financial Statements.

(2) As of March 31, 1995, there were options outstanding to purchase a total of 3,795,800 shares of Common Stock at a weighted average exercise price of \$0.10 per share and 2,364,638 shares were reserved for grant of future options under the Company's 1994 Stock Option Plan. Subsequent to March 31, 1995 and through May 31, 1995, the Board of Directors granted options to purchase an additional 1,671,000 shares at a weighted average exercise price of \$0.27 per share. In addition, the Board of Directors adopted the 1995 Stock Option Plan, the 1995 Employee Stock Purchase Plan and the 1995 Director Option Plan, pursuant to which 4,500,000, 1,000,000 and 100,000 shares, respectively, were reserved for issuance thereunder. See "Management — Stock Plans" and Notes 6 and 10 of Notes to Consolidated Financial Statements.

## DILUTION

The pro forma net tangible book value of the Company as of March 31, 1995, including the issuance of 2,000,000 shares of Series C Preferred Stock in April 1995 for net proceeds of approximately \$17,300,000, was \$16,983,516 or \$0.63 per share of Common Stock. Pro forma net tangible book value per share is determined by dividing the pro forma tangible book value of the Company (total tangible assets less total liabilities) by the number of outstanding shares of Common Stock at that date (assuming the conversion of each outstanding share of Preferred Stock, including 2,000,000 shares of Series C Preferred Stock issued in April 1995, into two shares of Common Stock). After giving effect to the sale by the Company of the 3,500,000 shares of Common Stock offered hereby (based upon an assumed initial public offering price of \$13.00 per share and after deduction of estimated underwriting discounts and commissions and estimated offering expenses), the Company's pro forma net tangible book value at March 31, 1995 would have been \$58,548,516 or \$1.93 per share. This represents an immediate increase in pro forma net tangible book value to existing stockholders of \$1.30 per share and an immediate dilution to new investors of \$11.07 per share. The following table illustrates the per share dilution:

Assumed initial public offering price per share .....	\$13.00
Pro forma net tangible book value per share as of March 31, 1995 .....	\$ 0.63
Increase in pro forma net tangible book value per share attributable to new investors .....	1.30
Pro forma net tangible book value per share after offering .....	<u>1.93</u>
Dilution per share to new investors .....	<u>\$11.07</u>

The following table sets forth on a pro forma basis as of March 31, 1995 the difference between the number of shares of Common Stock purchased from the Company, the total consideration paid, and the average price per share paid by the existing stockholders and by the new investors (based upon an assumed initial public offering price of \$13.00 per share before deduction of estimated underwriting discounts and commissions and estimated offering expenses), assuming the conversion of each outstanding share of Preferred Stock, including 2,000,000 shares of Series C Preferred Stock issued in April 1995, into two shares of Common Stock:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders .....	26,776,244	88.4%	\$28,024,805	38.1%	\$ 1.05
New investors .....	3,500,000	11.6	45,500,000	61.9	13.00
Total .....	<u>30,276,244</u>	<u>100.0%</u>	<u>\$73,524,805</u>	<u>100.0%</u>	

The foregoing table assumes no exercise of the Underwriters' over-allotment option and no exercise of stock options outstanding at March 31, 1995. As of March 31, 1995, there were options outstanding to purchase a total of 3,795,800 shares of Common Stock at a weighted average exercise price of \$0.10 per share and 2,364,638 shares were reserved for grant of future options under the Company's 1994 Stock Option Plan. Subsequent to March 31, 1995 and through May 31, 1995, the Board of Directors granted options to purchase an additional 1,671,000 shares at a weighted average exercise price of \$0.27 per share. In addition, the Board of Directors adopted the 1995 Stock Option Plan, the 1995 Employee Stock Purchase Plan and the 1995 Director Option Plan, pursuant to which 4,500,000, 1,000,000 and 100,000 shares, respectively, were reserved for issuance thereunder. To the extent that any of these options are exercised, there will be further dilution to new investors. See "Capitalization," "Management — Stock Plans" and Notes 6 and 10 of Notes to Consolidated Financial Statements.

## SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with the consolidated financial statements and the notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere herein. The consolidated statement of operations data set forth below with respect to the period from inception (April 4, 1994) to December 31, 1994, and the consolidated balance sheet data at December 31, 1994, are derived from, and are qualified by reference to, the audited consolidated financial statements included elsewhere in this Prospectus and should be read in conjunction with those consolidated financial statements and notes thereto. The consolidated statement of operations data for the quarter ended March 31, 1995, and the balance sheet data at March 31, 1995, are derived from unaudited consolidated financial statements that have been prepared on the same basis as the audited financial statements and in the opinion of management, contain all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the results of operations for such period. The historical results are not necessarily indicative of the results of operations to be expected in the future.

	Inception (April 4, 1994) to December 31, 1994	Quarter Ended March 31, 1995
<b>Consolidated Statement of Operations Data:</b>		
<b>Revenues:</b>		
Product revenues .....	\$ 378,490	\$ 4,496,031
Service revenues .....	317,381	241,560
Total revenues .....	695,871	4,737,591
<b>Cost of revenues:</b>		
Cost of product revenues .....	114,777	273,169
Cost of service revenues .....	104,313	61,732
Total cost of revenues .....	219,090	334,901
Gross profit .....	476,781	4,402,690
<b>Operating expenses:</b>		
Research and development .....	2,031,986	1,981,292
Sales and marketing .....	2,813,689	2,897,915
General and administrative .....	1,669,193	1,740,524
Property rights agreement and related charges .....	2,486,688	500,000
Total operating expenses .....	9,001,556	7,119,731
Operating loss .....	(8,524,775)	(2,717,041)
Interest income .....	55,238	45,074
Interest expense .....	(308)	(27,056)
Net loss .....	\$ (8,469,845)	\$ (2,699,023)
Net loss per share .....	\$ (0.25)	\$ (0.08)
Shares used in computing net loss per share .....	33,481,438	34,255,882
	<u>December 31, 1994</u>	<u>March 31, 1995</u>
<b>Consolidated Balance Sheet Data:</b>		
Working capital (deficit) .....	\$(1,337,613)	\$(2,587,063)
Total assets .....	7,158,641	12,312,523
Long-term obligations .....	725,000	2,352,411
Stockholders' equity (deficit) .....	1,083,585	(271,484)



## **MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Overview**

Netscape Communications Corporation is a leading provider of open client, server and integrated applications software that enables information exchange and commerce over the Internet and private IP networks. The Company was formed in April 1994 and commenced shipments of its initial product in December 1994. Through March 31, 1995, the Company derived the substantial majority of its revenues from product licenses. In particular, for the quarter ended March 31, 1995, product revenue from Netscape Navigator and Netscape Commerce Server accounted for 52% and 32%, respectively, of the Company's total product revenues. In addition, bundled product licenses that included both Netscape Navigator and Netscape Commerce Server, accounted for an additional 10% of the Company's product revenues in the quarter ended March 31, 1995.

The Company has only a limited operating history upon which an evaluation of the Company and its prospects can be based. The Company's prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in their early stage of development, particularly companies in new and rapidly evolving markets. To address these risks, the Company must, among other things, respond to competitive developments, continue to attract, retain and motivate qualified persons, and continue to upgrade its technologies and commercialize products and services incorporating such technologies. There can be no assurance that the Company will be successful in addressing such risks. The Company has incurred net losses since inception and expects to continue to operate at a loss for the foreseeable future. As of March 31, 1995, the Company had an accumulated deficit of \$11.2 million. Although the Company has experienced revenue growth in recent periods, such growth rates will not be sustainable and are not indicative of future operating results. There can be no assurance that the Company will achieve or sustain profitability.

### **Results of Operations**

#### ***Revenues***

The Company derives its revenues from license fees for its software products and fees for services, which are generally charged separately from software licenses. Product revenues consist of product licensing fees, and service revenues consist of fees for maintenance and support services, training, consulting and advertising space. Product revenues are recognized upon delivery only if no significant obligations of the Company remain and collection of the resulting receivable is considered probable. Product returns and sales allowances (which have not been significant through March 31, 1995) and costs of free telephone support are estimated and provided for at the time of sale. Service revenues from customer maintenance fees for ongoing customer support and product updates are recognized ratably over the term of the maintenance agreement, which is typically 12 months. Payment for maintenance fees are generally made in advance and are non-refundable. Service revenues from training and consulting are recognized when the services are performed. Service revenues from the sale of advertising space are recognized in the period in which the advertisement is displayed on the Company's home page.

**Total Revenues.** Total revenues were \$696,000 and \$4,738,000 for the period from inception (April 4, 1994) through December 31, 1994 (the "Inception Period") and for the quarter ended March 31, 1995, respectively. The Inception Period reflects only two weeks of product sales and service revenues. The quarter ended March 31, 1995 is the first full quarter in which the Company's products and services were made commercially available. Digital and SGI accounted for 14% and 9%, respectively, of total revenues in the quarter ended March 31, 1995.

**Product Revenues.** Product revenues were \$379,000 and \$4,496,000 for the Inception Period and for the quarter ended March 31, 1995, respectively. Product revenues in the Inception Period and the quarter ended March 31, 1995 were attributable to licenses of Netscape Navigator, Netscape Commerce Server and Netscape Communications Server. During each of these periods, licenses of Netscape Navigator accounted for a majority of the Company's product revenues.

Through the quarter ended March 31, 1995, the Company had distributed substantially all of its products through direct sales (including field sales and telesales), sales over the Internet through the Company's electronic store and OEMs. Beginning in the quarter ending June 30, 1995, the Company began offering its products through VARs and through distribution for retail sale. Currently, only the Company's Netscape Navigator Personal Edition product is being offered through distribution for retail sale.

**Service Revenues.** Service revenues were \$317,000 and \$242,000 for the Inception Period and for the quarter ended March 31, 1995, respectively. In each of the Inception Period and the quarter ended March 31, 1995, service revenues were attributable to fees for consulting, maintenance and support and, to a lesser extent, training. The Company began selling advertising space on its home page in the quarter ending June 30, 1995. The Company expects that service revenues will increase as a percentage of total revenues in the future.

**International Revenues.** International revenues (sales outside of North America) were immaterial in the Inception Period and were approximately 10% of total revenues for the quarter ended March 31, 1995. As of March 31, 1995, all international revenues had been recognized by the U.S. parent corporation and denominated in U.S. currency. The Company established a subsidiary in Japan in December 1994 and intends to establish subsidiaries in Europe. Although its Japanese subsidiary had not recognized any revenues as of March 31, 1995, it had entered into several OEM reseller arrangements pursuant to which it has received prepaid royalty payments denominated and collected in Japanese currency. Such prepaid royalties have been deferred at March 31, 1995 due to the Company's remaining obligation to deliver foreign country localized versions of its products. The Company expects to invoice customers of its international subsidiaries in local currencies. The Company has not engaged in foreign currency hedging activities, and international revenues are currently subject to currency exchange fluctuation risks. The Company anticipates that international revenues will increase as a percentage of total revenues in the future, and, as a result, foreign currency exposure may increase.

#### **Cost of Revenues**

**Cost of Product Revenues.** Cost of product revenues consists primarily of the cost of product media and duplication, manuals, packaging materials, amounts paid for licensed technology, and fees paid to third party vendors for sales administration, order fulfillment and free telephone support. Cost of product revenues was \$115,000 and \$273,000 for the Inception Period and for the quarter ended March 31, 1995, respectively, and was 30% and 6%, respectively, of the related product revenues. In each of the Inception Period and the quarter ended March 31, 1995, cost of product revenues consisted primarily of the cost of product media and duplication, manuals, packing materials and fees paid to third party vendors. The Company believes that cost of product revenues may increase as a percentage of the related product revenues in future periods due to amounts paid for licensed technology to be incorporated in future products and increased costs associated with providing free telephone support. Some of the Company's products include free telephone support for a certain period of time and such costs are accrued at the time of sale. Increases in the cost of product revenues as a percentage of the related product revenues would adversely effect gross margins. All development costs incurred to date in the research and development of new software products and enhancements to existing software products have been expensed as incurred. As a result, cost of product revenues does not include amortization of capitalized software development costs. See Note 1 of Notes to Consolidated Financial Statements.

**Cost of Service Revenues.** Cost of service revenues consists primarily of personnel related costs incurred in providing customer support, consulting services and training to customers. Cost of service revenues also includes fees paid to a third party related to the sale of advertising space on the Company's home page. Cost of service revenues was \$104,000 and \$62,000 for the Inception Period and for the quarter ended March 31, 1995, respectively, and was 33% and 26%, respectively, of related service revenues. In each of the Inception Period and the quarter ended March 31, 1995, cost of service revenues related primarily to consulting services and to maintenance and support provided by the Company. In future periods, the Company believes that the cost of service revenues will increase as a percentage of the related service revenues as a result of personnel related costs incurred in building the Company's customer support and training organizations and due to fees

incurred in connection with selling advertising space. Increases in the cost of service revenues as a percentage of related service revenues would have an adverse impact on the Company's gross margins.

Gross margins may be impacted by the mix of distribution channels used by the Company, the mix of products sold, the mix of product revenues versus service revenues and the mix of international versus North American revenues. The Company typically realizes higher gross margins on direct sales than on sales through indirect channels and higher gross margins on product revenues than on service revenues. If sales through indirect channels, especially OEMs and VARs, increase as a percentage of total revenue, or if, as the Company anticipates, service revenues increase as a percentage of total revenues, the Company's gross margins will be adversely impacted.

### *Operating Expenses*

The Company's operating expenses have increased in absolute dollar amounts in every consecutive quarter through the quarter ended March 31, 1995. This trend reflects the Company's rapid transition from the product development phase to its first full quarter of marketing and licensing products and offering services. The Company believes that continued expansion of operations is essential to achieving and maintaining market leadership. As a consequence, the Company intends to continue to increase expenditures in all operating areas.

The Company has recorded deferred stock compensation of \$2,579,000 for the difference between the grant price and the deemed fair value of the Company's Common Stock for 6,654,600 shares subject to options granted in the first quarter of 1995. The deferred stock compensation is being amortized to operating expenses over the related 50-month vesting periods of the options. In addition, the Company intends to record a significant amount of deferred stock compensation in the second quarter of 1995. The amortization of all such deferred stock compensation amounts over future periods, generally 50 months, will have a material adverse impact on the Company's results of operations.

**Research and Development.** Research and development expenses consist primarily of salaries and consulting fees to support product development. Research and development expenses were \$2,032,000 and \$1,981,000 for the Inception Period and for the quarter ended March 31, 1995, respectively, and were 292% and 42%, respectively, of total revenues. Research and development expenses for the quarter ended March 31, 1995 included a non-cash charge of \$16,000 related to the amortization of deferred stock compensation. To date, all software development costs have been expensed as incurred. The Company believes that significant investments in research and development are required to remain competitive in the software business. As a consequence, the Company intends to increase the absolute amount of its research and development expenditures in the future.

**Sales and Marketing.** Sales and marketing expenses consist primarily of salaries (including sales commissions), consulting fees, trade show expenses, advertising and cost of marketing literature. Sales and marketing expenses were \$2,814,000 and \$2,898,000 for the Inception Period and for the quarter ended March 31, 1995, respectively, and were 404% and 61%, respectively, of total revenues. Sales and marketing expenses for the quarter ended March 31, 1995 included a non-cash charge of \$25,000 related to the amortization of deferred stock compensation. The Company intends to increase the level of sales and marketing expenses in future periods.

**General and Administrative.** General and administrative expenses consist primarily of salaries and fees for professional services. General and administrative expenses were \$1,669,000 and \$1,741,000 for the Inception Period and for the quarter ended March 31, 1995, respectively, and were 240% and 37%, respectively, of total revenues. General and administrative expenses for the quarter ended March 31, 1995 included a non-cash charge of \$821,000 related to the amortization of deferred stock compensation. The Company intends to increase the level of general and administrative expenses in future periods.

**Property Rights Agreement and Related Charges.** The Company has segregated certain expenses totaling \$2,487,000 and \$500,000 for the Inception Period and for the quarter ended March 31, 1995, respectively. These expenses relate to an agreement with the University of Illinois and Spyglass and associated

costs, including fees for expert and professional services, trademark search costs and other related expenses. The Company will incur additional charges related to this agreement in the event that it enters into certain types of agreements with two specified companies. See Note 5 of Notes to Consolidated Financial Statements.

#### ***Income Taxes***

As of December 31, 1994, the Company had federal net operating loss carryforwards of approximately \$7,000,000. The Company also had federal research and development tax credit carryforwards of approximately \$90,000. The net operating loss and credit carryforwards will expire in 2009 if not utilized. The Company also has state net operating loss carryforwards of approximately \$5,000,000 which will expire in 2002 if not utilized. Utilization of the net operating losses and credits may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986 and similar state provisions. See Note 7 of Notes to Consolidated Financial Statements.

#### **Factors Affecting Operating Results**

As a result of the Company's limited operating history, the Company does not have historical financial data for a significant number of periods on which to base planned operating expenses. Accordingly, the Company's expense levels are based in part on its expectations as to future revenues and to a large extent are fixed. However, the Company typically operates with no backlog. As a result, quarterly sales and operating results generally depend on the volume and timing of and ability to fulfill orders received within the quarter, which are difficult to forecast. The Company may be unable to adjust spending in a timely manner to compensate for any unexpected revenues shortfall. Accordingly, any significant shortfall of demand for the Company's products and services in relation to the Company's expectations would have an immediate adverse impact on the Company's business, operating results and financial condition. In addition, the Company plans to increase its operating expenses to fund greater levels of research and development, increase its sales and marketing operations, develop new distribution channels and broaden its customer support capabilities. To the extent that such expenses precede or are not subsequently followed by increased revenues, the Company's business, operating results and financial condition will be materially adversely affected.

The Company has in the past and expects in the future to experience significant fluctuations in quarterly operating results that may be caused by many factors, including demand for the Company's products, introduction or enhancement of products by the Company and its competitors, market acceptance of new products, mix of distribution channels through which products are sold, mix of products and services sold, and general economic conditions. As a result, the Company believes that period-to-period comparisons of its results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance. Due to all of the foregoing factors, it is likely that in some future quarter the Company's operating results will be below the expectations of public market analysts and investors. In such event, the price of the Company's Common Stock would likely be materially adversely affected.

#### **Liquidity and Capital Resources**

The Company has primarily financed its operations through private sales of equity securities. In the quarter ended March 31, 1995, cash provided by operating activities of \$803,000 was primarily attributable to an increase in deferred revenues, partially offset by the growth in accounts receivable and a net loss. Cash used in investment activities in the quarter ended March 31, 1995 related primarily to \$1,667,000 in capital expenditures. Cash flows from financing activities in the quarter ended March 31, 1995 of \$2,584,000 were primarily attributable to the net proceeds from the issuance of installment notes payable, and, to a lesser extent, Common Stock.

Deferred revenues consists of the unrecognized portion of revenues received pursuant to maintenance and support contracts and pursuant to OEM reseller agreements with significant obligations remaining. Pursuant to the OEM reseller agreements, the Company receives non-refundable prepaid royalties. The significant obligations resulting in the deferral of revenues relate primarily to unreleased products. Deferred revenues increased from \$2,575,000 at December 31, 1994 to \$7,245,000 at March 31, 1995 due to an increase in the number of OEM reseller agreements and, to a lesser extent, the number of maintenance and support contracts.

Capital expenditures were approximately \$2,663,000 and \$1,667,000 for the Inception Period and the quarter ended March 31, 1995, respectively. The Company has no material commitments other than obligations under installment notes payable and operating leases. The Company estimates that 1995 capital expenditures will be approximately \$12,000,000, of which \$5,000,000 is related to the implementation of a new management information systems. See Note 3 of Notes to Consolidated Financial Statements.

At March 31, 1995, the Company's principal source of liquidity was approximately \$4,900,000 in cash and cash equivalents. In addition, the Company completed an equity financing in April 1995 that resulted in net proceeds of approximately \$17,300,000 to the Company. Further, the Company has a \$2,200,000 debt facility agreement, secured by certain assets of the Company, of which \$100,000 was available at March 31, 1995. See Note 4 of Notes to Consolidated Financial Statements.

The Company adopted Statement of Financial Accounting Standards ("SFAS") No. 115, "Accounting for Certain Investments in Debt and Equity Securities," during the Inception Period. The adoption of SFAS No. 115 did not have a material impact on the Company's results of operations or financial condition.

The Company believes that the net proceeds from this offering, together with available funds and cash flows expected to be generated by operations, will be sufficient to meet its anticipated cash needs for working capital and capital expenditures for at least the next 12 months. Thereafter, if cash generated by operations is insufficient to satisfy the Company's liquidity requirements, the Company may sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity or convertible debt securities will result in additional dilution to the Company's stockholders.

## BUSINESS

### Overview

Netscape is a leading provider of open client, server and integrated applications software that enables information exchange and commerce over the Internet and private IP networks. The Company's products are designed to deliver high levels of performance, ease of use and security. These products allow individuals and organizations to execute secure financial transactions across the Internet, such as the buying and selling of merchandise, publications, software and information. In addition, through the use of the Company's software, organizations can extend their internal information systems and enterprise applications to geographically dispersed facilities, remote offices and mobile employees.

### Industry Background

#### *Internet*

The Internet is a global web of computer networks which International Data Corporation ("IDC") estimates had approximately 38 million users worldwide at the end of 1994. IDC estimates that today approximately 73%, or 28 million, of these users are in organizations connecting private IP networks to the Internet to access e-mail and newsgroups. By 1999, IDC estimates that there will be nearly 200 million users of the Internet. Of these users, IDC estimates that 125 million users will have full Internet access, which, in addition to e-mail and newsgroups, includes file transfer capabilities and access to graphic and multimedia information on the World Wide Web.

Developed over 25 years ago, this "network of networks" allows any computer attached to the Internet to talk to any other using the Internet Protocol. The Internet has historically been used by academic institutions, defense contractors and government agencies primarily for remote access to host computers and for sending and receiving e-mail and has traditionally been subsidized by the U.S. Federal Government. As an increasing number of commercial entities have come to rely on the Internet for business communications and commerce, the level of federal subsidies has significantly diminished, and funding for the Internet infrastructure and backbone operations has shifted primarily to the private sector. In addition, according to industry market research, in October 1994 the number of commercial domains on the Internet surpassed the number of educational domains for the first time. Industry sources also estimate that in the 12 months ending January 1995, approximately 2.6 million additional servers were connected to the Internet, for a total of approximately 4.9 million Internet servers.

Further, individuals are connecting directly to the Internet through Internet access services such as those provided by MCI Telecommunications Corporation ("MCI"), NETCOM, Performance Systems International, Inc. ("PSI"), and UUNET Technologies, Inc. ("UUNET"). These services are growing as easy-to-use software packages make accessing the Internet as easy as getting onto the popular consumer online services. To compete with these direct Internet access providers, consumer online services including America OnLine, Inc. ("AOL"), CompuServe, Inc. ("CompuServe"), and Prodigy Services Co. ("Prodigy"), have also introduced Internet access gateways for their existing subscribers. With these gateways, the online services effectively become large Internet "on-ramps," bringing large numbers of subscribers onto the Internet. IDC estimates that by the end of 1996, more than 16 million subscribers to consumer online services will have full Internet access, as compared to less than one million at the end of 1994.

#### *World Wide Web*

Much of the recent growth in Internet use by businesses and individuals has been driven by the emergence of a network of servers and information available on the Internet called the World Wide Web ("Web"). The Web, based on a client/server model and a set of standards for information access and navigation, can be accessed using software that allows non-technical users to exploit the capabilities of the Internet. The Web enables users to find, retrieve and link information on the Internet in a consistent way that makes the underlying complexities transparent to the user. Electronic documents are published on Web servers in a common format described by the Hypertext Markup Language ("HTML"). Web client software can retrieve these documents across the Internet by making requests using a standard protocol called Hypertext Transfer Protocol ("HTTP"). The first Web client (or "browser") with a graphical user interface to utilize these protocols was NCSA Mosaic, first released in April 1993 by the National Center for Supercomputing Applications at the University of Illinois ("NCSA"). The Netscape Navigator, introduced in

December 1994, was the first commercially available Web client to include built-in security capabilities, facilitating commercial transactions over the Internet.

The proliferation of Web clients has created significant demand for software to enable Internet servers and private servers on corporate networks to function as Web servers. These servers are used by content providers to offer their products and services on the Internet and to publish confidential company information to employees inside the enterprise. Industry market research estimates that there were over 22,000 Web-capable servers on the Internet by May 1995, as compared with approximately 1,265 in June 1994. Web usage is expected to be further fueled by advances in Web client, server and application software, in concert with technological developments that drive cost reductions and performance enhancements.

### *Internet Commerce*

The Internet provides organizations with new means to conduct business. Commercial uses of the Internet include business-to-business and business-to-consumer transactions, product marketing, advertising, entertainment, electronic publishing, electronic services and customer support. The Internet offers a new and powerful medium for traditional retail and mail order businesses to target and manage a wider customer base more rapidly, economically and productively. The Company believes that only a small fraction of this retail business is currently conducted electronically. Another important application for Internet commerce is electronic publishing through advertiser supported and fee-based Internet services. Electronic publishing offers substantial savings as compared to publishing on paper or computer discs. In addition, Web software permits the publishing of audio files and video clips as well as text and graphical data.

In addition to retailers and publishers, other new businesses are appearing on the Web as it provides access to a growing base of education, business and home customers. Business information providers such as DowJones, Individual, Inc., and Reuters have started customized news services on the Web. Financial service institutions are providing online banking information, stock information and trading services. Examples of popular consumer information services recently introduced include ESPNNet, Knight-Ridder's Mercury Center and Sportline U.S.A. Companies from many industries are publishing product and company information to their channel partners and customers, providing customer support via the Web, allowing customers to immediately buy products online, and collecting customer feedback and demographic information interactively.

### *Enterprise Applications*

As an increasing number of organizations provide their employees with Web access from their desktops, an opportunity is emerging for internal information systems and enterprise applications hosted on internal Web servers. The Internet enables organizations to extend their internal information systems and enterprise applications to geographically dispersed facilities, remote offices, and mobile employees using Web client and server software. IDC estimates that shipments of IP-enabled computers increased from 1.5 million in 1992 to 5.2 million in 1994. The Company believes that organizations will increasingly use private IP networks to improve communications, distribute information, lower operating costs and re-engineer operations.

For example, Web servers with secure communications capabilities will enable organizations to electronically publish confidential company information within departments and across company locations. Secure news servers can be used to host discussion groups and facilitate corporate communications in a manner similar to groupware products such as Lotus Notes. Through the use of Web client and server software, organizations can implement "team computing," thereby allowing engineers and product marketing people to collaborate more effectively to speed product development and improve time to market. In addition, sales, product and order information can be published in internal Web servers for access by a sales force to ensure that information critical to the selling process is readily available.

The Company believes that the market opportunity for Web server software inside the internal enterprise application is substantial. IDC estimates that by the end of 1995 there will be more than 10 million servers on private enterprise networks, and that number is estimated to grow to more than 25 million in 1997.

### **Netscape**

Netscape is a leading provider of open client, server and integrated applications software that enables information exchange and commerce over the Internet and private IP networks. The Company's products are designed to deliver high levels of performance, ease of use and security. These products allow individuals and organizations to execute secure financial transactions across the Internet, such as the buying and selling of merchandise, publications, software and information. In addition, through the use of the Company's software, organizations can extend their internal information systems and enterprise applications to geographically dispersed facilities, remote offices and mobile employees.

The Company's goal is to make its software the de facto standard for publishing information and executing transactions on the Internet and private IP networks. The Company's strategy is to enable enhanced communications and electronic commerce by developing and offering industry leading software and services. The Company's strategy includes the following key elements:

#### ***Offer Complete Suite of Easy-to-Use, High Performance, Secure Internet and IP-based Software***

To address the issues that have historically limited the use of the Internet as a popular communications network and commercial marketplace, the Company's products include the following features:

***Comprehensive Product Line.*** The Company offers a suite of client, server and integrated applications software products that support communications, electronic commerce, electronic publishing and related uses for the enterprise and the individual.

***Ease of Use.*** The Company's client software provides a consistent point and click graphical user interface that is independent of the server protocol, client operating system or means of network access. The Company's server software facilitates the operation of Web server sites by providing capabilities such as subscriber administration and content management.

***High Performance and Scalability.*** The Company's products are engineered for rapid retrieval and display of information, even at the relatively low 14.4 kbps dial-up transmission speeds employed by many users. The Company's suite of products support a complete spectrum of multimedia content, including a variety of text, graphical images and audio and video formats, and are compatible with industry standard Web servers and browsers. In addition, the Company's server products employ a multiprocessing technology which enables them to support a large number of users.

***Multi-platform Support.*** The Company's software is designed to operate on most popular computer platforms including Microsoft Windows and Windows NT, Apple Macintosh and numerous versions of the Unix operating system. In addition, the Company expects to support Windows 95.

***Enhanced Security.*** The Company's products employ leading IBM OS/2 open standards for data and communications security and are designed to enable secure commerce and communications. The Company has defined and implemented its security architecture, the Secure Sockets Layer, based upon encryption and server authentication technology licensed from RSA Data Security, Inc., a leader in computer data security. A group of 19 industry-leading companies in the banking, credit card, communications, software and computer hardware businesses have announced their support for SSL.

#### ***Leverage Relationships With Leading Strategic Partners***

To accelerate the acceptance of the Company's products and facilitate the adoption of the Internet as a communications network and a commercial marketplace, the Company has developed strategic partnerships with leading technology, infrastructure and financial services partners.

***Technology Providers.*** The Company has entered into and intends to further pursue selected technology licenses and partnerships. These relationships are designed to ensure the compatibility of Netscape's products with other complementary, leading technologies and tools. For example, to facilitate content creation and management for the Internet, the Company has worked with leading multimedia publishing providers, such as



Adobe Systems Incorporated and Macromedia, Inc. To enhance the functionality of its Netscape Navigator Personal Edition client product, the Company has licensed complementary networking software from Shiva Corporation and the Eudora electronic mail application from Qualcomm, Inc. The Company also has a license to bundle the Oracle database with its integrated applications products. Further, Netscape intends to incorporate Sun's Java programming language into certain of its products, further enhancing the capability of Netscape's clients to display and manipulate information.

**Infrastructure Providers.** The Company has developed and intends to continue to develop strategic relationships with the leading telecommunications companies and Internet access service providers worldwide. For example, MCI deploys Netscape client and server software for the internetMCI service and marketplaceMCI online. In addition, Pacific Bell has selected Netscape client software for its Internet product offerings. The Company also has Internet access agreements with MCI, Portal Information Network and NETCOM to allow purchasers of the Netscape Navigator Personal Edition to choose between those service providers in automatically registering for Internet access. The Company intends to allow additional Internet service providers to offer their service through Netscape's user registration server.

**Financial Services Providers.** The Company is pursuing relationships with leading banks and transaction processing companies, such as First Data Corporation and Wells Fargo Bank, N.A., to establish a secure financial payment system on the Internet. Netscape is also a member of the CommerceNet consortium, which is working towards the first large scale market trial of electronic commerce on the Internet.

#### ***Support and Enhance Open Industry Standards***

By leveraging existing technologies and standards, the Company intends to shorten its product time to market and accelerate and broaden market acceptance of its products. All of Netscape's products are designed based on existing Internet standards and are compatible with the installed base of Web servers and clients. The Company also actively participates in leading standard setting organizations including the Internet Engineering Task Force and the World Wide Web Consortium. The Company intends to implement and proactively contribute to future standards created by these standard setting entities. For example, the Company has proposed its SSL security architecture to the World Wide Web Consortium as a new open standard for secure Internet communications. In addition, the Company has joined a consortium of companies to invest in Terisa Systems, Inc. ("Terisa"), which will promote and sell development tools using security protocols, such as SSL and Secure Hypertext Transfer Protocol ("SHTTP"). The Company intends to incorporate SHTTP into its products and intends to work as a shareholder in Terisa to promote the broadest adoption of open security protocols as SSL and SHTTP. The Company has also proposed its extensions to the HTML language to the World Wide Web Consortium for inclusion in a new generation of the HTML standard.

#### ***Develop Multiple Distribution Channels***

The Company's objective is to become the de facto industry standard by rapidly disseminating its products and services through multiple distribution channels worldwide.

**Direct Channels.** The Company's direct distribution channels include a direct sales force and telesales. The direct sales force targets medium to large-sized organizations for Internet commerce and enterprise communications market opportunities. These organizations require server software for individual sites or on-line services, typically large-scale applications, often including financial transaction processing and security. Other enterprise applications require multi-server installations and large site licenses for clients. In cases where customers require industry-specific applications, the Company also provides training, support and consulting.

**Indirect Channels.** The Company distributes its products indirectly through OEMs, systems integrators, VARs and software retailers. Computer equipment OEMs, systems integrators and VARs complement the Company's direct sales efforts for institutional customers and provide sales support and service primarily for server products. Telecommunication and online service companies, as providers of Internet access, also sell the Company's products to individual business and home PC users for personal information publishing, browsing and shopping. For example, the Company has agreements with Digital, SGI, Sun, Apple, Mitsubishi

Corporation ("Mitsubishi"), Toshiba Corporation ("Toshiba"), NEC Corporation ("NEC"), Sony Corporation ("Sony"), Novell, MCI, Pacific Bell, Delphi Internet Services Corporation ("Delphi") and others to bundle Netscape's server or client software with certain of their product offerings. Customers can also purchase Netscape Navigator Personal Edition software at traditional software retailers.

**Internet Distribution.** Organizations and individuals also have the option to evaluate and purchase software directly from the Company via the Internet. The Company believes that this strategy has facilitated the acceptance of its products and establishment of its brand name.

#### ***Industry Leading Technical and Management Teams***

The Company believes that one of its key competitive advantages is its development and management teams. The Company's core development group includes key members of the engineering teams that developed the original Mosaic Web client at NCSA and the original Web server software at Centre for European Particle Research ("CERN") and NCSA, as well as leading software security specialists.

The Company has also established a senior management team which combines leading executives from several of the key industries involved in the Internet, including telecommunications, software and computing industries. For example, James H. Clark, the Company's Chairman, is the founder and former Chairman of the Board of Silicon Graphics, Inc. and James L. Barksdale, the Company's President and Chief Executive Officer, was President and Chief Executive Officer of AT&T Wireless Services and Chief Operating Officer as well as Chief Information Officer of Federal Express Corporation.

#### **Products**

The Company provides a comprehensive line of client, server and application software for communications and commerce on the Internet and private IP networks. These products enable the retrieval and presentation of information and dynamically changing data in multiple forms, including video, audio and graphical content. These products are designed to provide enhanced security for the controlled access of confidential information on private IP networks and the Internet and the execution of financial transactions.

Market	Product Type	Netscape Product	U.S. End User Price
Individual PC User	Client	Navigator LAN Edition	\$39
		Navigator Personal Edition	\$45
Enterprise	Server	Communications Server	\$1,500
		Commerce Server	\$5,000
		Proxy Server	\$2,500
		News Server*	\$2,500
Internet Commerce	Integrated Application	Merchant System	\$50,000+
		Publishing System*	\$50,000+
		Community System*	\$50,000+
		IStore*	\$20,000+

\* Expected to be commercially available by the end of 1995

#### ***Netscape Client Software***

The Netscape Navigator product line is client software that allows users to easily exchange information and conduct commerce on the Internet. Netscape Navigator features a point-and-click graphical user interface and hyperlink capability that enable users to navigate the Internet's vast array of networked resources. Netscape Navigator integrates all major Internet functions, including Web browsing, file transfers, news group communications and e-mail, under one simple, easy-to-learn and use interface.

Netscape Navigator features several improvements over other HTTP-compatible browsers:

**Speed.** The Company's client software is engineered for rapid retrieval and display of information, even at the relatively low 14.4 kbps dial-up transmission speeds employed by many users. Performance gains are substantially greater for users accessing the Internet over higher capacity lines. The Company's client software also employs technologies such as document and image caching and the simultaneous loading of multiple images to accelerate the presentation of information.

**Simplicity.** Netscape Navigator has been designed to make the Internet easy to learn and use. Netscape Navigator includes intuitive user interface technologies such as a toolbar for frequently used commands and bookmarks for quickly accessing Web sites. Additionally, Navigator works transparently with other software such as search tools and personal productivity applications.

**Open Standards.** Netscape Navigator software communicates seamlessly with virtually all popular Internet server protocols, including HTTP, file transfer protocol ("FTP") and simple mail transport protocol ("SMTP") making it compatible with the existing installed base of Web servers from a variety of vendors.

**Security.** Netscape Navigator is designed to provide enhanced security so communications with servers across the Internet can be protected against third party access or interference. This security is based on an encrypted data stream that will allow for future enhancements with new protocols.

**Consistency Across Platforms.** Netscape Navigator is available in functionally equivalent versions for Microsoft Windows and Windows NT, Apple Macintosh and various Unix platforms. This common look and feel is a major advantage in mixed computing environments, minimizing training and support. Netscape has introduced its beta version of the Navigator for Microsoft Windows 95 and expects to ship the commercial version by the end of 1995.

The Company currently offers two versions of its Navigator client software.

**Netscape Navigator LAN Edition.** Netscape Navigator LAN Edition is intended for users who already have IP connections to the Internet or internal networks. It incorporates all of the features described above and is available for Windows, Mac and various Unix platforms. It is compatible with all standard IP implementations on these platforms.

**Netscape Navigator Personal Edition.** Netscape Navigator Personal Edition is intended for companies and individuals without direct IP connections who want dial-up access to the Internet. It includes a fully integrated TCP/IP stack, an implementation of the Point to Point Protocol ("PPP"), a dialer and an e-mail application. All components are installed and configured through easy-to-use installation programs and feature automatic access to a choice of Internet service providers through Netscape's server.

#### ***Netscape Server Software***

Netscape server software provides the basic communication services, security, administration and other capabilities necessary for implementing and operating Web server sites.

**Multi-Platform Support.** Netscape server software currently operates on Intel-compatible PCs and on many of the leading Unix platforms, including those from Digital, HP, IBM, SGI and Sun. Netscape's Communications and Commerce servers also operate on the Microsoft Windows NT operating system.

**Open Standards.** Netscape server products support the HTTP, HTML and SSL protocols and, as a result, are compatible with the installed base of Web browsers. The Company also intends to support the SHTTP security protocol.

**High Performance and Scalability.** Netscape server products are based on process models which enable them to support a large number of users. Depending on the underlying platform, Netscape servers use either multi-threaded processing or a proprietary process management algorithm to efficiently handle peak demand. As a result, the Company believes its server software delivers documents faster than other HTTP servers.

**Ease of Use.** Netscape servers include automated installation and configuration capabilities, and improved user management and maintenance through use of intuitive, online forms.

**Security.** Netscape server products employ SSL server authentication and data encryption based on technology licensed from RSA. Server authentication uses a certificate and a digital signature to verify the legitimacy of the server. Data encryption protects the privacy of client/server communications by encrypting the data stream between two entities.

The Netscape server software line currently includes three products: the Netscape Communications Server, the Netscape Commerce Server, and the Netscape Proxy Server. The Company expects that the Netscape News Server will be commercially available by the end of 1995.

**Netscape Communications Server.** The Netscape Communications Server enables organizations to publish on the Internet and to reach new audiences online. In addition, corporations may conduct cost-effective online marketing and customer support programs, and may facilitate internal communications and collaborations among employees and workgroups.

**Netscape Commerce Server.** The Netscape Commerce Server provides all of the functionality of the Communications Server, plus SSL-based security features for transactions conducted over the Internet. On enterprise networks, the security features can be used to restrict access to information and applications.

**Netscape Proxy Server.** The Netscape Proxy Server is designed to improve the performance and security of communications within a private IP network or between a private IP network and the Internet. Performance is improved because the server stores frequently accessed pages locally. Security is enhanced because the server provides encrypted communications through a firewall onto the Internet.

**Netscape News Server.** The Netscape News Server, which is expected to be commercially available by the end of 1995, enables companies to create their own public and private discussion groups for information exchange between employees, customers or any other audience. It is compatible with the Internet's Usenet news hierarchy and incorporates the open SSL protocol, allowing users to create secure forums for confidential or proprietary information exchange.

#### ***Integrated Applications***

Netscape intends to offer comprehensive solutions that enable organizations to conduct full-scale electronic commerce on the Internet. These applications are being designed to address different business needs, including the presentation of multimedia formats, support for large numbers of merchants and products, the need for real time data management, support for special communities of interest, and the automation of high volumes of online transactions. All integrated applications are being designed to use the Netscape Commerce Server, which provides enhanced security, including data encryption and server authentication. These applications will be based on a modular architecture that enables integration between applications and the addition of Internet applications as needed. The integrated applications are being designed to provide the capability to manage large-scale commercial sites on the Internet.

All integrated applications are being designed to perform merchant authentication, credit authorization and transaction settlement. Merchant authentication will be performed by a certification authority that validates the server and gives it a signed digital signature that can be checked over the network. Credit card authorization will occur online by checking records to ensure no abnormal activity has occurred and that the transaction does not exceed the authorized credit limit. A merchant bank will perform transaction settlement by transferring funds from the customer's account to the merchant's account.

The Netscape Merchant Server was commercially released by the Company in March 1995. The Company expects to introduce the Netscape Publishing System, the Netscape Community Server and the Netscape IStore by the end of 1995.

**Netscape Merchant System.** The Merchant System allows users to set up and manage virtual storefronts. By storing product information in a relational database, it provides the flexibility to add and delete products, change prices and import new graphics. Furthermore, display pages are automatically updated, which simplifies the task of managing thousands of products.

With the Merchant System, shoppers may browse or make multi-level queries and view automatically generated pages displaying items that meet their stated criteria. An electronic shopping basket allows shoppers to hold items and allows purchases of any one or many products at a time of a customer's choosing, even if the basket contains items from several merchants in the mall. At the point of sale, the Merchant System automatically forwards the shopping basket and payment information to credit card authorization and processing partners.

**Netscape Publishing System.** The Publishing System, which is expected to be commercially available by the end of 1995, is designed for fee-based electronic publishers. It is being designed to allow organizations to display and update information dynamically and to provide the billing and management tools to make electronic publishing on the Internet viable.

The Publishing System will manage critical data for a publisher: content, files, pricing information, access authorization, user demographic information and advertising response rates. It is being designed to display context-sensitive advertising to subscribers based upon specified criteria, including available demographic information, entry path and time. The Publishing System will archive past issues, link related stories and create HTML pages on the fly in response to user queries by concept or keyword.

**Netscape Community System.** The Community System, which is expected to be commercially available by the end of 1995, is being designed to give organizations the ability to create virtual communities based upon shared interest. It will support such popular activities as e-mail, bulletin boards and news groups. These applications will let electronic publishers or merchants communicate with their customers in new ways, by explaining product features online and offering customer support.

**Netscape IStore.** Netscape IStore, which is expected to be commercially available by the end of 1995, is being designed to provide the integrated data management, on-line credit card authorization, billing and order-processing capabilities required for a single merchant to build and manage a virtual storefront. It will feature an embedded relational database for easy information tracking and management, pre-configured reports for easy information retrieval and analysis, and easy forms-based set-up and administration.

#### **Authoring Tools**

The Netscape authoring tools are currently under development by the Company and are currently scheduled for release in the first half of 1996. The Company is designing authoring tools to provide content providers with a software solution for building an online presence. The authoring tools are intended to extend beyond document creation and to leverage existing multimedia and document creation tools and formats. Content providers are expected to be able to more productively create, edit and organize documents specifically for the Internet to include hypermedia text with images, audio and video. By integrating and organizing multiple content creation and management tools and standards, the authoring tools are expected to provide a more compelling content creation environment for content providers. The Company believes that these tools, once developed, will significantly enhance the ability of electronic merchants and publishers to develop Web sites.

#### **Security Risks**

Despite the implementation into the Company's products of the SSL, the Company's products may be vulnerable to break-ins and similar disruptive problems caused by Internet users. Such computer break-ins and other disruptions would jeopardize the security of information stored in and transmitted through the computer systems of end users of the Company's products, which may result in significant liability to the Company and may also deter potential customers. Persistent security problems continue to plague public and private data networks. Recent break-ins reported in the press and otherwise occurred at GE, Sprint, and IBM, as well as the computer systems of NETCOM and the San Diego Supercomputer Center, and have included incidents involving hackers bypassing firewalls by posing as trusted computers and involving the theft of confidential information. Alleviating problems caused by third parties may require significant expenditures of capital and resources by the Company and may cause interruptions, delays, or cessation of service to the Company's customers; such expenditures or interruptions could have a material adverse effect on the

Company's business, operating results and financial condition. Moreover, the security and privacy concerns of existing and potential customers, as well as concerns related to computer viruses, may inhibit the growth of the Internet marketplace generally, and the Company's customer base and revenues in particular. The Company attempts to limit its liability to customers, including liability arising from a failure of the security feature contained in the Company's products, through contractual provisions. However, there can be no assurance that such limitations will be enforceable. The Company currently does not have product liability insurance to protect against these risks and there can be no assurance that such insurance will be available to the Company on commercially reasonable terms.

## **Services**

### ***Support Programs***

The Company has made a commitment to provide timely, high quality technical support to meet the diverse needs of its customers and partners and to facilitate the adoption and use of its products. The Company offers several support products:

***Netscape HelpDesk Support.*** The Company offers a full spectrum of annual support intended for organizations who need to internally support large-scale deployment of Netscape Navigator software and for authorized VARs and systems integrators providing direct support to their customers. This program offers access to technical experts, support and training materials, support tools call histories, maintenance releases and software updates.

***Netscape Consultation Support.*** For individuals and for small groups using Netscape Navigator software, the Company offers support through a toll-free telephone number on a time and materials payment basis. This service provides online technical support and bug fixes or software releases as required. Netscape Consultation Support is particularly economical for self-supporting departments who consolidate questions through a department system administrator.

***Netscape Server Licensee Support.*** The Company offers an annual support program targeted at system administrators who have licensed Netscape servers. The program features are similar to those in Netscape HelpDesk Support but are oriented toward the Netscape server software.

***Netscape Advanced Support.*** The Company offers medium to large-sized organizations and strategic partners 24 hour support, partner specific training and consulting, online access to support information, and early access to new software releases.

***Netscape Server Administration Training Course.*** The Company offers a two-day course intended for Unix system administrators who are implementing an Internet HTTP presence with Netscape software. The topics covered include server site preparation, configuration and installation, HTML authoring, security, CGI scripts, hands-on labs and a discussion of the Company and the role of its products on the Internet.

### ***Consulting***

The Company offers consulting services for particularly complex application design, integration and installation. Consulting services are provided at negotiated rates, and typically include on-site support during the installation process by Company engineers.

### ***Training***

Netscape offers hands-on training courses and materials to resellers and end users covering installation, configuration and troubleshooting. In addition, courses and materials cover security and encryption, user support, data loading and content creation, HTML user interface design, HTML template scripting and integration with the data base.

### ***Advertising Space***

For its most frequently visited Web pages, Netscape has created a program which enables advertisers to display their logo or message on a hyperlinked button with access to their Web site. The Company charges a monthly fee for the advertising spots which varies depending on the specific page location and the number of visits to the page.

### **Marketing and Distribution**

#### ***Target Markets***

The Company's target markets are the Internet commerce, enterprise and individual PC user markets.

**Internet Commerce Market.** The Company believes that many major corporations will begin to publish information on the Internet and to offer products and services for sale. Companies are expected to use the Internet to publish corporate product and support information as "electronic brochures". Corporations likely to offer products and services for sale include telecommunications companies, information service providers, mail order and traditional retailers, publishers, and financial service providers.

**Enterprise Market.** Medium and large-sized organizations, particularly those with geographically dispersed employee bases, are expected to increasingly use the Internet in conjunction with private IP networks to facilitate internal communications. Many Fortune 500 companies already maintain extensive private communication networks today, which can be enhanced and extended through use of the Internet.

**Individual PC Users.** While the number of business desktop computer users accessing the Internet is increasing rapidly, the Company believes that only a small fraction of business computer users currently use the Internet. In addition, the popularity of online information services, such as Prodigy, CompuServe and AOL, as well as home shopping services, such as QVC and Home Shopping Network, coupled with the approximately 33 million home computers estimated by IDC to be in the United States today, suggest that the home market for commercial applications on the Internet will be substantial. The accessibility and ease of use of the Company's products are designed to address the demands of this marketplace.

The key targeted markets are illustrated below:

<b>Target Markets</b>	<b>Netscape Products</b>	<b>Channels</b>
Internet Commerce	Merchant System Publishing System* Community System* IStore*	Systems Integrators VARs Direct Sales
Enterprise	Communications Server Commerce Server Proxy Server News Server*	OEMs Direct Sales Systems Integrators VARs Telesales Internet
Individual PC User	Navigator LAN Edition Navigator Personal Edition	Retail OEMs Telesales Internet

\* Expected to be commercially available by the end of 1995.

The market for the Company's software and services has only recently begun to develop, is rapidly evolving and is characterized by an increasing number of market entrants who have introduced or developed products and services for communication and commerce over the Internet and private IP networks. As is typical in the case of a new and rapidly evolving industry, demand and market acceptance for recently introduced products and services are subject to a high level of uncertainty. The industry is young and has few proven products. Moreover, critical issues concerning the commercial use of the Internet (including security, reliability, cost, ease of use and access, and quality of service) remain unresolved and may impact the growth of Internet use. While the Company believes that its software products offer significant advantages for commerce and communication over the Internet and private IP networks, there can be no assurance that Internet Commerce and communication will become widespread, or that the Company's products for commerce and communication over the Internet and private IP networks will become widely adopted for these purposes.

### ***Marketing***

The Company uses a variety of marketing programs to stimulate demand for its products and services. These programs are focused on the target markets mentioned above and are designed to leverage the Internet itself as a powerful marketing vehicle. In addition, the Company has developed co-marketing programs with channel partners designed to take advantage of their complementary marketing capabilities. The key elements of the Company's marketing strategy include:

***Marketing on the Internet.*** Netscape Navigator is designed to automatically access the Netscape home page on the Company's Web server each time it starts up. The home page provides frequently updated help for new users, news about the Company, directories to interesting sites on the Internet and a variety of product and technical support information. The Company makes its products available for evaluation and purchase through its home page. Customer information is collected electronically through an automated registration process, creating the basis for ongoing marketing of upgrades, new products, add-on products and merchandise.

***Target marketing.*** The Company focuses direct marketing efforts on new electronic merchants, companies now publishing on the Web and decision makers using the Internet for internal use in medium and large-sized enterprises. The Company addresses these customers through a referral program for Netscape Navigator users, outbound telemarketing, direct response advertising and seminar programs. The goal of these efforts is to identify potential buyers of the Company's products, create awareness of the Company's product offerings and generate leads for follow-on sales calls.

***Marketing to PC users.*** Client products are marketed widely to PC users in both the business and home PC market segments. Retail distribution through national resellers, reseller agreements with Internet access providers, and bundling arrangements with PC hardware and software OEMs are being used to make the Company's client products rapidly available to a large number of potential customers. In order to stimulate demand for its products, the Company also advertises in PC industry publications and engages in sales promotions with distribution partners.

### ***Distribution***

The Company's objective is to become the de facto industry standard in part through rapid dissemination of its products and services through multiple distribution channels worldwide. The Company has designed its distribution strategy to address the particular requirements of its diverse institutional and individual target customers. The Company's direct distribution efforts consist of a direct sales force and telesales as well as marketing directly via the Netscape home page on the Internet. The Company's products are distributed indirectly through OEMs, systems integrators, VARs and software retailers.

***Direct Sales.*** The Company's direct sales force targets primarily medium to large-sized organizations, including telecommunications companies, retailers, publishers and entertainment companies. The Company believes that these organizations are most likely to become the electronic merchants and information publishers for commerce on the Internet. In addition, these organizations have a substantial installed base of



private IP networks and are expected to employ Web servers for internal enterprise applications. In certain instances, the Company's direct sales force works with complementary hardware OEMs, VARs and systems integrators to deliver complete solutions for major customers.

**Telesales.** The Company's telesales organization, based in Mountain View, California, receives customer orders as well as proactively contacts potential customers obtained from a variety of sources.

**Internet Sales.** The Company offers its products and services electronically via the Internet. Internet sales and distribution is particularly well suited to address the large base of Internet users.

**OEMs.** The Company has established OEM relationships to leverage its sales efforts. For example, the Company has agreements with Digital, SGI, Sun, Apple, Mitsubishi, Toshiba, NEC, Sony, Novell, MCI, Pacific Bell, Delphi and others to bundle Netscape's server or client software with certain of their product offerings.

**VARs and Systems Integrators.** VARs and systems integrators customize, configure and install the Company's software products with complementary hardware, software and services. In combining these products and services, these resellers are able to deliver more complete Netscape-based solutions to address specific customer needs. The Company may also help these VARs and systems integrators design customized applications to meet the unique requirements of these customers. Since April 1, 1995, more than 150 VARs have been qualified by the Company to resell its products.

**Software Retailers.** In June 1995, the Company introduced its Netscape Navigator Personal Edition product for distribution through leading software retailers.

The Company has historically sold its products through direct sales and OEMs. The Company expects to increasingly utilize OEMs and has only recently begun utilizing systems integrators, VARs and software retailers (collectively, "Resellers"). The Company expects that any material increase in sales through Resellers as a percentage of total revenues, especially in the percentage of sales through OEMs and VARs, will adversely affect the Company's average selling prices and gross margins due to the lower unit prices that are typically charged when selling through indirect channels. Moreover, there can be no assurance that the Company will be able to attract Resellers that will be able to market the Company's products effectively and will be qualified to provide timely and cost-effective customer support and service. In addition, the Company's agreements with Resellers typically do not restrict Resellers from distributing competing products, and in many cases may be terminated by either party without cause. Further, in some cases the Company has granted exclusive distribution rights which are limited by territory and in duration. Consequently, the Company may be adversely affected should any Reseller fail to adequately penetrate its market segment. The inability to recruit, or the loss of, important Resellers, or their inability to penetrate their respective market segments, could materially adversely affect the Company's business, operating results or financial condition.

The Company plans to expand its field sales force and its telesales organization. There can be no assurance that such internal expansion will be successfully completed, that the cost of such expansion will not exceed the revenues generated, or that the Company's sales and marketing organization will be able to successfully compete against the significantly more extensive and well-funded sales and marketing operations of many of the Company's current or potential competitors. The Company's inability to effectively manage its internal expansion could have a material adverse effect on the Company's business, operating results or financial condition.

In addition to expanding its direct sales channels, the Company will continue to distribute its products electronically through the Internet. Distributing the Company's products through the Internet makes the Company's software more susceptible than other software to unauthorized copying and use. The Company currently allows potential customers to electronically download its client and server software for a free trial period. There can be no assurance that, upon expiration of the evaluation period, the Company will be able to collect payment from users that retain a copy of the Company's software. If, as a result of changing legal interpretations of liability for unauthorized use of the Company's software or otherwise, users were to become less sensitive to avoiding copyright infringement, the Company's business, operating results and financial condition would be materially adversely affected.

## **International**

International revenues (sales outside of North America) were immaterial in the Inception Period and accounted for approximately 10% of total revenues for the quarter ended March 31, 1995. However, the Company believes that approximately 30% of all Internet servers are located outside the U.S. The Company intends to translate and localize its products to address certain international markets.

The Company believes it is important to have a strong international presence. The Company intends to do business in markets outside the U.S. through a combination of subsidiaries and distributors. The Company intends to employ a mix of channels similar to the U.S. model, through the use of OEMs, systems integrators, VARs and software retailers.

A Japanese subsidiary, Netscape Communications (Japan), Ltd. was established at the end of 1994. The Company has established relationships with computer hardware manufacturers, system integrators, and trading houses in Japan, including Information Services International - Dentsu, Itochu Techno-Science, Mitsubishi, NEC, NTT PC Communications, Softbank Corp., Software Japan International, Sony and Toshiba. The Company intends to establish a presence in European markets and other Pacific Rim countries in the second half of 1995.

In particular, the Company intends to establish foreign subsidiaries in Europe by the end of 1995. If the international revenues generated by these subsidiaries are not adequate to offset the expense of establishing and maintaining these foreign operations, the Company's business, operating results or financial condition could be materially adversely affected. To date, the Company has only limited experience in developing localized versions of its products and marketing and distributing its products internationally. There can be no assurance that the Company will be able to successfully market, sell and deliver its products in these markets. In addition to the uncertainty as to the Company's ability to expand its international presence, there are certain risks inherent in doing business on an international level, such as unexpected changes in regulatory requirements, tariffs and other trade barriers, difficulties in staffing and managing foreign operations, longer payment cycles, problems in collecting accounts receivable, political instability, fluctuations in currency exchange rates, seasonal reductions in business activity during the summer months in Europe and certain other parts of the world and potentially adverse tax consequences, which could adversely impact the success of the Company's international operations. There can be no assurance that one or more of such factors will not have a material adverse effect on the Company's future international operations and, consequently, on the Company's business, operating results and financial condition.

Due to the encryption technology contained in the Company's products, such products are subject to U.S. export controls. There can be no assurance that such export controls, either in their current form or as may be subsequently enacted, will not limit the Company's ability to distribute products outside of the United States or electronically. While Netscape takes precautions against unlawful exportation, the global nature of the Internet makes it virtually impossible to effectively control the distribution of the Company's products. In addition, federal or state legislation or regulation may further limit levels of encryption or authentication technology. Any such export restrictions or new legislation or regulation could have a material adverse impact on the Company's business, operating results or financial condition.

## **Research and Development**

The Company's current development efforts are focused on new products and adapting existing products to new operating systems. Netscape's Community System, Publishing System and IStore integrated application products, Netscape News Server and the Netscape Navigator for Windows 95, are all currently being beta tested. Community System, Publishing System, Netscape News Server, News Saver and IStore are expected to be commercially available by the end of 1995. There can be no assurance, however, that these products will be made commercially available as expected or otherwise on a timely and cost-effective basis, or that if introduced, that these products will achieve market acceptance.

The Company believes that its software development team represents a significant competitive advantage for the Company. The team includes key members of the engineering teams which developed the original

Mosaic Web client at NCSA, the original Web server software at CERN and NCSA, as well as leading software security specialists. The Company's ability to attract and retain highly qualified employees will be the principal determinant of its success in maintaining technological leadership. Netscape has a policy of using equity-based compensation programs to reward and motivate significant contributors among its employees.

Research and development expenses were \$2,032,000 and \$1,981,000 for the Inception Period and for the quarter ended March 31, 1995, respectively. To date, all software development costs have been expensed as incurred. The Company believes that significant investments in research and development are required to remain competitive in the software business. As a consequence, the Company intends to increase the absolute amount of its research and development expenditures in the future.

Substantially all of the Company's revenues have been derived, and substantially all of the Company's future revenues are expected to be derived, from the license of its software and sale of its associated services. Accordingly, broad acceptance of the Company's products and services by customers is critical to the Company's future success, as is the Company's ability to design, develop, test and support new software products and enhancements on a timely basis that meet changing customer needs and respond to technological developments and emerging industry standards. There can be no assurance that the Company will be successful in developing and marketing new software products and enhancements that meet changing customer needs and respond to such technological changes or evolving industry standards. The Company's current products are designed around certain standards, including, for example, security standards, and current and future sales of the Company's products will be dependent, in part, on industry acceptance of such standards. Other companies, like Microsoft and IBM are proposing alternative standards, the adoption of which could have a material adverse effect on the Company's business, operating results or financial condition. In addition, there can be no assurance that the Company will not experience difficulties that could delay or prevent the successful development, introduction and marketing of new products and enhancements, or that its new products and enhancements will adequately meet the requirements of the marketplace and achieve market acceptance. The Company will be substantially dependent in the near future upon its server and integrated application software products that are still being developed or have been recently released. In particular, the Company has not yet commercially released the Netscape Publishing System, the Netscape Community System or the Netscape IStore integrated applications software products, the Netscape News Server or the Netscape authoring tools. Further, because the Company has only recently commenced shipment of its products, there can be no assurance that, despite testing by the Company and by current and potential customers, errors will not be found in the Company's products, or, if discovered, successfully corrected in a timely manner. If the Company is unable to develop on a timely basis new software products, enhancements to existing products or error corrections, or if such new products or enhancements do not achieve market acceptance, the Company's business, operating results and financial condition will be materially adversely affected.

### **Competition**

The market for Internet-based software and services is new, intensely competitive, rapidly evolving and subject to rapid technological change. The Company expects competition to persist, intensify and increase in the future. Almost all of the Company's current and potential competitors have longer operating histories, greater name recognition, larger installed customer bases and significantly greater financial, technical and marketing resources than the Company. The additional competition could materially adversely affect the Company's business, operating results or financial condition. The Company's current and potential competitors can be divided into several groups: Microsoft, browser software vendors, Web server software and service vendors, PC and Unix software vendors and online service providers.

**Microsoft Corporation.** Microsoft has licensed browser software from Spyglass and has announced its intention to improve and bundle the browser with its Windows 95 operating system. Microsoft's browser will access the Microsoft Network, its announced online service, and will also offer Internet access. While the anticipated penetration of this software into Microsoft's installed base of PC users will increase the size and usefulness of the Internet, it could also have a material adverse impact on Netscape's ability to sell client software. In addition, Microsoft may choose to develop Web server software as a complement to its product

line and to support the Microsoft Network. This could have a materially adverse impact on Netscape's ability to sell server software or integrated applications. Microsoft has a longer operating history, a much larger installed base and number of employees, and dramatically greater financial, technical and marketing resources, access to distribution channels and name recognition than the Company.

**Browser Software Vendors.** Several companies are currently offering client-based Web browser products, including Spry, Inc. (a subsidiary of CompuServe), Spyglass, Booklink Technologies, Inc. ("Booklink", a subsidiary of AOL), NetManage Inc., Network Computing Devices, Inc. and Quarterdeck Office Systems, Inc. In addition, the NCSA at the University of Illinois distributes its product, NCSA Mosaic, for free for noncommercial use. Further, Spyglass has an exclusive license to NCSA Mosaic and is actively sublicensing it to other commercial vendors. These sublicensees are expected to offer derivative products that will compete with the Company's Netscape Navigator product line.

**Server Software and Service Vendors.** Some companies are offering Web server software that they install and operate on behalf of their customers, and other companies are offering services using Web servers. Companies offering Web server software include Open Market, Inc. ("Open Market"), which has a Web server for various Unix platforms, Process Software Corp. and O'Reilly & Associates, Inc., which have Windows NT Web server products, Spyglass, which has announced a Web server for Windows NT and various Unix platforms, and Terisa, which offers a toolkit for adding security functions to the existing NCSA and CERN Web servers. Service companies include Open Market and Internet Media Services, which publish content from third parties on their own Web servers. In the future, software companies which have server products in other product categories may choose to enhance the functionality of existing products or develop new products which are competitive with the Company's Web server and integrated application products. These include Lotus (which IBM recently announced its intent to acquire), which may extend Notes in this manner, and Novell, which may choose to provide add-ons to Netware for Web publishing. In addition, the database vendors Oracle, Sybase and Informix may incorporate Web server functionality into their products.

**PC and Unix Software Vendors.** The Company believes that PC software vendors may become particularly formidable competitors. In addition to Microsoft, IBM has incorporated client software in its OS/2 operating system, and the Company believes that other PC operating system vendors, including Apple, will also eventually incorporate some Web client functionality into their operating systems as standard features. This may also be true of Unix operating systems vendors, such as Sun, HP, IBM, Digital, SCO and SGI. If these companies incorporate Web browser functionality into their software products, they could subsequently offer this functionality at little or no additional cost to customers. Further, in the event that client products incorporated into operating systems by Microsoft or other Unix or PC software vendors gain market acceptance, these organizations will be better positioned than the Company to sell Web server and applications software products.

**Online Service Providers.** Although the online services provided by companies such as Prodigy, CompuServe and AOL are not Internet-based services, these services currently present an alternative medium to content providers considering Internet-based publishing. In addition, due to the appeal of the Internet to content publishers and end users, these companies are adapting their service offerings to provide Internet access. At least two of these companies compete directly with the Company in the Internet-based software and services market: AOL, which acquired Booklink, an Internet-based software company, and CompuServe, which acquired Spry. The Company's client software products do not offer access to any online services, including Microsoft Network, and could be at a competitive disadvantage versus browser products which offer both access to the Internet and to an online service.

Additional competition could come from client/server applications and tools vendors, other database companies, multimedia companies, document management companies, networking software companies, network management companies and educational software companies.

Competitive factors in the Internet-based software and services market include core technology, breadth of product features, product quality, marketing and distribution resources, and customer service and support. The Company believes it presently competes favorably with respect to each of these factors. However, the market and competition are still new and rapidly emerging, and there can be no assurance that the Company

will be able to compete successfully against current or future competitors, or that this competition will not adversely affect its business, operating results and financial condition.

### **Government Regulation**

The Company is not currently subject to direct regulation by any government agency, other than regulations applicable to businesses generally, and there are currently few laws or regulations directly applicable to access to or commerce on the Internet. However, due to the increasing popularity and use of the Internet, it is possible that a number of laws and regulations may be adopted with respect to the Internet, covering issues such as user privacy, pricing and characteristics and quality of products and services. For example, the Exon Bill (which was recently approved by the Senate) would prohibit distribution of obscene, lascivious or indecent communications on the Internet. The adoption of any such laws or regulations may decrease the growth of the Internet, which could in turn decrease the demand for the Company's products and increase the Company's cost of doing business or otherwise have an adverse effect on the Company's business, operating results or financial condition. Moreover, the applicability to the Internet of existing laws governing issues such as property ownership, libel and personal privacy is uncertain.

### **Proprietary Rights**

In December 1994, the Company entered into an agreement with the University of Illinois (the "University") and Spyglass. Under the terms of the agreement, the University and Spyglass agreed not to assert any claim of trademark infringement arising out of the Company's prior use of the word "Mosaic" or other symbols or words used by the Company to market itself or its products. The University and Spyglass further agreed not to assert against the Company any claim of copyright infringement, trade secret misappropriation or related claims based on the Company's use of former University employees in the development of the Company's present and future products. As consideration for these covenants not to assert any such claims, the Company agreed to make certain payments to the University over a two-year period. If the Company does not make these payments within the specified time periods, the University or Spyglass could assert claims of intellectual property infringement against the Company. Such litigation could result in substantial costs and diversion of resources even if ultimately decided in favor of the Company. Further, although the Company believes that it has not infringed the intellectual property rights of the University or Spyglass, any such litigation and the outcome of such litigation could have a material adverse effect on the Company's business, operating results or financial condition.

The Company's success and ability to compete is dependent in part upon its proprietary technology. While the Company relies on trademark, trade secret and copyright law to protect its technology, the Company believes that factors such as the technological and creative skills of its personnel, new product developments, frequent product enhancements, name recognition and reliable product maintenance are more essential to establishing and maintaining a technology leadership position. The Company presently has no patents or patent applications pending. There can be no assurance that others will not develop technologies that are similar or superior to the Company's technology. The source code for the Company's proprietary software is protected both as a trade secret and as a copyrighted work. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use the Company's products or technology without authorization, or to develop similar technology independently. In addition, effective copyright and trade secret protection may be unavailable or limited in certain foreign countries, and the global nature of the Internet makes it virtually impossible to control the ultimate destination of the Company's products. The Company generally enters into confidentiality or license agreements with its employees, consultants and vendors, and generally controls access to and distribution of its software, documentation and other proprietary information. To license its products, the Company primarily relies on "shrink wrap" licenses that are not signed by the end-user and, therefore, may be unenforceable under the laws of certain jurisdictions. Despite the Company's efforts to protect its proprietary rights, unauthorized parties may attempt to copy aspects of the Company's products or to obtain and use information that the Company regards as proprietary. Policing unauthorized use of the Company's products is difficult. There can be no assurance that the steps taken by the Company will prevent misappropriation of its technology or that such agreements will be enforceable. In addition, litigation

may be necessary in the future to enforce the Company's intellectual property rights, to protect the Company's trade secrets, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on the Company's business, operating results or financial condition.

Unisys recently announced its intention to require the payment of royalties for the use of compression technology associated with the Graphics Interchange Format ("GIF"), a popular file format based on compression technology patented by Unisys. The Company's products have the ability to decompress files, including files stored in GIF. While the Company has received notice of Unisys' intention to enforce such patent, the Company believes its technology falls outside the scope of such patent. However, the Company could incur additional costs and liability should its products be found to be within the scope of the Unisys patent. The assertion of these patent rights by Unisys, if successful, could result in additional costs to the Company or prevent the Company's products from enabling users to view files compressed in GIF. From time to time the Company has, in addition to the notice from Unisys, received, and may receive in the future, notice of claims of infringement of other parties' proprietary rights. Although the Company does not believe that its products infringe the proprietary rights of any third parties, there can be no assurance that infringement or invalidity claims (or claims for indemnification resulting from infringement claims) will not be asserted or prosecuted against the Company or that any such assertions or prosecutions will not materially adversely affect the Company's business, financial condition or results of operations. Irrespective of the validity or the successful assertion of such claims, the Company would incur significant costs and diversion of resources with respect to the defense thereof which could have a material adverse effect on the Company's business, financial condition or results of operations. If any claims or actions are asserted against the Company, the Company may seek to obtain a license under a third party's intellectual property rights. There can be no assurance, however, that under such circumstances, a license would be available on reasonable terms or at all.

#### Employees

As of June 5, 1995, the Company had a total of 213 employees, 205 of whom were based in the United States. Of the total, 80 were in research and development, 117 were engaged in sales, marketing and customer support and 20 were in administration and finance. The Company's future success depends in significant part upon the continued service of its key technical and senior management personnel and its continuing ability to attract and retain highly qualified technical and managerial personnel. Competition for highly qualified personnel is intense and there can be no assurance that the Company can retain its key managerial and technical employees or that it will be able to attract or retain additional highly qualified technical and managerial personnel in the future. None of the Company's employees is represented by a labor union. The Company has not experienced any work stoppages and considers its relations with its employees to be good.

The rapid execution necessary for the Company to fully exploit the market window for its products and services requires an effective planning and management process. The Company's rapid growth has placed, and is expected to continue to place, a significant strain on the Company's managerial, operational and financial resources. The Company recently hired James L. Barksdale as its new President and Chief Executive Officer in January 1995 and Peter L.S. Currie as its Vice President and Chief Financial Officer in April 1995. In addition, most of the Company's development and engineering staff was only recently hired. To manage its growth, the Company must continue to implement and improve its operational and financial systems and to expand, train and manage its employee base. For example, the Company is currently in the process of building its internal maintenance and support organization. Although the Company believes that it has made adequate allowances for the costs and risks associated with this expansion, there can be no assurance that the Company's systems, procedures or controls will be adequate to support the Company's operations or that Company management will be able to achieve the rapid execution necessary to fully exploit the market window for the Company's products and services. If the Company is unable to manage growth effectively, the Company's business, operating results and financial condition will be materially adversely affected.

### **Facilities**

The Company leases its principal facility, which occupies approximately 50,000 square feet of office space, in Mountain View, California. This facility is leased through December 31, 2001. The Company is additionally committed to an adjacent building of approximately 50,000 square feet for future expansion. The lease requires the Company to occupy and begin rental payments on the second building no later than September 1, 1995. The lease on this building also expires on December 31, 2001. In addition, the Company occupies a building of approximately 28,000 square feet of space adjacent to its existing facilities pursuant to a lease which expires in September 1995. The Company believes that its existing facilities will be adequate until the end of the year and that sufficient additional space will be available as needed thereafter.

The Company also leases approximately 11,000 square feet of office space in a building in Mountain View, California, which was its principal business location until January 6, 1995. This space is leased through May 16, 1996. The Company has recently sublet this space to a subtenant which will rent that space through the term of the Company's lease. The Company also has short-term operating leases for sales offices in several states, Tokyo and Paris.

The Company maintains secure Web servers which contain confidential information of the Company and its customers. The Company's operations are dependent in part upon its ability to protect its network infrastructure against damage from physical break-ins, natural disasters, operational disruptions and other events. Any damage or failure that causes interruptions in the Company's operations could materially adversely affect the Company's business, operating results or financial condition. In addition, physical break-ins could result in the theft or loss of confidential or critical business information of the Company or its customers.

## MANAGEMENT

### Executive Officers and Directors

The executive officers and directors of the Company, and their ages and positions as of May 31, 1995, are as follows:

<u>Name</u>	<u>Age</u>	<u>Position(s)</u>
James H. Clark	50	Chairman of the Board
James L. Barksdale	52	President, Chief Executive Officer and Director
Marc L. Andreessen	23	Vice President, Technology and Director
Peter L.S. Currie	38	Vice President and Chief Financial Officer
Conway Rulon-Miller	44	Vice President, Sales and Field Operations
Michael J. Homer	37	Vice President, Marketing
Roberta R. Katz	47	Vice President, General Counsel and Secretary
Richard M. Schell	45	Vice President, Engineering
James C.J. Sha	45	Vice President and General Manager, Integrated Applications
Kandis Malefyt	41	Vice President, Human Resources
L. John Doerr(1)	43	Director
John E. Warnock(1)	54	Director

(1) Member of the Audit and Compensation Committees.

Dr. Clark co-founded the Company in April 1994 and serves as its Chairman of the Board. From inception of the Company to December 1994, Dr. Clark served as the President and Chief Executive Officer of the Company. From 1981 to 1994, Dr. Clark was Chairman of the Board of Directors of Silicon Graphics, Inc. ("SGI"), a computer systems company he founded in 1981. Dr. Clark also served as Chief Technical Officer of SGI from 1981 to 1987. Prior to founding SGI, Dr. Clark was an associate professor at Stanford University. Dr. Clark holds a Ph.D. from the University of Utah and an M.S. from Louisiana State University.

Mr. Barksdale joined the Company in January 1995 as President and Chief Executive Officer. He has served as a director of the Company since October 8, 1994. From 1992 to 1994, Mr. Barksdale served as President and Chief Operating Officer, and, as of September 1994, Chief Executive Officer of AT&T Wireless Services (formerly, McCaw Cellular Communications, Inc. ("McCaw")). From 1983 to 1991, Mr. Barksdale served as Executive Vice President and Chief Operating Officer of Federal Express Corporation. From 1979 to 1983, Mr. Barksdale served as Chief Information Officer of Federal Express. Mr. Barksdale also held various management positions, including Chief Information Officer, with Cook Industries Inc. during the mid-1970s and was employed by International Business Machines Corporation from 1965 to 1972. He holds a B.A. from the University of Mississippi. Mr. Barksdale serves as a director of 3Com Corporation and The Promus Companies, Incorporated.

Mr. Andreessen co-founded the Company in April 1994. He currently serves as Vice President, Technology and has been a director of the Company since September 1994. He received a B.S. from the University of Illinois in 1994 where he co-authored the original NCSA Mosaic Web browser.

Mr. Currie joined the Company as Vice President and Chief Financial Officer in April 1995. From April 1989 to January 1995, Mr. Currie held various management positions at McCaw, including Executive Vice President and Chief Financial Officer, and as of February 1993, Executive Vice President of Corporate Development. From 1982 to 1989, he held various positions at Morgan Stanley & Co., Incorporated. Mr. Currie holds an M.B.A. from Stanford University and a B.A. from Williams College. Mr. Currie serves as a director of LIN Television Corporation.

Mr. Rulon-Miller joined the Company in October 1994 as Vice President, Sales and Field Operations of the Company. From December 1992 to October 1994, Mr. Rulon-Miller was President and Chief Executive Officer of Software Alliance Corp., a subsidiary of Teknekron Communications Systems Inc. From 1986 to



1992, he served as Vice President of North American Operations of NeXT Computer, Inc. Mr. Rulon-Miller has previously held management positions at Tandem Computers, Inc., American Express Company and IBM. Mr. Rulon-Miller holds a B.A. from Princeton University.

Mr. Homer joined the Company in October 1994 as Vice President, Marketing. From August 1993 to October 1994, Mr. Homer served as Vice President, Engineering at EO Corporation and from July 1991 to July 1993, Mr. Homer was Vice President, Marketing at GO Corporation. He had previously been Director of Product Marketing at Apple Computer, Inc. where he had held various technical and marketing positions from 1982 through 1991. Mr. Homer holds a B.S. from the University of California, Berkeley.

Ms. Katz joined the Company in May 1995 as Vice President, General Counsel and Secretary. From March 1993 until joining the Company, Ms. Katz served as Senior Vice President and General Counsel of McCaw. In addition, from March 1992 until joining the Company, Ms. Katz served as Senior Vice President and General Counsel of LIN Broadcasting Corporation, a subsidiary of McCaw. Prior to March 1992, Ms. Katz was in private legal practice, most recently as a partner in the law firm of Heller, Ehrman, White & McAuliffe. Ms. Katz is a Fellow of the Discovery Institute and a member of the Board of Directors of The Washington Technology Center. Ms. Katz holds a J.D. from the University of Washington School of Law, a Ph.D. from Columbia University and a B.A. from Stanford University.

Dr. Schell joined the Company in October 1994 as Vice President, Engineering. From January 1993 to October 1994, Dr. Schell was employed by Symantec Corporation, most recently as Vice President/General Manager of the Central Point Division (formerly Central Point Software, Inc.). From 1989 to 1992, he served as Vice President, Languages and dBase at Borland International. Prior to that time, Dr. Schell held various management positions at Sun Microsystems, Inc. and Intel Corporation. Dr. Schell holds a Ph.D., an M.S. and a B.A. from the University of Illinois.

Mr. Sha joined the Company in August 1994 as Vice President and General Manager, Integrated Applications. From 1990 to 1994, Mr. Sha served as Vice President, Unix Division at Oracle Corporation. From 1986 to 1990, he served as Vice President/General Manager, Advanced Systems Division at Wyse Technology, Inc. Mr. Sha holds an M.S.E.E. from the University of California, Berkeley, an M.B.A. from Santa Clara University and a B.S.E.E. from National Taiwan University.

Ms. Malefyt joined the Company in December 1994 as Vice President, Human Resources. From 1988 to 1994, Ms. Malefyt served as a Director, Human Resources at Silicon Graphics, Inc. Prior to that time, she served as Vice President, Human Resources at ISI. Ms. Malefyt holds an M.S. from Antioch University and a B.A. from Harding University.

Mr. Doerr has been a director of the Company since September 1994. Mr. Doerr has been a general partner of Kleiner, Perkins, Caufield & Byers, a venture capital firm, since 1980. Prior to joining Kleiner, Perkins, Caufield & Byers, Mr. Doerr was employed by Intel Corporation for five years. He is a director of Intuit Inc., Macromedia, Inc., Platinum, Shiva Corporation and Sun, as well as several private companies. He holds an M.B.A. from the Harvard Business School and an M.E.E. and a B.S. from Rice University.

Dr. Warnock has been a director of the Company since April 1995. Dr. Warnock is a founder of Adobe Systems Incorporated ("Adobe"), and has been its Chairman of the Board since 1989. He has served as Adobe's President, Chief Executive Officer and a director since December 1982. Prior to founding Adobe, Dr. Warnock was principal scientist of the Imaging Sciences Laboratory at Xerox Corporation's Palo Alto Research Center. He is a director of Adobe, Evans & Sutherland Computer Corporation, Red Brick Systems and the Tech Museum of Innovation. Dr. Warnock holds a Ph.D., an M.S. and a B.S. from the University of Utah.

The Company currently has authorized five directors. In June 1995, the Board of Directors approved, subject to stockholder approval, an amendment to the Company's Amended and Restated Certificate of Incorporation to provide for a classified Board of Directors. In accordance with the terms of the proposed amendment to the Amended and Restated Certificate of Incorporation, effective upon the closing of this offering, the terms of office of the Board of Directors will be divided into three classes: Class I, Class II and Class III. The terms of office of the respective classes of directors initially classified will be as follows: Class I will expire at the annual meeting of stockholders to be held in 1996; Class II will expire at the annual meeting of stockholders to be held in 1997; and Class III will expire at the annual meeting of stockholders to be held in 1998. At each annual meeting of stockholders after the aforementioned initial classification, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until

the third annual meeting following election and until successors will have been duly elected and will have qualified. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.

In connection with the Series B Preferred Stock financing, Mr. Doerr was elected to the Board of Directors pursuant to the Company's Amended and Restated Certificate of Incorporation. In connection with the Series C Preferred Stock financing, Dr. Warnock was elected to the Board of Directors pursuant to the Company's Amended and Restated Certificate of Incorporation. These provisions will terminate upon the closing of this offering.

Each officer serves at the discretion of the Board of Directors. There are no family relationships among any of the directors or officers of the Company.

#### **Director Compensation**

The Company's directors are not compensated for any meetings that they attend nor are they reimbursed for any expenses that are incurred in attending such meetings. However, in January 1995, in exchange for his services as a director, James L. Barksdale was granted an option to purchase 200,000 shares of the Company's Common Stock at an exercise price of \$0.1125 per share under the Company's 1994 Stock Option Plan. The Company has recently established a director stock option plan, which provides for automatic grants to non-employee directors commencing upon the consummation of this offering. See "Stock Plans — 1994 Stock Option Plan," "— 1995 Directors Option Plan."

#### **Compensation Committee Interlocks and Insider Participation**

The Company's Compensation Committee was formed in June 1995 to review and approve the compensation and benefits for the Company's executive officers, administer the Company's stock purchase and stock option plans and make recommendations to the Board of Directors regarding such matters. The committee is currently composed of Mr. Doerr and Dr. Warnock. No interlocking relationship exists between the Company's Board of Directors or Compensation Committee and the board of directors or compensation committee of any other company, nor has any such interlocking relationship existed in the past.

#### **Employment Agreements**

The Company has an employment agreement with James L. Barksdale, the Company's President and Chief Executive Officer, which is terminable at will by either the Company or Mr. Barksdale. In connection with such agreement, Mr. Barksdale was granted an option to purchase 4,000,000 shares of the Company's Common Stock at an exercise price of \$0.1125 per share. The options were all immediately exercisable, with 2,000,000 shares vested immediately upon grant and an additional 40,000 shares vesting per month over 50 months. The Company retains the right to repurchase any unvested shares at \$0.1125 upon the cessation of Mr. Barksdale's service for any reason. Upon a change in control of the Company, the Company or its successor entity shall be obligated to employ Mr. Barksdale until all shares subject to his option have vested in full.

#### **Limitation on Liability and Indemnification Matters**

The Company's Certificate of Incorporation limits the liability of directors to the maximum extent permitted by Delaware law. Delaware law provides that a corporation's certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director for monetary damages for breach of their fiduciary duties as directors, except for liability (i) for any breach of their duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit.

The Company's Bylaws provide that the Company shall indemnify its directors and may indemnify its officers and employees to the fullest extent permitted by law. The Company believes that indemnification under its Bylaws covers at least negligence and gross negligence on the part of indemnified parties.

The Company intends to enter into agreements to indemnify its directors and officers, in addition to the indemnification provided for in the Company's Bylaws. These agreements, among other things, indemnify the Company's directors and officers for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by or in the right of the Company, arising out of such person's services as a director or officer of the Company, any subsidiary of the Company or any other company or enterprise to which the person provides services at the request of the Company. The Company believes that these provisions and agreements are necessary to attract and retain qualified directors and officers.

At present, there is no pending litigation or proceeding involving any director, officer, employee or agent of the Company where indemnification will be required or permitted. The Company is not aware of any threatened litigation or proceeding that might result in a claim for such indemnification.

#### Executive Compensation

The following table sets forth information concerning the compensation paid by the Company during the period from the Company's inception (April 1994) to December 31, 1994 to the Company's Chief Executive Officer and each of the Company's four other most highly compensated executive officers (collectively, the "Named Officers"):

Summary Compensation Table

Name and Principal Position	Annual Compensation		Long-Term Compensation Securities Underlying Options	All Other Compensation
	Salary	Bonus		
James H. Clark(1) ..... Chairman of the Board	\$ 0	\$0	—	\$0
James C.J. Sha(2) ..... Vice President and General Manager, Integrated Applications	\$69,230	\$0	—	\$0
Marc L. Andreessen(3) ..... Vice President, Technology	\$60,000	\$0	280,000	\$0
Conway Rulon-Miller(4) ..... Vice President, Sales and Field Operations	\$53,850	\$0	—	\$0
Richard M. Schell(5) ..... Vice President, Engineering	\$49,615	\$0	400,000	\$0

(1) Mr. Clark served as the President and Chief Executive Officer of the Company from its inception in April 1994 until December 1994. Mr. Clark did not receive any compensation or stock options in 1994.

(2) Mr. Sha joined the Company in August 1994; his annualized base salary for 1994 was \$200,000.

(3) Mr. Andreessen joined the Company in April 1994; his annualized base salary for 1994 was \$80,000.

(4) Mr. Rulon-Miller joined the Company in October 1994; his annualized base salary for 1994 was \$225,000.

(5) Mr. Schell joined the Company in October 1994; his annualized base salary for 1994 was \$215,000.

### Option Grants During 1994

The following table sets forth, as to the Named Officers, information concerning stock options granted during the period from inception (April 1994) to December 31, 1994:

Name	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term(5)	
	Number of Securities Underlying Options Granted(1)	Percent of Total Options Granted to Employees in 1994(2)	Exercise Price(3)	Expiration Date(4)	5%(\$)	10%(\$)
James H. Clark.....	—	—	—	—	—	—
James C.J. Sha.....	—	—	—	—	—	—
Marc L. Andreessen.....	280,000	9.6%	\$0.0375	07/14/04	\$ 6,603	\$16,734
Conway Rulon-Miller.....	—	—	—	—	—	—
Richard M. Schell.....	400,000	13.7%	\$0.1125	09/14/04	28,300	71,718

- (1) These options are incentive stock options granted pursuant to the 1994 Stock Option Plan and have ten year terms. The options are immediately exercisable; however, the shares purchasable under such options are subject to repurchase by the Company at the original exercise price paid per share upon the optionee's cessation of service prior to the vesting of such shares. In this context, "vesting" means that the shares subject to options are no longer subject to repurchase by the Company. Twenty percent of the options vest upon completion of 10 months of service with the Company, and the remaining shares vest at the rate of two percent over the next 40 months of service.
- (2) In 1994, the Company granted options to purchase an aggregate of 2,921,200 shares.
- (3) In determining the fair market value of the Company's Common Stock, the Board of Directors considered various factors, including the Company's financial condition and business prospects, its operating results, the absence of a market for its Common Stock and the risks normally associated with high technology companies. The exercise price may be paid in cash, check, promissory note, shares of the Company's Common Stock, through a cashless exercise procedure involving same-day sale of the purchased shares or any combination of such methods.
- (4) Options may terminate before their expiration dates if the optionee's status as an employee or consultant is terminated or upon the optionee's death.
- (5) The 5% and 10% assumed annual rates of compounded stock price appreciation are mandated by rules of the Securities and Exchange Commission and do not represent the Company's estimate or projection of the Company's future Common Stock prices.

### Aggregate Option Exercises in 1994 and Year-End Option Values

The following table sets forth concerning options exercises and option holdings for the period from inception (April 1994) to December 31, 1994 with respect to each of the Named Officers:

Name	Number of Shares Acquired on Exercise	Value Realized (Market Price at Exercise Less Exercise Price)	Number of Securities Underlying Unexercised Options at 12/31/94		Value of Unexercised In-the-Money Options at 12/31/94 (1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
James H. Clark.....	—	—	—	—	—	—
James C.J. Sha.....	—	—	—	—	—	—
Marc L. Andreessen.....	—	—	280,000	0	\$21,000	0
Conway Rulon-Miller.....	—	—	—	—	—	—
Richard M. Schell.....	—	—	400,000	0	0	0

- (1) Calculated by determining the difference between the fair market value of the securities underlying the option at December 31, 1994 (\$0.1125 per share as determined by the Board of Directors) and the exercise price of the Named Officer's option. In determining the fair market value of the Company's

Common Stock, the Board of Directors considered various factors, including the Company's financial condition and business prospects, its operating results, the absence of a market for its Common Stock and the risks normally associated with high technology companies.

## **Stock Plans**

### ***1994 Stock Option Plan***

The Company's 1994 Stock Option Plan (the "1994 Plan") provides for the grant to employees of incentive stock options and the grant of nonstatutory stock options to employees and consultants of the Company. As of May 31, 1995, an aggregate of 8,076,672 shares of Common Stock have been reserved for issuance under the 1994 Plan, and options to purchase an aggregate of 4,384,800 shares of Common Stock were outstanding under the 1994 Plan. The Board of Directors has determined that no further options will be granted under the 1994 Plan after this offering.

### ***1995 Stock Plan***

The Company's 1995 Stock Plan (the "1995 Plan") was approved by the Board of Directors in June 1995. The Plan provides for the granting to employees (including officers and employee directors) of incentive stock options and for the granting to employees (including officers and employee directors) and consultants of nonstatutory stock options, stock purchase rights ("SPRs"), and long-term performance awards. A total of 4,500,000 shares of Common Stock have been reserved for issuance under the 1995 Plan, which number shall be increased on the first day of each new fiscal year of the Company, beginning in 1997, by a number of shares equal to four percent of the Company's outstanding Common Stock as of the last business day of the immediate preceding fiscal year. However, the maximum number of shares of Common Stock available for issuance pursuant to incentive stock option grants under the 1995 Plan is 4,500,000.

The 1995 Plan may be administered by the Board of Directors or a committee designated by the Board (the "Committee"). Options, SPRs, and long-term performance awards granted under the 1995 Plan are not generally transferable by the optionee except by will or by the laws of descent and distribution, and are exercisable during the lifetime of the optionee only by such optionee. Options granted under the 1995 Plan must be exercised within three months of the end of optionee's status as an employee or consultant of the Company, or within twelve months after such optionee's termination by death or disability, but in no event later than the expiration of the option term. The exercise price of all incentive and nonstatutory stock options granted under the 1995 Plan shall be determined by the Committee. With respect to any participant who owns stock possessing more than ten percent of the voting power of all classes of the Company's outstanding capital stock (a "10% Stockholder"), the exercise price of any incentive stock option granted must equal at least 110% of the fair market value on the grant date. The exercise price of incentive stock options for all other employees shall be no less than 100% of the fair market value per share on the date of the grant. The maximum term of an option granted under the 1995 Plan may not exceed ten years from the date of grant (five years in the case of an incentive stock option granted to a 10% Stockholder). In the case of SPRs, unless the Committee determines otherwise, the Company shall have a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or disability). Such repurchase option lapses at a rate determined by the Committee. The purchase price for shares repurchased by the Company shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at a rate determined by the Committee. Long-term performance awards are cash or stock bonus awards, and may be granted alone or in conjunction with other awards under the 1995 Plan.

### ***1995 Employee Stock Purchase Plan***

The Company's 1995 Employee Stock Purchase Plan (the "1995 Purchase Plan") was adopted by the Board of Directors in June 1995. The Company has reserved a total of 1,000,000 shares of Common Stock for issuance under the 1995 Purchase Plan. The 1995 Purchase Plan, which is intended to qualify under Section 423 of the Internal Revenue Code of 1986, as amended, permits eligible employees of the Company to purchase Common Stock through payroll deductions of up to ten percent of their compensation (including commissions, overtime, shift premium, and bonuses), up to a maximum of \$21,250 for all purchase periods

ending within any calendar year. The price of Common Stock purchased under the 1995 Purchase Plan will be 85% of the lower of the fair market value of the Common Stock on the first or last day of each six month purchase period. Employees may end their participation in the 1995 Purchase Plan at any time during an offering period, and they will be paid their payroll deductions to date. Participation ends automatically upon termination of employment with the Company. Rights granted under the 1995 Purchase Plan are not transferable by a participant other than by will, the laws of descent and distribution, or as otherwise provided under the plan. The 1995 Purchase Plan will be implemented by an initial offering period of approximately 23 months commencing on the first trading day on or after the effective date of this offering and ending on the last trading day in the period ending July 31, 1997. Subsequent offering periods will last 24 months and will commence on the first trading day on or after February 1 and August 1 of each year during which the 1995 Purchase Plan is in effect, and will terminate on the last trading day in the periods ending 24 months later. Each 24-month offering period will consist of four purchase periods of approximately six months duration. The 1995 Purchase Plan will be administered by the Board of Directors or by a committee appointed by the Board. Employees are eligible to participate if they are customarily employed by the Company or any designated subsidiary for at least 20 hours per week and for more than five months in any calendar year.

#### ***1995 Directors Option Plan***

Non-employee directors are entitled to participate in the 1995 Director Option Plan (the "1995 Director Plan"). The Director Plan was adopted by the Board of Directors in June 1995 but shall not become effective until the effective date of this offering. A total of 100,000 shares of Common Stock have been reserved for issuance under the Director Plan.

The Director Plan provides for an automatic grant of an option to purchase 8,000 shares of Common Stock (the "First Option") to each non-employee director on the date on which the Director Plan becomes effective or, if later, on the date on which the person first becomes a non-employee director. After the First Option is granted to the non-employee director, he or she shall automatically be granted an option to purchase 2,000 shares (a "Subsequent Option") on January 1 of each subsequent year provided he or she is then a non-employee director and, provided further, that on such date he or she has served on the Board for at least six months. First Options and each Subsequent Option shall have a term of ten years. Twenty percent of the shares subject to the First Option shall vest on the date ten months after the grant of the option, and an additional two percent of the shares subject to the First Option shall become exercisable each month thereafter, provided that the optionee continues to serve as a director on such dates. One twenty-fourth of the shares subject to a Subsequent Option shall become exercisable at the end of each month after the option grant, provided that the optionee continues to serve as a director on such dates. The exercise prices of the First Option and each Subsequent Option shall be 100% of the fair market value per share of the Company's Common Stock on the date of the grant of the option.

## CERTAIN TRANSACTIONS

Since the inception of the Company in April 1994, the Company has issued, in private placement transactions, shares of Preferred Stock, as follows: 4,151,000 shares of Series A Preferred Stock at \$0.75 per share; 2,857,222 shares of Series B Preferred Stock at \$2.25 per share and 2,000,000 shares of Series C Preferred Stock at \$9.00 per share. All of such Preferred Stock will convert into an aggregate of 18,016,444 shares of Common Stock upon the closing of this offering. The holders of such converted shares of Common Stock are entitled to certain registration rights with respect to the Common Stock issued or issuable upon conversion thereof. See "Description of Capital Stock — Registration Rights." The following table summarizes the shares of Preferred Stock purchased by the Company's directors, executive officers, five percent stockholders and their respective affiliates as of May 31, 1995:

<u>Investor</u>	<u>Series A Preferred Stock</u>	<u>Series B Preferred Stock</u>	<u>Series C Preferred Stock</u>
James H. Clark .....	4,000,000	500,000	
James C.J. Sha .....	25,000	75,000	
Entities affiliated with Kleiner Perkins Caufield & Byers(1) .....		2,200,000	
Adobe Systems Incorporated(2) .....			444,445

(1) Includes 1,881,000 shares, 209,000 shares and 110,000 shares held by Kleiner Perkins Caufield & Byers VII, KPCB VII Founders Fund and KPCB Info Zaibatsu II, respectively. L. John Doerr is a general partner of KPCB VII Associates, which is a general partner of Kleiner Perkins Caufield & Byers VII, KPCB VII Founders Fund and KPCB Info Zaibatsu II. Mr. Doerr serves as the representative of the Series B Preferred Stock holders on the Board of Directors pursuant to the Company's Amended and Restated Certificate of Incorporation. Mr. Doerr disclaims beneficial ownership of such shares except for his proportional interest therein.

(2) All shares are held by Adobe. Dr. Warnock was a founder of Adobe and currently serves as its President and Chief Executive Officer and as a director. Dr. Warnock also serves as the representative of the Series C Preferred Stock holders on the Board of Directors of the Company pursuant to the Company's Amended and Restated Certificate of Incorporation. Dr. Warnock may therefore be deemed to share voting and investment power with respect to such shares.

In May 1994, James H. Clark and Marc L. Andreessen, executive officers and directors of the Company, each purchased 720,000 shares of Common Stock at \$0.0005 per share (the then fair market value of the Common Stock as determined by the Company's Board of Directors). The Company issued a total of 3,350,000 shares of Common Stock in this financing. In August 1994, James C.J. Sha, an executive officer of the Company, purchased 400,000 shares of Common Stock at \$0.0375 per share (the then fair market value of the Common Stock as determined by the Company's Board of Directors). The Company has also agreed to make a loan in the amount of \$200,000 to Dr. Schell to assist in his relocation to the San Francisco Bay Area and purchase of a home. Such loan may be forgiven by the Company when Dr. Schell's options have vested in full.

In January 1995, the Company entered into an employment agreement with James L. Barksdale. See "Management — Employment Agreements." The Company intends to enter into indemnification agreements with each of its executive officers and directors prior to the closing of this offering.

The Company believes that all of the transactions set forth above were made on terms no less favorable to the Company than could have been obtained from unaffiliated third parties. All future transactions, including loans, between the Company and its officers, directors and principal stockholders and their affiliates will be approved by a majority of the Board of Directors, including a majority of the independent and disinterested outside directors of the Board of Directors, and will be on terms no less favorable to the Company than could be obtained from unaffiliated third parties.

## PRINCIPAL STOCKHOLDERS

The following table sets forth certain information with respect to the beneficial ownership of the Common Stock as of May 31, 1995 and as adjusted to reflect the sale of Common Stock offered hereby for (i) each person or entity who is known by the Company to beneficially own more than 1.5% of the Common Stock, (ii) each of the Company's directors, (iii) each of the Named Officers, and (iv) all directors and executive officers of the Company as a group:

Name or Group of Beneficial Owners	Shares Beneficially Owned (1)	Percentage of Shares Beneficially Owned (1)	
		Before Offering	After Offering
James H. Clark(2) c/o Netscape Communications Corporation 501 East Middlefield Road Mountain View, CA 94043	9,720,000	36.0%	31.9%
James L. Barksdale(3) c/o Netscape Communications Corporation 501 East Middlefield Road Mountain View, CA 94043	4,200,000	15.6	13.8
L. John Doerr(4) Kleiner Perkins Caufield & Byers 4 Embarcadero Center, Suite 3520 San Francisco, CA 94111	4,400,000	16.3	14.4
Marc L. Andreessen(5)	1,000,000	3.7	3.2
John E. Warnock(6)	888,890	3.3	2.9
Adobe Systems Incorporated(6)	888,890	3.3	2.9
TCI Netscape Holdings, Inc.	888,890	3.3	2.9
The Times Mirror Company	888,890	3.3	2.9
James C.J. Sha(7)	600,000	2.2	2.0
Knight-Ridder Investment Company	444,446	1.6	1.5
The Hearst Corporation	444,446	1.6	1.5
IDG Holdings, Inc.	444,438	1.6	1.5
Conway Rulon-Miller(8)	400,000	1.5	1.3
Richard M. Schell(9)	400,000	1.5	1.3
All directors and executive officers as a group (12 persons)(10)	22,708,890	77.8	69.5

\* Less than 1%.

- (1) Assumes no exercise of the Underwriters' over-allotment option. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of Common Stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days of May 31, 1995 are deemed outstanding. Such shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of each other person. Except as indicated in the footnotes to this table and pursuant to applicable community property laws, the stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite such stockholder's name.
- (2) Includes 532,800 shares subject to a repurchase right of the Company upon cessation of his service to the Company. Such repurchase right lapses at a rate of two percent per month.
- (3) Includes 2,040,000 shares subject to a repurchase right of the Company upon cessation of his service to the Company. Such repurchase right lapses at a rate of two percent per month.
- (4) Includes 3,762,000 shares, 418,000 shares and 220,000 shares held by Kleiner Perkins Caufield & Byers VII, KPCB VII Founders Fund and KPCB Info Zaiibatsu II, respectively. Mr. Doerr is a general partner of KPCB VII Associates, which is a general partner of both Kleiner Perkins Caufield & Byers VII, KPCB VII Founders Fund and KPCB Info Zaiibatsu II. Mr. Doerr disclaims beneficial ownership of such shares except for his proportional interest therein.
- (5) Includes 280,000 shares issuable upon a currently exercisable option, of which 207,200 shares are subject to a repurchase right of the Company upon cessation of his service to the Company. Also includes 532,800 shares subject to a repurchase right of the Company upon cessation of his service to the Company. Such repurchase rights lapse at a rate of two percent per month.
- (6) All such shares are held by Adobe. Dr. Warnock was a founder of Adobe and currently serves as its President and Chief Executive Officer and as a director. Dr. Warnock also serves as the representative of the Series C Preferred Stock holders on the Board of Directors of the Company pursuant to the Company's Amended and Restated Certificate of Incorporation. Dr. Warnock may therefore be deemed to share voting and investment power with respect to such shares.
- (7) Includes 400,000 shares subject to a repurchase right of the Company upon cessation of his service to the Company. Such repurchase right lapses as to 20% of the shares on June 29, 1995 and at a rate of two percent per month thereafter.
- (8) Includes 400,000 shares issuable upon a currently exercisable option, all of which are subject to a repurchase right of the Company upon cessation of his service to the Company. Such repurchase right lapses as to 20% of the shares on September 14, 1995 and at a rate of 2% per month thereafter.
- (9) Includes 400,000 shares issuable upon a currently exercisable option, all of which are subject to a repurchase right of the Company upon cessation of his service to the Company. Such repurchase right lapses as to 20% of the shares on August 12, 1995 and at a rate of 2% per month thereafter.
- (10) Includes (i) an aggregate of 2,180,000 shares issuable upon currently exercisable options, (ii) an aggregate of 4,984,000 shares subject to certain repurchase rights of the Company upon cessation of the individual's service to the Company, which repurchase rights generally lapse at a rate of two percent per month, and (iii) 5,288,890 shares owned by entities associated with Messrs. Doerr and Warnock.



## DESCRIPTION OF CAPITAL STOCK

The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, \$0.0001 par value, and 5,000,000 shares of undesignated Preferred Stock, \$0.0001 par value.

The following summary of certain provisions of the Common Stock and Preferred Stock does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of the Company's Amended and Restated Certificate of Incorporation which is included as an exhibit to the Registration Statement of which this Prospectus is a part and by the provisions of applicable law.

### Common Stock

As of May 31, 1995, there were 27,002,244 shares of Common Stock outstanding that were held of record by approximately 69 stockholders. There will be 30,502,244 shares of Common Stock outstanding (assuming no exercise of the Underwriters' over-allotment option and no exercise of outstanding options) after giving effect to the sale of Common Stock offered to the public hereby.

The holders of Common Stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Subject to preferences that may be applicable to any outstanding shares of Preferred Stock, the holders of Common Stock are entitled to receive ratably such dividends, if any, as may be declared by the Board of Directors out of funds legally available for the payment of dividends. See "Dividend Policy." In the event of a liquidation, dissolution or winding up of the Company, the holders of Common Stock are entitled to share ratably in all assets remaining after payment of liabilities and liquidation preferences of any outstanding shares of Preferred Stock. Holders of Common Stock have no preemptive rights or rights to convert their Common Stock into any other securities. There are no redemption or sinking fund provisions applicable to the Common Stock. All outstanding shares of Common Stock are fully paid and non-assessable, and the shares of Common Stock to be issued upon completion of this offering will be fully paid and non-assessable.

### Preferred Stock

Pursuant to the Company's Amended and Restated Certificate of Incorporation, the Board of Directors has the authority, without further action by the stockholders, to issue up to 5,000,000 shares of Preferred Stock in one or more series and to fix the designations, powers, preferences, privileges, and relative participating, optional or special rights and the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of the Common Stock. The Board of Directors, without stockholder approval, can issue Preferred Stock with voting, conversion or other rights that could adversely affect the voting power and other rights of the holders of Common Stock. Preferred Stock could thus be issued quickly with terms calculated to delay or prevent a change in control of the Company or make removal of management more difficult. Additionally, the issuance of Preferred Stock may have the effect of decreasing the market price of the Common Stock, and may adversely affect the voting and other rights of the holders of Common Stock. At present, there are no shares of Preferred Stock outstanding and the Company has no plans to issue any of the Preferred Stock.

### Antitakeover Effects of Provisions of the Certificate of Incorporation, Bylaws and Delaware Law

#### *Certificate of Incorporation and Bylaws*

Upon the initial sale of the Common Stock offered hereby, the Company's Amended and Restated Certificate of Incorporation will provide that the Company's Board of Directors be staggered into three classes of directors. See "Management — Executive Officers and Directors." It will also provide that all stockholder action must be effected at a duly called meeting of stockholders and not by a consent in writing. In addition, the Company's Amended and Restated Bylaws will not permit stockholders of the Company to call a special meeting of stockholders; only the Company's Chief Executive Officer or a majority of the members of the Company's Board of Directors may call a special meeting of stockholders. These provisions of the Amended

and Restated Certificate of Incorporation and Amended and Restated Bylaws could discourage potential acquisition proposals and could delay or prevent a change in control of the Company. Such provisions also may have the effect of preventing changes in the management of the Company. See "Risk Factors — Effect of Certain Charter Provisions; Antitakeover Effects of Certificate of Incorporation, Bylaws and Delaware Law."

#### ***Delaware Takeover Statute***

The Company is subject to Section 203 of the Delaware General Corporation Law ("Section 203") which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that such stockholder became an interested stockholder, unless: (i) prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned (x) by persons who are directors and also officers and (y) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or (iii) on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66⅔% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines business combination to include: (i) any merger or consolidation involving the corporation and the interested stockholder; (ii) any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation; (iii) subject to certain exceptions, any transaction which results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; (iv) any transaction involving the corporation which has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or (v) the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation. In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person.

#### **Registration Rights**

Pursuant to an agreement between the Company and the holders (the "Holders") of approximately 18,016,444 shares of Common Stock (the "Registrable Securities"), the Holders are entitled to certain rights with respect to the registration of such shares under the Securities Act. If the Company proposes to register any of its securities under the Securities Act, either for its own account or for the account of other security Holders, exercising registration rights, such Holders are entitled to notice of such registration and are entitled to include shares of such Common Stock therein. Additionally, Holders of the Registrable Securities are also entitled to certain demand registration rights pursuant to which they may require the Company to file a registration statement under the Securities Act at the Company's expense with respect to their shares of Common Stock, and the Company is required to use its best efforts to effect such registration. Further, the holders of such demand rights may require the Company to file additional registration statements on Form S-3 at the Company's expense. All of these registration rights are subject to certain conditions and limitations, among them the right of the underwriters of an offering to limit the number of shares included in such registration and the right of the Company not to effect a requested registration within nine months following an offering of the Company's securities, including the offering made hereby.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for the Common Stock of the Company. Future sales of substantial amounts of Common Stock in the public market could adversely affect market prices prevailing from time to time. Furthermore, since only a limited number of shares will be available for sale shortly after this offering because of certain contractual and legal restrictions on resale (as described below), sales of substantial amounts of Common Stock of the Company in the public market after the restrictions lapse could adversely affect the prevailing market price and the ability of the Company to raise equity capital in the future.

Upon completion of this offering, the Company will have outstanding an aggregate of 30,502,244 shares of Common Stock, assuming no exercise of the Underwriters' over-allotment option and no exercise of outstanding options. Of these shares, the 3,500,000 shares sold in this offering will be freely tradeable without restriction or further registration under the Securities Act, unless such shares are purchased by "affiliates" of the Company as that term is defined in Rule 144 under the Securities Act (the "Affiliates"). The remaining 27,002,244 shares of Common Stock held by existing stockholders are "restricted securities" as that term is defined in Rule 144 under the Securities Act ("Restricted Shares"). Restricted Shares may be sold in the public market only if registered or if they qualify for an exemption from registration under Rules 144, 144(k) or 701 promulgated under the Securities Act, which rules are summarized below. As a result of the contractual restrictions described below and the provisions of Rules 144, 144(k) and 701, additional shares will be available for sale in the public market as follows: (i) no shares will be eligible for immediate sale on the date of this Prospectus, (ii) 5,276,800 shares will be eligible for sale upon expiration of the lock-up agreements 180 days after the date of this Prospectus and (iii) 21,725,444 shares will be eligible for sale upon expiration of their respective two-year holding periods.

Upon completion of this offering, the holders of 18,016,444 shares of Common Stock, or their transferees, will be entitled to certain rights with respect to the registration of such shares under the Securities Act. See "Description of Capital Stock — Registration Rights." Registration of such shares under the Securities Act would result in such shares becoming freely tradeable without restriction under the Securities Act (except for shares purchased by Affiliates) immediately upon the effectiveness of such registration.

All officers, directors, stockholders and option holders of the Company have agreed not to sell, make any short sale of, grant any option for the purchase of, or otherwise transfer or dispose of, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock for a period of 180 days after the date of this Prospectus, without the prior written consent of Morgan Stanley & Co. Incorporated. Morgan Stanley & Co. Incorporated currently has no plans to release any portion of the securities subject to lock-up agreements. When determining whether or not to release shares from the lock-up agreements, Morgan Stanley & Co. Incorporated will consider, among other factors, the stockholder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time.

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this Prospectus, a person (or persons whose shares are aggregated) who has beneficially owned Restricted Shares for at least two years (including the holding period of any prior owner except an affiliate) would be entitled to sell within any three-month period a number of shares that does not exceed the greater of: (i) one percent of the number of shares of Common Stock then outstanding (which will equal approximately 305,022 shares immediately after this offering); or (ii) the average weekly trading volume of the Common Stock on the Nasdaq National Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale. Sales under Rule 144 are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about the Company. Under Rule 144(k), a person who is not deemed to have been an affiliate of the Company at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least three years (including the holding period of any prior owner except an affiliate), is entitled to sell such shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144; therefore, unless otherwise restricted, "144(k) shares" may therefore be sold immediately upon the completion of this offering. In general, under Rule 701 of the Securities Act as currently in effect, any employee, consultant or advisor of the Company who

purchases shares from the Company in connection with a compensatory stock or option plan or other written agreement is eligible to resell such shares 90 days after the effective date of this offering in reliance on Rule 144, but without compliance with certain restrictions, including the holding period, contained in Rule 144.

The Company intends to file a registration statement under the Securities Act covering shares of Common Stock reserved for issuance under the Company's 1994 Plan, 1995 Plan, Director Plan and 1995 Purchase Plan. Based on the number of options outstanding and options and shares reserved for issuance at May 31, 1995 under all such plans, such registration statement would cover approximately 11,795,872 shares. See "Management — Stock Plans." Such registration statement is expected to be filed and become effective as soon as practicable after the effective date of this offering. Accordingly, shares registered under such registration statement will, subject to Rule 144 volume limitations applicable to affiliates, be available for sale in the open market, unless such shares are subject to vesting restrictions with the Company or the lock-up agreements described above. As of May 31, 1995, options to purchase 4,384,800 shares of Common Stock were issued and outstanding under the 1994 Plan, and no options to purchase shares had been granted under the Company's 1995 Plan, Director Plan, and 1995 Purchase Plan. See "Management — Director Compensation" and "— Stock Plans."

## CERTAIN UNITED STATES FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following discussion concerns the material United States federal income and estate tax consequences of the ownership and disposition of shares of Common Stock applicable to Non-U.S. Holders of such shares of Common Stock. In general, a "Non-U.S. Holder" is any holder other than (i) a citizen or resident of the United States, (ii) a corporation or partnership created or organized in the United States or under the laws of the United States or any State or (iii) an estate or trust whose income is includible in gross income for United States federal income tax purposes regardless of its source. The discussion is based on current law, which is subject to change retroactively or prospectively, and is for general information only. The discussion does not address all aspects of federal income and estate taxation and does not address any aspects of state, local or foreign tax laws. The discussion does not consider any specific facts or circumstances that may apply to a particular Non-U.S. Holder (including the fact that in the case of a Non-U.S. Holder that is a partnership, the United States tax consequences of holding and disposing of shares of Common Stock may be affected by certain determinations made at the partner level). Accordingly, prospective investors are urged to consult their tax advisors regarding the United States federal, state, local and non-U.S. income and other tax consequences of holding and disposing of shares of Common Stock.

**Dividends.** Dividends, if any (see "Dividend Policy"), paid to a Non-U.S. Holder generally will be subject to United States withholding tax at a 30% rate (or a lower rate as may be prescribed by an applicable tax treaty) unless the dividends are effectively connected with a trade or business of the Non-U.S. Holder within the United States. Dividends effectively connected with a trade or business will generally not be subject to withholding (if the Non-U.S. Holder properly files an executed United States Internal Revenue Service ("IRS") Form 4224 with the payor of the dividend) and generally will be subject to United States federal income tax on a net income basis at regular graduated rates. In the case of a Non-U.S. Holder which is a corporation, such effectively connected income also may be subject to the branch profits tax (which is generally imposed on a foreign corporation on the repatriation from the United States of effectively connected earnings and profits). The branch profits tax may not apply if the recipient is a qualified resident of certain countries with which the United States has an income tax treaty. To determine the applicability of a tax treaty providing for a lower rate of withholding, dividends paid to a stockholder's address of record in a foreign country are presumed, under the current IRS position, to be paid to a resident of that country, unless the payor has knowledge that such presumption is not warranted or an applicable tax treaty (or United States Treasury Regulations thereunder) requires some other method for determining a Non-U.S. Holder's residence. However, under proposed U.S. Treasury regulations, which have not yet been put into effect, to claim the benefits of a tax treaty, a Non-U.S. Holder of Common Stock would be required to file certain forms accompanied by a statement from a competent authority of the treaty country.

**Sale of Common Stock.** Generally, a Non-U.S. Holder will not be subject to United States federal income tax on any gain realized upon the disposition of such holder's shares of Common Stock unless (i) the gain is effectively connected with a trade or business carried on by the Non-U.S. Holder with the United States (in which case the branch profits tax may apply); (ii) the Non-U.S. Holder is an individual who holds the shares of Common Stock as a capital asset and is present in the United States for 183 days or more in the taxable year of the disposition and to whom such gain is United States source; (iii) the Non-U.S. Holder is subject to tax pursuant to the provisions of U.S. tax law applicable to certain former United States citizens or residents; or (iv) the Company is or has been a "U.S. real property holding corporation" for federal income tax purposes (which the Company does not believe that it is or is likely to become) at any time during the five year period ending on the date of disposition (or such shorter period that such shares were held) and, subject to certain exceptions, the Non-U.S. Holder held, directly or indirectly, more than 5% of the Common Stock.

**Estate Tax.** Shares of Common Stock owned or treated as owned by an individual who is not a citizen or resident (as specifically defined for United States federal estate tax purposes) of the United States at the time of death will be includible in the individual's gross estate for United States federal estate tax purposes, unless an applicable tax treaty provides otherwise, and may be subject to United States federal estate tax.

## **Backup Withholding and Information Reporting**

**Dividends.** The Company must report annually to the IRS and to each Non-U.S. Holder the amount of dividends paid to and the tax withheld, if any, with respect to such holder. These information reporting requirements apply regardless of whether withholding was reduced by an applicable tax treaty. Copies of these information returns may also be available under the provisions of a specific treaty or agreement with the tax authorities in the country in which the Non-U.S. Holder resides. Dividends that are subject to United States withholding tax at the 30% statutory rate or at a reduced tax treaty rate and dividends that are effectively connected with the conduct of a trade or business in the United States (if certain certification and disclosure requirements are met) are exempt from backup withholding of U.S. federal income tax. In general, backup withholding at a rate of 31% and information reporting will apply to other dividends paid on shares of Common Stock to holders that are not "exempt recipients" and fail to provide in the manner required certain identifying information (such as the holder's name, address and taxpayer identification number). Generally, individuals are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients.

**Disposition of Common Stock.** The payment of the proceeds from the disposition of shares of Common Stock through the United States office of a broker will be subject to information reporting and backup withholding unless the holder, under penalties of perjury, certifies, among other things, its status as a Non-U.S. Holder, or otherwise establishes an exemption. Generally, the payment of the proceeds from the disposition of shares of Common Stock to or through a non-U.S. office of a broker will not be subject to backup withholding and will not be subject to information reporting. In the case of the payment of proceeds from the disposition of shares of Common Stock through a non-U.S. office of a broker that is a U.S. person or a "U.S.-related person," existing regulations require information reporting (but not backup withholding) on the payment unless the broker receives a statement from the owner, signed under penalties of perjury, certifying, among other things, its status as a Non-U.S. Holder, or the broker has documentary evidence in its files that the owner is a Non-U.S. Holder and the broker has no actual knowledge to the contrary. For tax purposes, a "U.S.-related person" is (i) a "controlled foreign corporation" for United States federal income tax purposes or (ii) a foreign person 50% or more of whose gross income from all sources for the three year period ending with the close of its taxable year preceding the payment (or for such part of the period that the broker has been in existence) is derived from activities that are effectively connected with the conduct of a United States trade or business.

Any amounts withheld from a payment to a Non-U.S. Holder under the backup withholding rules will be allowed as a credit against such holder's United States federal income tax liability and may entitle such holder to a refund, provided that the required information is furnished to the IRS. Non-U.S. Holders should consult their tax advisors regarding the application of these rules to their particular situations, the availability of an exemption therefrom and the procedures for obtaining such an exemption, if available.

## UNDERWRITERS

Under the terms and subject to conditions contained in an Underwriting Agreement dated the date hereof, the U.S. Underwriters named below, for whom Morgan Stanley & Co. Incorporated and Hambrecht & Quist LLC are serving as U.S. Representatives, have severally agreed to purchase, and the Company has agreed to sell 3,000,000 shares of the Company's Common Stock, and the International Underwriters named below, for whom Morgan Stanley & Co. International Limited and Hambrecht & Quist LLC are serving as International Representatives (collectively with the U.S. Representatives, the "Representatives"), have severally agreed to purchase, and the Company has agreed to sell 500,000 shares of the Company's Common Stock, which in the aggregate equals the number of shares set forth opposite the name of such Underwriters below.

<u>Name</u>	<u>Number of Shares</u>
<b>U.S. Underwriters:</b>	
Morgan Stanley & Co. Incorporated .....	
Hambrecht & Quist LLC .....	
 Subtotal .....	 <u>3,000,000</u>
<b>International Underwriters:</b>	
Morgan Stanley & Co. International Limited .....	
Hambrecht & Quist LLC .....	
 Subtotal .....	 <u>500,000</u>
<b>Total .....</b>	<b><u>3,500,000</u></b>

The U.S. Underwriters and the International Underwriters are collectively referred to as the "Underwriters." The Underwriting Agreement provides that the obligations of the several Underwriters to pay for and accept delivery of the shares of Common Stock offered hereby are subject to the approval of certain legal matters by counsel and to certain other conditions, including the conditions that no stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose are pending before or threatened by the Securities and Exchange Commission and that there has been no material adverse change or any development involving a prospective material adverse change in the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Registration Statement. The Underwriters are obligated to take and pay for all of the shares of Common Stock offered hereby (other than those covered by the over-allotment option described below) if any are taken.

Pursuant to the Agreement Between U.S. and International Underwriters, each U.S. Underwriter has represented and agreed that, with certain exceptions set forth below, (a) it is not purchasing any U.S. Shares (as defined below) for the account of anyone other than a United States or Canadian Person (as defined below) and (b) it has not offered or sold, and will not offer or sell, directly or indirectly, any U.S. Shares or distribute this Prospectus outside the United States or Canada or to anyone other than a United States or Canadian Person. Pursuant to the Agreement Between U.S. and International Underwriters, each International Underwriter has represented and agreed that, with certain exceptions set forth below, (a) it is not purchasing any International Shares (as defined below) for the account of any United States or Canadian Person and (b) it has not offered or sold, and will not offer or sell, directly or indirectly, any International Shares or distribute this Prospectus within the United States or Canada or to any United States or Canadian Person. The foregoing limitations do not apply to stabilization transactions or to certain other transactions specified in the Agreement Between U.S. and International Underwriters. With respect to Hambrecht & Quist LLC, the foregoing representations or agreements (i) made by it in its capacity as a U.S. Underwriter shall apply only to shares of Common Stock purchased by it in its capacity as a U.S. Underwriter, (ii) made by it in its capacity as an International Underwriter shall apply only to shares of Common Stock purchased by

it in its capacity as an International Underwriter and (iii) shall not restrict its ability to distribute this Prospectus to any person. As used herein, "United States or Canadian Person" means any national or resident of the United States or Canada or any corporation, pension, profit-sharing or other trust or other entity organized under the laws of the United States or Canada or of any political subdivision thereof (other than a branch located outside of the United States and Canada of any United States or Canadian Person) and includes any United States or Canadian branch of a person who is not otherwise a United States or Canadian Person, and "United States" means the United States of America, its territories, its possessions and all areas subject to its jurisdiction. All shares of Common Stock to be offered by the U.S. Underwriters and International Underwriters under the Underwriting Agreement are referred to herein as the "U.S. Shares" and the "International Shares," respectively.

Pursuant to the Agreement Between U.S. and International Underwriters, sales may be made between the U.S. Underwriters and the International Underwriters of any number of shares of Common Stock to be purchased pursuant to the Underwriting Agreement as may be mutually agreed. The per share price and currency settlement of any shares of Common Stock so sold shall be the public offering price set forth on the cover page hereof, in United States dollars, less an amount not greater than the per share amount of the concession to dealers set forth below.

Pursuant to the Agreement Between U.S. and International Underwriters, each U.S. Underwriter has represented that it has not offered or sold, and has agreed not to offer or sell, any shares of Common Stock, directly or indirectly, in Canada in contravention of the securities laws of Canada or any province or territory thereof and has represented that any offer of such shares in Canada will be made only pursuant to an exemption from the requirement to file a prospectus in the province or territory of Canada in which such offer is made. Each U.S. Underwriter has further agreed to send to any dealer who purchases from it any shares of Common Stock a notice stating in substance that, by purchasing such shares, such dealer represents and agrees that it has not offered or sold, and will not offer or sell, directly or indirectly, any of such shares in Canada in contravention of the securities laws of Canada or any province or territory thereof and that any offer of shares of Common Stock in Canada will be made only pursuant to an exemption from the requirement to file a prospectus in the province or territory of Canada in which such offer is made, and that such dealer will deliver to any other dealer to whom it sells any of such shares a notice to the foregoing effect.

Pursuant to the Agreement Between U.S. and International Underwriters, each International Underwriter has represented that (i) it has not offered or sold and will not offer or sell any shares of Common Stock in the United Kingdom by means of any document (other than to persons whose ordinary business it is to buy and sell securities or debentures, whether as principal or agent, or in circumstances that do not constitute an offer to the public within the meaning of the Companies Act 1985), (ii) it has complied and will comply with all applicable provisions of the Financial Services Act 1986 with respect to anything done by it in relation to such shares in, from or otherwise involving the United Kingdom, and (iii) it has only issued or passed on and will only issue or pass on in the United Kingdom any document received by it in connection with the issue of such shares, other than any document which consists of or of part of listing particulars, supplementary listing particulars or any other document required or permitted to be published by listing rules under Part IV of the Financial Services Act 1986, to any person of a kind described in Article 9(3) of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988, or to any person to whom the document may otherwise lawfully be issued or passed on.

Pursuant to the Agreement Between U.S. and International Underwriters, each International Underwriter has represented and agreed that it has not offered or sold, and will not offer or sell, directly or indirectly, in Japan or to or for the account of any resident thereof, any shares of Common Stock acquired in connection with this offering, except for offers or sales to Japanese International Underwriters or dealers and except pursuant to any exemption from the registration requirements of the Securities and Exchange Law of Japan. Each International Underwriter has further agreed to send to any dealer who purchases from it any of such shares of Common Stock a notice stating in substance that such dealer may not offer or sell any of such shares, directly or indirectly, in Japan or to or for the account of any resident thereof, except pursuant to any exemption from the registration requirements of the Securities and Exchange Law of Japan, and that such dealer will send to any other dealer to whom it sells any of such shares a notice to the foregoing effect.



The Underwriters propose to offer part of the shares of Common Stock offered hereby directly to the public at the public offering price set forth on the cover page hereof and part to certain dealers at a price which represents a concession not in excess of \$                      per share under the public offering price. The Underwriters may allow, and such dealers may re-allow, a concession not in excess of \$                      per share to other Underwriters or to certain other dealers.

Pursuant to the Underwriting Agreement, the Company has granted to the U.S. Underwriters an option, exercisable for 30 days from the date of this Prospectus, to purchase up to an additional 525,000 shares of Common Stock at the public offering price set forth on the cover page hereof, less underwriting discounts and commissions. The U.S. Underwriters may exercise such option to purchase solely for the purpose of covering over-allotments, if any, incurred in the sale of the shares of Common Stock offered hereby. To the extent such option is exercised, each U.S. Underwriter will become obligated, subject to certain conditions, to purchase approximately the same percentage of such additional shares as the number set forth next to such U.S. Underwriters' name in the preceding table bears to the total number of shares of Common Stock offered hereby to the U.S. Underwriters.

The Representatives have informed the Company that the Underwriters do not intend to confirm sales to accounts over which they exercise discretionary authority.

The Company and the Underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

See "Shares Eligible for Future Sale" for a description of certain arrangements by which all officers, directors, stockholders and option holders of the Company have agreed not to sell or otherwise dispose of Common Stock or convertible securities of the Company for up to 180 days after the date of this Prospectus without the prior consent of Morgan Stanley & Co. Incorporated. The Company has agreed in the Underwriting Agreement that it will not, without the prior written consent of Morgan Stanley & Co. Incorporated, offer, sell, contract to sell or otherwise dispose of any shares of Common Stock or any securities convertible into or exchangeable for Common Stock for a period of 180 days after the date of this Prospectus, except under certain circumstances.

The Company and the Underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

#### **Pricing of the Offering**

Prior to this offering, there has been no public market for the Company's Common Stock. The initial public offering price will be determined by negotiation between the Company and the Representatives. Among the factors to be considered in determining the initial public offering price will be the future prospects of the Company and its industry in general, sales, earnings and certain other financial and operating information of the Company in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities and certain financial and operating information of companies engaged in activities similar to those of the Company. The estimated initial public offering price range set forth on the cover page of this Preliminary Prospectus is subject to change as a result of market conditions and other factors.

## **LEGAL MATTERS**

Certain legal matters with respect to the legality of the issuance of the shares of Common Stock offered hereby will be passed upon for the Company by Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304. Certain legal matters in connection with this offering will be passed upon for the Underwriters by Morrison & Foerster, 755 Page Mill Road, Palo Alto, California 94304.

## **EXPERTS**

The consolidated financial statements and schedule of the Company at December 31, 1994 and for the period from April 4, 1994 (inception) to December 31, 1994 appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon appearing elsewhere herein and in the Registration Statement, and are included in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.

## **ADDITIONAL INFORMATION**

The Company has filed with the Securities and Exchange Commission (the "Commission"), Washington, D.C. 20549, a Registration Statement on Form S-1 under the Securities Act with respect to the shares of Common Stock offered hereby. This Prospectus does not contain all of the information set forth in the Registration Statement and the exhibits and schedules thereto. Certain items are omitted in accordance with the rules and regulations of the Commission. For further information with respect to the Company and the Common Stock offered hereby, reference is made to the Registration Statement and the exhibits and schedules filed therewith. Statements contained in this Prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance reference is made to the copy of such contract or other document filed as an exhibit to the Registration Statement, each such statement being qualified in all respects by such reference. A copy of the Registration Statement, and the exhibits and schedules thereto, may be inspected without charge at the public reference facilities maintained by the Commission in Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's Regional offices located at the Northwestern Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661 and Seven World Trade Center, 13th Floor, New York, New York 10048, and copies of all or any part of the Registration Statement may be obtained from such office upon the payment of the fees prescribed by the Commission.

**NETSCAPE COMMUNICATIONS CORPORATION**

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## REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

The Board of Directors and Stockholders  
Netscape Communications Corporation

We have audited the accompanying consolidated balance sheet of Netscape Communications Corporation as of December 31, 1994 and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for the period from inception (April 4, 1994) to December 31, 1994. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Netscape Communications Corporation at December 31, 1994, and the consolidated results of its operations and its cash flows for the period from inception (April 4, 1994) to December 31, 1994, in conformity with generally accepted accounting principles.

ERNST & YOUNG LLP

Palo Alto, California  
February 22, 1995,  
except for Note 10,  
as to which the date is  
June 19, 1995

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The foregoing report is in the form that will be signed upon completion of the two-for-one stock split described in Note 10 to the consolidated financial statements.

Palo Alto, California  
June 22, 1995

*Ernst & Young LLP*

# NETSCAPE COMMUNICATIONS CORPORATION

## CONSOLIDATED BALANCE SHEETS

### ASSETS

	December 31, 1994	March 31, 1995	Pro Forma Stockholders' Equity March 31, 1995
		(Unaudited)	(Unaudited)
<b>Current assets:</b>			
Cash and cash equivalents .....	\$ 3,243,510	\$ 4,851,848	
Accounts receivable, net of allowance for doubtful accounts of \$56,153 in 1995 .....	701,649	2,751,478	
Other current assets .....	67,284	41,207	
<b>Total current assets .....</b>	<b>4,012,443</b>	<b>7,644,533</b>	
Property and equipment, net .....	2,447,098	3,857,639	
Deposits and other assets .....	699,100	810,351	
	<u>\$ 7,158,641</u>	<u>\$ 12,312,523</u>	

### LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)

<b>Current liabilities:</b>			
Accounts payable .....	\$ 855,068	\$ 735,571	
Accrued compensation and related liabilities .....	527,340	622,176	
Other accrued liabilities .....	667,503	430,548	
Deferred revenues .....	2,575,145	7,244,626	
Current portion of long-term obligations .....	725,000	725,000	
Installment notes payable .....	—	473,675	
<b>Total current liabilities .....</b>	<b>5,350,056</b>	<b>10,231,596</b>	
Long-term obligations .....	725,000	725,000	
Installment notes payable .....	—	1,627,411	
Commitments and contingencies			
<b>Stockholders' equity (deficit):</b>			
Preferred stock, \$0.0001 par value; issuable in series; 7,608,222 shares authorized, 7,008,222 shares issued and outstanding (aggregate liquidation preference of \$9,541,999) (5,000,000 shares authorized, none issued and outstanding, pro forma) .....	701	701	—
Common stock, \$0.0001 par value; 20,000,000 shares authorized; 4,511,000 shares in 1994 and 8,759,800 shares in 1995 issued and outstanding (100,000,000 shares authorized, 22,776,244 shares issued and outstanding, pro forma) .....	451	876	2,278
Additional paid-in capital .....	9,552,278	12,612,953	12,612,252
Deferred compensation .....	—	(1,717,146)	(1,717,146)
Accumulated deficit .....	(8,469,845)	(11,168,868)	(11,168,868)
<b>Total stockholders' equity (deficit) .....</b>	<b>1,083,585</b>	<b>(271,484)</b>	<b>\$ (271,484)</b>
	<u>\$ 7,158,641</u>	<u>\$ 12,312,523</u>	

See accompanying notes.

**NETSCAPE COMMUNICATIONS CORPORATION**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	Inception (April 4, 1994) to December 31, 1994	Three Months Ended March 31, 1995 (Unaudited)
<b>Revenues:</b>		
Product revenues .....	\$ 378,490	\$ 4,496,031
Service revenues .....	<u>317,381</u>	<u>241,560</u>
Total revenues .....	695,871	4,737,591
<b>Cost of revenues:</b>		
Cost of product revenues .....	114,777	273,169
Cost of service revenues .....	<u>104,313</u>	<u>61,732</u>
Total cost of revenues .....	<u>219,090</u>	<u>334,901</u>
Gross profit .....	476,781	4,402,690
<b>Operating expenses:</b>		
Research and development .....	2,031,986	1,981,292
Sales and marketing .....	2,813,689	2,897,915
General and administrative .....	1,669,193	1,740,524
Property rights agreement and related charges .....	<u>2,486,688</u>	<u>500,000</u>
Total operating expenses .....	<u>9,001,556</u>	<u>7,119,731</u>
Operating loss .....	(8,524,775)	(2,717,041)
Interest income .....	55,238	45,074
Interest expense .....	<u>(308)</u>	<u>(27,056)</u>
Net loss .....	<u>\$ (8,469,845)</u>	<u>\$ (2,699,023)</u>
Net loss per share .....	<u>\$ (0.25)</u>	<u>\$ (0.08)</u>
Shares used in computing net loss per share .....	<u>33,481,438</u>	<u>34,255,882</u>

See accompanying notes.

**NETSCAPE COMMUNICATIONS CORPORATION**

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**

	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Deferred Compensation</u>	<u>Accumulated Deficit</u>	<u>Total Stockholders' Equity (Deficit)</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Issuance of common stock to founders and employees for cash .....	—	\$ —	3,750,000	\$375	\$ 16,300	\$ —	\$ —	\$ 16,675
Issuance of Series A convertible preferred stock at \$0.75 per share for cash and technology .....	4,151,000	415	—	—	3,112,835	—	—	3,113,250
Issuance of Series B convertible preferred stock at \$2.25 per share for cash, net of issuance costs of \$33,933 .....	2,857,222	286	—	—	6,394,531	—	—	6,394,817
Exercise of common stock options .....	—	—	761,000	76	28,612	—	—	28,688
Net loss .....	—	—	—	—	—	—	(8,469,845)	(8,469,845)
Balance at December 31, 1994 .....	<u>7,008,222</u>	<u>701</u>	<u>4,511,000</u>	<u>451</u>	<u>9,552,278</u>	<u>—</u>	<u>(8,469,845)</u>	<u>1,083,585</u>
Issuance of common shares upon exercise of stock options, net of repurchases (unaudited) .....	—	—	4,248,800	425	482,017	—	—	482,442
Deferred compensation related to grant of stock options (unaudited) .....	—	—	—	—	2,578,658	(2,578,658)	—	—
Amortization of deferred compensation (unaudited) .....	—	—	—	—	—	861,512	—	861,512
Net loss (unaudited) .....	—	—	—	—	—	—	(2,699,023)	(2,699,023)
Balance at March 31, 1995 (unaudited) .....	<u><u>7,008,222</u></u>	<u><u>\$701</u></u>	<u><u>8,759,800</u></u>	<u><u>\$876</u></u>	<u><u>\$12,612,953</u></u>	<u><u>\$(1,717,146)</u></u>	<u><u>\$(11,168,868)</u></u>	<u><u>\$ (271,484)</u></u>

See accompanying notes.

**NETSCAPE COMMUNICATIONS CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS**

	Inception (April 4, 1994) to December 31, 1994	Three Months Ended March 31, 1995 (Unaudited)
<b>Cash flows from operating activities</b>		
Net loss .....	\$(8,469,845)	\$(2,699,023)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Amortization of deferred compensation .....	—	861,512
Depreciation and amortization .....	215,868	256,346
Changes in assets and liabilities:		
Accounts receivable .....	(701,649)	(2,049,829)
Other current assets .....	(67,284)	26,077
Accounts payable .....	855,068	(119,497)
Accrued compensation and related liabilities .....	527,340	94,836
Other accrued liabilities .....	667,503	(236,955)
Deferred revenues .....	2,575,145	4,669,481
Long-term obligations .....	1,450,000	—
Net cash (used in) provided by operating activities .....	<u>(2,947,854)</u>	<u>802,948</u>
<b>Cash flows from investing activities</b>		
Capital expenditures .....	(2,662,966)	(1,666,887)
Increase in deposits and other assets .....	(654,100)	(111,251)
Net cash used in investing activities .....	<u>(3,317,066)</u>	<u>(1,778,138)</u>
<b>Cash flows from financing activities</b>		
Proceeds from the issuance of installment notes payable .....	—	2,101,086
Proceeds from issuance of preferred stock, net .....	9,463,067	—
Proceeds from issuance of common stock, net .....	45,363	482,442
Net cash provided by financing activities .....	<u>9,508,430</u>	<u>2,583,528</u>
Net increase in cash and cash equivalents .....	3,243,510	1,608,338
Cash and cash equivalents at beginning of period .....	—	3,243,510
Cash and cash equivalents at end of period .....	<u>\$ 3,243,510</u>	<u>\$ 4,851,848</u>

See accompanying notes.



**NETSCAPE COMMUNICATIONS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Summary of Significant Accounting Policies**

*The Company*

Netscape Communications Corporation ("Netscape" or the "Company") provides open client, server and integrated applications software that enables information exchange and commerce over the Internet and private Internet Protocol networks. The Company was formed in April 1994 and commenced shipment of its initial products in December 1994.

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All significant intercompany balances and transactions have been eliminated.

*Interim Financial Information*

The financial information at March 31, 1995 and for the three months ended March 31, 1995 are unaudited but include all adjustments, consisting only of normal recurring adjustments, which the Company considers necessary for a fair presentation of the financial position at such date and the operating results and cash flows for those periods. The Company was formed in April 1994, therefore, there is no financial information prior to that date. Results of the three months ended March 31, 1995 are not necessarily indicative of results for the entire year.

*Revenue Recognition*

The Company's product revenues are derived from product licensing fees, while service revenues are derived from maintenance support, training and consulting. Product revenues are recognized upon delivery if no significant vendor obligations remain and collection of the resulting receivable is deemed probable. Service revenues from customer maintenance fees for ongoing customer support and product updates are recognized ratably over the term of the maintenance period which is typically 12 months. Payments for maintenance fees are generally made in advance and are nonrefundable. Service revenues from training and consulting are recognized when the services are performed. Costs related to insignificant obligations, primarily telephone support, are accrued upon shipment and included in cost of goods sold.

*Cash and Cash Equivalents*

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents consist of cash on deposit with banks and money market investments.

The Company has adopted Statement of Financial Accounting Standards No. 115 "Accounting for Certain Investments in Debt and Equity Securities." At December 31, 1994 and March 31, 1995, the Company had no investments in debt or equity securities.

*Depreciation and Amortization*

Depreciation is provided using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are amortized over the lesser of the term of the lease or the estimated useful life of the asset.

# NETSCAPE COMMUNICATIONS CORPORATION

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

### *Concentration of Credit Risk*

The Company performs ongoing credit evaluations of its customers' financial condition and generally does not require collateral. The Company maintains reserves for credit losses, and such losses have been within management's expectations.

### *Research and Development*

Research and development expenditures are charged to operations as incurred. Statement of Financial Accounting Standard No. 86 "Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed," requires capitalization of certain software development costs subsequent to the establishment of technological feasibility.

Based on the Company's product development process, technological feasibility is established upon completion of a working model. Costs incurred by the Company between completion of the working model and the point at which the product is ready for general release have been insignificant. All research and development costs have been expensed.

### *Per Share Amounts*

Net loss per share is computed using the weighted average number of common and dilutive common equivalent shares outstanding during the period. Pursuant to the Securities and Exchange Commission Staff Accounting Bulletins and Staff Policy, such computations include all common and common equivalent shares issued within 12 months of the filing date as if they were outstanding for all periods presented using the treasury stock method. Common equivalent shares consist of the incremental common shares issuable upon conversion of the convertible preferred stock (using the if-converted method) and shares issuable upon the exercise of stock options (using the treasury stock method).

## 2. Property and Equipment

Property and equipment, at cost, consists of the following:

	December 31, 1994	March 31, 1995 (Unaudited)
Computers and equipment .....	\$2,169,537	\$3,139,026
Furniture and fixtures .....	486,439	933,016
Leasehold improvements .....	6,990	257,811
	2,662,966	4,329,853
Less accumulated depreciation .....	215,868	472,214
	<u>\$2,447,098</u>	<u>\$3,857,639</u>

## NETSCAPE COMMUNICATIONS CORPORATION

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

#### 3. Leases

The Company leases its facilities and certain other equipment under operating lease agreements expiring through December 31, 2001. Future minimum payments as of December 31, 1994 under these leases, net of sublease payments, are as follows:

1995 .....	\$ 815,750
1996 .....	1,480,860
1997 .....	1,480,860
1998 .....	1,588,720
1999 and thereafter .....	<u>4,864,227</u>
	<u>\$10,230,417</u>

Rent expense for the period from inception (April 4, 1994) to December 31, 1994 was \$59,287, net of sublease payments.

#### 4. Installment Notes Payable

On March 3, 1995, the Company entered into a senior loan agreement for total borrowings not to exceed \$2,200,000. Borrowings made under the agreement are secured by certain assets of the Company. The notes are payable in 36 monthly installments. Maturities subsequent to March 31, 1995 are as follows: \$384,408 in 1995; \$575,301 in 1996; \$682,982 in 1997 and \$458,395 in 1998.

#### 5. Property Rights Agreement

On December 20, 1994, the Company entered into an agreement with the University of Illinois (the "University") and Spyglass, Inc. ("Spyglass"). Under the terms of the agreement, the University and Spyglass agreed not to assert any claim of trademark infringement arising out of the Company's prior use of the word "Mosaic" or other symbols or words used by the Company to market itself or its products. The University and Spyglass further agreed not to assert against the Company any claim of copyright infringement, trade secret misappropriation or related claims based on the Company's use of former University employees in the development of the Company's present and future products. As consideration for these covenants not to assert, the Company agreed to make certain payments to the University over a two year period. The full amount of this agreement and associated costs, including fees for experts and professional services, as well as trademark search and other costs, was expensed in 1994 and was included as "Property rights agreement and related charges" on the consolidated statements of operations. Certain amounts become payable to the University in 1995 and 1996, and have been recorded as long-term obligations.

If over the term of the agreement (two years from December 21, 1994) the Company enters into a license, distribution, remarketing or sublicensing agreement with certain specific companies, the Company may pay up to \$1.3 million to the University. During the three months ended March 31, 1995, the Company made two such additional payments totaling \$500,000. In addition, if over the term of the agreement any of these companies acquires a controlling interest in the Company, there is a per unit royalty paid to the University over the remaining term.

# NETSCAPE COMMUNICATIONS CORPORATION

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

### 6. Stockholders' Equity

#### *Preferred Stock*

Preferred stock as of December 31, 1994 and March 31, 1995 consists of the following convertible preferred stock, par value \$0.0001 per share:

	<u>Shares Authorized</u>	<u>Shares Issued and Outstanding</u>	<u>Liquidation Preference</u>
Series A .....	4,151,000	4,151,000	\$3,113,250
Series B .....	3,457,222	2,857,222	6,428,749
	<u>7,608,222</u>	<u>7,008,222</u>	<u>\$9,541,999</u>

Each share of Series A and B preferred stock is convertible into common stock at the option of the holder on a two-for-one basis, subject to certain adjustments. Each series of preferred stock will automatically convert upon the earliest of the closing date of an underwritten public offering of the Company's common stock with aggregate proceeds of more than \$10,000,000 or the date of written consent of the holders of a majority of the outstanding shares of the preferred stock. The Company has reserved a sufficient number of shares of common stock to permit conversion of the preferred stock in accordance with its terms.

Holders of the preferred stock are entitled to one vote for each share of common stock into which such shares may be converted. Each share of Series A and B preferred stock entitles the holder to receive noncumulative dividends, if and when declared by the board of directors, prior to any dividend paid on the common stock. Dividends, if any, on preferred stock shall be declared at an annual rate of \$0.0675 per share for Series A preferred stock and \$0.20 per share for Series B preferred stock. As of December 31, 1994, no dividends have been declared.

In the event of liquidation, the preferred stock has preference over the common stock in the amounts of \$0.75 and \$2.25 per share for the Series A and B preferred stock, respectively, plus declared but unpaid dividends.

#### *Common Stock*

All shares of common stock issued by the Company at December 31, 1994 were subject to stock repurchase agreements whereby the Company has the option to repurchase the unvested shares upon termination of employment for any reason, with or without cause, at the original price paid for the shares. Generally, the stock vests over 50 months from the date of issuance.

In addition, the Company has the right of first refusal upon sale or transfer of shares of common stock. This right will expire upon the Company's initial public offering.

#### *1994 Stock Option Plan*

During 1994, the Company adopted the 1994 Stock Option Plan under which incentive stock options or nonqualified stock options to purchase common stock may be granted to employees and certain consultants or independent contractors. Under the Plan, options to purchase common stock may be granted at prices not less than 85% of the fair value on the date of grant (110% of fair value in certain instances), as determined by the board of directors. Options granted are immediately exercisable and the resulting shares issued to employees under the Plan are subject to repurchase by the Company, at the discretion of the Company, upon the individual's cessation of service prior to vesting in the shares at the original purchase price. The right expires as determined by the board of directors, generally over a 50-month period.

# NETSCAPE COMMUNICATIONS CORPORATION

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

A summary of activity under the option portion of the Plan is as follows:

	Shares Available for Grant	Options Outstanding	
		Number of Shares	Price Per Share
Shares reserved .....	5,729,232	—	—
Options granted .....	(2,921,200)	2,921,200	\$0.038-\$0.1125
Options cancelled .....	300,000	(300,000)	\$0.038
Options exercised .....	—	(761,000)	\$0.038-\$0.1125
Balance at December 31, 1994 .....	3,108,032	1,860,200	\$0.038-\$0.1125
Shares reserved (unaudited) .....	1,784,006	—	—
Options granted (unaudited) .....	(2,598,600)	2,598,600	\$0.1125
Options cancelled (unaudited) .....	71,200	(71,200)	\$0.038-\$0.1125
Options exercised (unaudited) .....	—	(591,800)	\$0.038-\$0.1125
Balance at March 31, 1995 (unaudited) .....	<u>2,364,638</u>	<u>3,795,800</u>	<u>\$0.038-\$0.1125</u>

In the quarter ended March 31, 1995, the Company granted an option to purchase 4,000,000 shares of common stock outside of the Plan. The exercise price was \$0.1125 per share. The options were all immediately exercisable with 50% subject to repurchase at the option of the Company upon the individual's cessation of service prior to vesting in the shares at the original purchase price. The stock vests over a 50-month period. In the quarter ended March 31, 1995, the option to purchase 4,000,000 shares of common stock was exercised.

At December 31, 1994, no options were vested and 3,947,000 shares of common stock were subject to repurchase at the option of the Company at the original purchase price. At March 31, 1995, options for 167,600 shares were vested and 5,904,000 shares were subject to repurchase. In the quarter ended March 31, 1995, the Company repurchased 343,000 shares of common stock at the original exercise price.

The Company has recorded deferred compensation expense of \$2,578,658 for the difference between the grant price and the deemed fair value of certain of the Company's common stock options granted in 1995. This amount is being amortized over the vesting period of the individual options, generally a 50-month period. Compensation expense recognized in the quarter ended March 31, 1995 totaled \$861,512.

### Unaudited Pro Forma Stockholders' Equity

Unaudited pro forma stockholders' equity at March 31, 1995 gives effect to a two-for-one conversion of 7,008,222 shares of preferred stock, into common stock upon the close of the Company's initial public offering of shares of its common stock.

### 7. Income Taxes

As of December 31, 1994, the Company had federal net operating loss carryforwards of approximately \$7,000,000. The Company also had federal research and development tax credit carryforwards of approximately \$90,000. The net operating loss and credit carryforwards will expire in 2009 if not utilized. The Company also has state net operating loss carryforwards of approximately \$5,000,000 which will expire in 2002 if not utilized.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amount used for income tax purposes. As of December 31, 1994, the Company had deferred tax assets of approximately \$3,500,000 relating primarily to net operating loss carryforwards. The net deferred tax asset has been fully offset by a valuation allowance.

## NETSCAPE COMMUNICATIONS CORPORATION

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Utilization of the net operating losses and credits may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986 and similar state provisions.

#### 8. Benefit Plan

The Company maintains a 401(k) retirement savings plan for its full time employees. Each participant in the Plan may elect to contribute from 1% to 15% of his or her annual compensation to the Plan. The Company, at its discretion, may make contributions to the Plan, however has made none through March 31, 1995.

#### 9. Segment Information

The Company conducts its business within one industry segment. Two customers accounted for 45% and 36% of total revenues in the period from inception (April 4, 1994) through December 31, 1994. Two customers accounted for 14% and 9% of total revenues in the quarter ended March 31, 1995.

Revenues from customers outside North America were less than 10% of total revenues in the period from inception (April 4, 1994) through December 31, 1994 and were approximately 10% of total revenues in the quarter ended March 31, 1995.

#### 10. Subsequent Events

In April 1995, the Company issued 2,000,000 shares of Series C convertible preferred stock to investors at \$9.00 per share, resulting in net cash proceeds of approximately \$17,300,000 to the Company. In conjunction with the issuance, the Company increased the number of authorized preferred shares to 11,286,222 of which 2,278,000 have been designated Series C and 2,000,000 have been undesignated, and increased the number of authorized common shares to 30,000,000. Holders of Series C preferred stock are entitled to noncumulative dividends of \$0.81 per share if and when declared by the board of directors and in advance of any distribution to Series A or B preferred stock or common stock. Each share of Series C preferred stock is convertible into common stock at the option of the holder on a two-for-one basis, subject to certain adjustments. Each series of preferred stock will automatically convert upon the earliest of the closing date of an underwritten public offering of the Company's common stock with aggregate proceeds of more than \$15,000,000 at a public offering price of not less than \$6.00 per share until April 5, 1996 or \$7.50 after April 5, 1996.

On June 19, 1995, the board of directors authorized management of the Company to file a Registration Statement with the Securities and Exchange Commission permitting the Company to sell shares of its common stock to the public. In addition, the Company's board of directors authorized an increase in the number of authorized common and preferred shares to 100,000,000 and 5,000,000 shares, respectively. In addition, the Company's board of directors, subject to stockholders' approval, initiated a two-for-one stock split. Accordingly, all the common share and per share data has been adjusted to reflect this change. At the same meeting, the Company's board of directors, subject to stockholders' approval, adopted the 1995 Employee Stock Purchase Plan (the "Purchase Plan") which authorizes the issuance of 1,000,000 shares of common stock. Shares may be purchased under the Purchase Plan at 85% of the lesser of the fair market value of the common stock on the grant or purchase date. In addition, the Company's board of directors, subject to stockholders' approval, adopted the 1995 Stock Option Plan and Directors Stock Option Plan which authorized the issuance of 4,500,000 shares and 100,000 shares of common stock, respectively.



NETSCAPE

**[ALTERNATIVE PAGE FOR INTERNATIONAL PROSPECTUS]  
PROSPECTUS (Subject to Completion)  
Issued June 23, 1995**

**3,500,000 Shares**



**NETSCAPE  
COMMON STOCK**

*Of the 3,500,000 Shares of Common Stock offered, 500,000 Shares are being offered outside of the United States and Canada by the International Underwriters and 3,000,000 Shares are being offered in the United States and Canada by the U.S. Underwriters. See "Underwriters." All of the Shares of Common Stock offered hereby are being sold by the Company. Prior to this offering, there has been no public market for the Common Stock of the Company. It is currently estimated that the initial public offering price will be between \$ and \$ per share. See "Underwriters" for a discussion of the factors to be considered in determining the initial public offering price.*

**THIS OFFERING INVOLVES A HIGH DEGREE OF RISK. SEE "RISK FACTORS" COMMENCING ON PAGE 5.**

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

	<b>PRICE \$</b>	<b>A SHARE</b>	
	<b>Price to Public</b>	<b>Underwriting Discounts and Commissions (1)</b>	<b>Proceeds to Company (2)</b>
<i>Per Share</i> .....	\$	\$	\$
<i>Total (3)</i> .....	\$	\$	\$

- (1) *The Company has agreed to indemnify the International Underwriters and U.S. Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended.*  
(2) *Before deducting expenses payable by the Company estimated at \$750,000.*  
(3) *The Company has granted the U.S. Underwriters an option, exercisable within 30 days of the date hereof, to purchase up to an aggregate of 525,000 additional Shares at the price to public less underwriting discounts and commissions for the purpose of covering over-allotments, if any. If the U.S. Underwriters exercise such option in full, the total price to public, underwriting discounts and commissions and proceeds to Company will be \$ , \$ and \$ , respectively. See "Underwriters."*

*The Shares are offered, subject to prior sale, when, as and if accepted by the Underwriters named herein and subject to approval of certain legal matters by Morrison & Foerster, counsel for the Underwriters. It is expected that delivery of certificates for the Shares will be made on or about , 1995, at the office of Morgan Stanley & Co. Incorporated, New York, N.Y., against payment therefor in New York funds.*

**MORGAN STANLEY & CO.**  
International

**HAMBRECHT & QUIST**



**[ALTERNATIVE PAGE FOR INTERNATIONAL PROSPECTUS]**

No person is authorized in connection with any offering made hereby to give any information or to make any representation other than as contained in this Prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized by the Company or any Underwriter. This Prospectus does not constitute an offer to sell or a solicitation of an offer to buy by any person in any jurisdiction in which it is unlawful for such person to make such an offering or solicitation. Neither the delivery of this Prospectus nor any sale made hereunder shall under any circumstances imply that the information contained herein is correct as of any date subsequent to the date hereof.

No action has been or will be taken in any jurisdiction by the Company or by any Underwriter that would permit a public offering of the Common Stock or possession or distribution of this Prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons into whose possession this Prospectus comes are required by the Company and the Underwriters to inform themselves about, and to observe any restrictions as to, the offering of the Common Stock and the distribution of this Prospectus.

Until \_\_\_\_\_, 1995 (25 days after the commencement of this offering), all dealers effecting transactions in the Common Stock, whether or not participating in this distribution, may be required to deliver a Prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a Prospectus when acting as Underwriters and with respect to their unsold allotments or subscriptions.

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The Company intends to furnish to its stockholders annual reports containing consolidated financial statements audited by an independent public accounting firm and quarterly reports for the first three quarters of each fiscal year containing interim unaudited financial information.

The Company has applied for registration of the following trademarks: Netscape, Netscape Navigator and the Company's logo. This Prospectus also includes product names and other trade names and trademarks of the Company and of other organizations.

**IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK OF THE COMPANY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

*Except as otherwise noted herein, all information in this Prospectus assumes (i) a two-for-one stock split of the Common Stock, (ii) the conversion of each outstanding share of Preferred Stock into two shares of Common Stock, which will occur automatically upon the closing of the offering, (iii) an increase in the authorized number of shares of Common Stock from 30,000,000 to 100,000,000, (iv) an increase in the authorized number of shares of undesignated Preferred Stock from 2,000,000 to 5,000,000, and (v) no exercise of the Underwriters' over-allotment option. See "Description of Capital Stock" and "Underwriters."*

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 13. *Other Expenses of Issuance and Distribution*

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by the Registrant in connection with the sale of Common Stock being registered. All amounts are estimates except the SEC registration fee, the NASD filing fee and the Nasdaq National Market Listing Fee.

	Amount To Be Paid
SEC registration fee .....	\$ 19,431
NASD filing fee .....	6,135
Nasdaq National Market listing fee .....	25,125
Printing and engraving expenses .....	*
Legal fees and expenses .....	*
Accounting fees and expenses .....	*
Blue Sky qualification fees and expenses .....	*
Transfer agent and registrar fees .....	*
Miscellaneous fees .....	*
Total .....	<u>\$750,000</u>

\* To be filed by amendment.

#### Item 14. *Indemnification of Directors and Officers*

As permitted by Section 145 of the Delaware General Corporation Law, the Registrant's Certificate of Incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breach or alleged breach of their duty of care. In addition, as permitted by Section 145 of the Delaware General Corporation Law, the Bylaws of the Registrant provide that: (i) the Registrant is required to indemnify its directors and executive officers and persons serving in such capacities in other business enterprises (including, for example, subsidiaries of the Registrant) at the Registrant's request, to the fullest extent permitted by Delaware law, including in those circumstances in which indemnification would otherwise be discretionary; (ii) the Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is not required bylaw; (iii) the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with defending a proceeding (except that it is not required to advance expenses to a person against whom the Registrant brings a claim for breach of the duty of loyalty, failure to act in good faith, intentional misconduct, knowing violation of law or deriving an improper personal benefit; (iv) the rights conferred in the Bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, executive officers and employees; and (v) the Registrant may not retroactively amend the Bylaw provisions in a way that it adverse to such directors, executive officers and employees.

The Registrant's policy is to enter into indemnification agreements with each of its directors and executive officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the Delaware General Corporation Law and the Bylaws, as well as certain additional procedural protections. In addition, the indemnity agreement provide that directors and executive officers will be indemnified to the fullest possible extent not prohibited by law against all expenses (including attorney's fees) and settlement amounts paid or incurred by them in any action or proceeding, including any derivative action by or in the right of the Registrant, on account of their services as directors or executive officers of the Registrant or as directors or officers of any other company or enterprise when they are serving in such capacities at the request of the Registrant. The Company will not be obligated pursuant to the indemnity agreements to indemnify or advance expenses to an indemnified party with respect to proceedings or claims

initiated by the indemnified party and not by way of defense, except with respect to proceedings specifically authorized by the Board of Directors or brought to enforce a right to indemnification under the indemnity agreement, the Company's Bylaws or any statute or law. Under the agreements, the Company is not obligated to indemnify the indemnified party (i) for any expenses incurred by the indemnified party with respect to any proceeding instituted by the indemnified party to enforce or interpret the agreement, if a court of competent jurisdiction determines that each of the material assertions made by the indemnified party in such proceeding was not made in good faith or was frivolous; (ii) for any amounts paid in settlement of a proceeding unless the Company consents to such settlement; (iii) with respect to any proceeding brought by the Company against the indemnified party for willful misconduct, unless a court determines that each of such claims was not made in good faith or was frivolous; (iv) on account of any suit in which judgment is rendered against the indemnified party for an accounting of profits made from the purchase or sale by the indemnified party of securities of the Company pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934 and related laws; (v) on account of the indemnified party's conduct which is finally adjudged to have been knowingly fraudulent or deliberately dishonest, or to constitute willful misconduct or a knowing violation of the law; (vi) an account of any conduct from which the indemnified party derived an improper personal benefit; (vii) on account of conduct the indemnified party believed to be contrary to the best interests of the Company or its stockholders; (viii) on account of conduct that constituted a breach of the indemnified party's duty of loyalty to the Company or its stockholders; or (ix) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

The indemnification provision in the Amended and Restated Bylaws and the indemnification agreements entered into between the Registrant and its directors and executive officers, may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities arising under the Securities Act.

Reference is made to the following documents filed as exhibits to this Registration Statement regarding relevant indemnification provisions described above and elsewhere herein:

<u>Document</u>	<u>Exhibit Number</u>
Form of Underwriting Agreement.....	1.1
Amended and Restated Certificate of Incorporation .....	3.1
Amended and Restated Bylaws .....	3.2
Second Amended and Restated Investors' Rights Agreement.....	4.2
Form of Indemnification Agreement entered into by the Registrant with each of its directors and executive officers .....	10.1

#### **Item 15. Recent Sales of Unregistered Securities**

From the Registrant's inception through May 31, 1995, the Registrant has issued and sold the following securities (as adjusted to give effect to the two-for-one stock split of the Company's Common Stock):

1. On various dates since inception, the Registrant has issued and sold an aggregate of 5,578,800 shares of Common Stock to employees for an aggregate purchase price of \$552,015 pursuant to exercises of employee stock options.
2. In May 1994 and June 1994, the Registrant issued and sold an aggregate of 3,350,000 shares of Common Stock to certain employees and officers at a purchase price of \$0.0005 per share, for an aggregate purchase price of \$1,675 pursuant to restricted stock purchase agreements.
3. From June 1994 to August 1994, the Registrant issued and sold an aggregate of 4,151,000 shares of Series A Preferred Stock (8,302,000 shares of Common Stock on an as-converted basis) to accredited investors and certain officers at a purchase price of \$0.75 per share for an aggregate purchase price of \$3,113,250.
4. In August 1994, the Registrant issued and sold 400,000 shares of Common Stock to an employee at a purchase price of \$0.0375 per share, for an aggregate purchase price of \$15,000 pursuant to a restricted stock purchase agreement.

5. From September 1994 to December 1994, the Registrant issued and sold an aggregate of 2,857,222 shares of Series B Preferred Stock (5,714,444 shares of Common Stock on an as-converted basis) to a group of accredited investors at a purchase price of \$2.25 per share for an aggregate purchase price of \$6,428,750.50.
6. In April 1995, the Registrant issued and sold an aggregate of 2,000,000 shares of Series C Preferred Stock (4,000,000 shares of Common Stock on an as-converted basis) to a group of accredited investors at a purchase price of \$9.00 per share for an aggregate purchase price of \$18,000,000.

The issuances described in Item 15(a)(1) were deemed exempt from registration under the Securities Act in reliance upon Rule 701 promulgated under the Securities Act. The issuances of the securities described in Items 15(a)(2), through Item(a)(6) were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of such Act as transactions by an issuer not involving any public offering. In addition, the recipients of securities in each such transaction represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates issued in such transactions. All recipients had adequate access, through their relationships with the Registrant, to information about the Registrant.

**Item 16. Exhibits and Financial Statement Schedules**

**(a) Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement.
3.1*	Amended and Restated Certificate of Incorporation of Registrant.
3.2*	Amended and Restated Bylaws of Registrant.
4.1*	Form of Registrant's Common Stock Certificate.
4.2	Second Amended and Restated Investors' Rights Agreement dated April 5, 1995.
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati regarding legality of the securities being issued.
10.1*	Form of Indemnification Agreement entered into by Registrant with each of its directors and executive officers.
10.2	Form of Restricted Stock Purchase Agreement.
10.3	1994 Stock Option Plan and related agreements.
10.4	1995 Stock Plan and related agreements.
10.5	1995 Employee Stock Purchase Plan and related agreements.
10.6	1995 Directors Option Plan and related agreements.
10.7	Employment Agreement between Registrant and James L. Barksdale dated January 4, 1995.
10.8†	Software License Agreement between Registrant and MCI Telecommunications Corporation dated February 28, 1995.
10.9†	License and Series A Stock Purchase Agreement between Registrant and RSA Data Security, Inc. dated August 19, 1994.
10.10†	Settlement Agreement by and among the Registrant, the University of Illinois and Spyglass, Inc. dated December 21, 1994.
10.11	Lease between Registrant and Ellis-Middlefield Business Park dated October 14, 1994.
10.12	Lease between Registrant and Ellis-Middlefield Business Park dated April 28, 1995.
10.13*	Series A Preferred Stock Purchase Agreement dated June 10, 1994.
10.14*	Series B Preferred Stock Purchase Agreement dated September 30, 1994.
10.15*	Series C Preferred Stock Purchase Agreement dated April 5, 1995.
11.1	Statement of computation of earnings per share.
21.1	Subsidiaries of the Registrant.
23.1*	Consent of Wilson Sonsini Goodrich & Rosati (included in Exhibit 5.1).
23.2	Consent of Ernst & Young LLP, Independent Auditors (see page II-7).
24.1	Power of Attorney (See page II-6).

\* To be supplied by amendment.

† Confidential treatment has been requested for certain portions which have been blacked out in the copy of the exhibit filed with the Securities and Exchange Commission. The omitted information has been filed separately with the Securities and Exchange Commission pursuant to the application for confidential treatment.

**(b) Financial Statement Schedule**

Schedule II — Valuation and Qualifying Accounts ..... S-1

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

**Item 17. Undertakings**

The undersigned hereby undertakes to provide to the Underwriters at the closing specified in the Underwriting Agreement, certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act"), may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of Prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of Prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of Prospectus shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Mountain View, State of California, on this 22 day of June 1995.

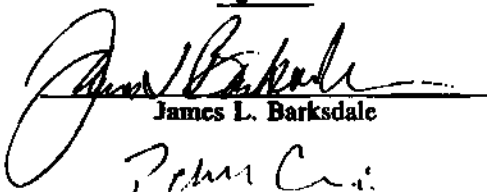


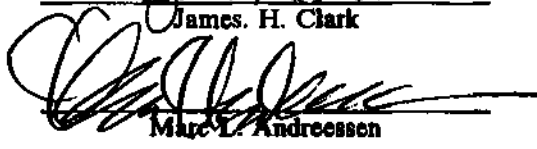
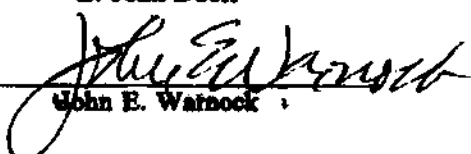
### NETSCAPE COMMUNICATIONS CORPORATION

By: Peter L.S. Currie  
**Peter L.S. Currie**  
*Vice President and Chief Financial Officer*

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each person whose signature appears below constitutes and appoints, jointly and severally, James. H. Clark, James L. Barksdale, Peter L.S. Currie, and Roberta R. Katz and each one of them, as his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or any of them, or his or her or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
 James L. Barksdale	President and Chief Executive Officer (Principal Executive Officer)	June 22, 1995
 Peter L.S. Currie	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	June 22, 1995
 James. H. Clark	Chairman of the Board	June 22, 1995
 Marc L. Andreessen	Director	June 22, 1995
 L. John Doerr	Director	June , 1995
 John E. Warnock	Director	June 22, 1995

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Mountain View, State of California, on this 22<sup>nd</sup> day of June 1995.

## NETSCAPE COMMUNICATIONS CORPORATION


By: \_\_\_\_\_

**Peter L.S. Currie**  
*Vice President and Chief Financial Officer*

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each person whose signature appears below constitutes and appoints, jointly and severally, James. H. Clark, James L. Barksdale, Peter L.S. Currie, and Roberta R. Katz and each one of them, as his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or any of them, or his or her or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
_____ James L. Barksdale	President and Chief Executive Officer (Principal Executive Officer)	June , 1995
_____ Peter L.S. Currie	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	June , 1995
_____ James. H. Clark	Chairman of the Board	June , 1995
_____ Marc L. Andreessen	Director	June , 1995
 _____ L. John Doerr	Director	June 22, 1995
_____ John E. Warnock	Director	June , 1995



**CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS**

We consent to the reference of our firm under the caption "Experts" and to the use of our report dated February 22, 1995 except for Note 10 as to which the date is June 19, 1995, in the Registration Statement on Form S-1 and related Prospectus of Netscape Communications Corporation for the registration of 3,500,000 shares of its common stock.

Our audit also included the financial statement schedule of Netscape Communications Corporation listed in Item 16(b) of this Registration Statement. This schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based on our audit. In our opinion, the financial statement schedule referred to above, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

**ERNST & YOUNG LLP**

Palo Alto, California  
June 22, 1995

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The foregoing consent is in the form it will be signed upon completion of the two-for-one stock split described in Note 10 to the consolidated financial statements.

Palo Alto, California  
June 22, 1995

*Ernst & Young LLP*

## NETSCAPE COMMUNICATIONS CORPORATION

**Valuation and Qualifying Accounts**  
**Period from Inception (April 4, 1994) to December 31, 1994 and**  
**Quarter ended March 31, 1995**

	<u>Balance as of beginning of period</u>	<u>Charges to cost and expenses</u>	<u>Charges to other accounts</u>	<u>Deductions</u>	<u>Balance as of end of period</u>
<b>Allowance for Doubtful Accounts</b>					
Period from inception (April 4, 1994) to December 31, 1994 .....	\$ —	\$ —	\$ —	\$ —	\$ —
Quarter ended March 31, 1995 .....	—	56,153	—	—	56,153

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**EXECUTED COPY**

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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**EXHIBITS**

**to**

**Form S-1**

**REGISTRATION STATEMENT**

**Under**

**THE SECURITIES ACT OF 1933**

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**Netscape Communications Corporation**

# EXHIBIT INDEX

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1.1*	Form of Underwriting Agreement.....	
3.1*	Amended and Restated Certificate of Incorporation of Registrant.....	
3.2*	Amended and Restated Bylaws of Registrant.....	
4.1*	Form of Registrant's Common Stock Certificate.....	90
4.2	Second Amended and Restated Investors' Rights Agreement dated April 5, 1995	
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati regarding legality of the securities being issued.....	
10.1*	Form of Indemnification Agreement entered into by Registrant with each of its directors and executive officers.....	
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23.2	Consent of Ernst & Young LLP, Independent Auditors (see page II-7).....	
24.1	Power of Attorney (See page II-6).....	

\* To be supplied by amendment.

† Confidential treatment has been requested for certain portions which have been blacked out in the copy of the exhibit filed with the Securities and Exchange Commission. The omitted information has been filed separately with the Securities and Exchange Commission pursuant to the application for confidential treatment.

**EXHIBIT 4.2**

**SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**NETSCAPE COMMUNICATIONS CORPORATION**

**April 5, 1995**

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Schedule A - Schedule of Investors

## **SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

This Second Amended and Restated Investors' Rights Agreement is entered into as of April 5, 1995, by and between Netscape Communications Corporation, a Delaware corporation (the "Company"), and the investors listed on Schedule A hereto (the "Investors").

WHEREAS, the Company and certain of the Investors (the "Prior Investors") are parties to that certain Amended and Restated Investors' Rights Agreement dated December 9, 1994 (the "Prior Agreement"), pursuant to which the Company granted to such Prior Investors certain registration rights;

WHEREAS, certain of the Investors (the "New Investors") are purchasing from the Company, and Company is selling to the New Investors, shares of the Company's Series C Preferred Stock pursuant to the terms and conditions set forth in that certain Series C Preferred Stock Purchase Agreement dated as of even date herewith (the "Series C Agreement");

WHEREAS, in order to induce the New Investors to invest funds in the Company pursuant to the Series C Agreement, the Investors and the Company hereby agree to enter into this Agreement; and

WHEREAS, the Company and a majority of the Prior Investors are hereby executing this Agreement to amend and replace the Prior Agreement.

NOW, THEREFORE, in consideration of the premises, covenants, and conditions set forth herein, the parties agree as follows:

**1.0 REGISTRATION RIGHTS.** The parties covenant and agree as follows:

**1.1 Definitions.** For purposes of this Section 1.0:

(a) The term "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act of 1933, as amended (the "Act"), and the declaration or ordering of effectiveness of such registration statement or document.

(b) The term "Registrable Securities" means (i) the Company's Common Stock issuable or issued upon conversion of the Series A, B and C Preferred Stock of the Company (the "Conversion Stock") and (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such Series A, B or C Preferred Stock or Common Stock, excluding in all cases, however, (A) any Registrable Securities sold by a person in a transaction in which such person's rights under this Section 1.0 are not assigned or (B) shares of Conversion Stock or other securities that have been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction.



(c) The number of shares of "Registrable Securities then outstanding" shall be equal to the sum of (i) the number of shares of Common Stock outstanding that are Registrable Securities and (ii) the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities that are exercisable or convertible into Registrable Securities.

(d) The term "Holder" means any person owning or having the right to acquire Registrable Securities or any transferee or assignee thereof in accordance with Section 1.14 hereof.

(e) The term "Form S-3" means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the Securities and Exchange Commission ("SEC") that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

## **1.2 Request for Registration.**

(a) If the Company shall receive at any time after the earlier of (i) September 30, 1998, or (ii) nine months after the effective date of the first registration statement for a public offering of securities of the Company (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or a SEC Rule 145 transaction), a written request from the Holders of thirty percent (30%) of the Registrable Securities then outstanding that the Company file a registration statement under the Act covering the registration of Registrable Securities with an aggregate gross offering price of at least \$5,000,000, then the Company shall, within ten (10) days of the receipt thereof, give written notice of such request to all Holders and shall, subject to the limitations of subsection 1.2(b), effect as soon as practicable, and in any event shall use its best efforts to effect within ninety (90) days of the receipt of such request, the registration under the Act of all Registrable Securities that the Holders request to be registered within twenty (20) days of the mailing of such notice by the Company.

(b) If the Holders initiating the registration request hereunder ("Initiating Holders") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.2 and the Company shall include such information in the written notice referred to in subsection 1.2(a). The underwriter or underwriters will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include his Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in subsection 1.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision

of this Section 1.2, if the underwriter or underwriters advise(s) the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among all Holders thereof, including the Initiating Holders, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Company owned by each Holder; provided, however, that the number of shares of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities, including, without limitation, any shares offered by the Company, are first entirely excluded from the underwriting.

(c) The Company is obligated to effect only two (2) registrations pursuant to this Section 1.2 (counting for this purpose only registrations that have been declared or ordered effective and pursuant to which Registrable Securities have been sold and registrations that have been withdrawn by the Holders as to which the Holders have not elected to bear the expenses of such registration pursuant to Section 1.6 hereof and would, absent such election, have been required to bear such expenses).

(d) Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and that it is therefore essential to defer the filing of such registration statement, the Company shall have the right to defer such filing for a period of not more than 120 days after receipt of the request of the Initiating Holders; provided, however, that the Company may defer its obligations for this reason only once in any twelve-month period.

**1.3 Company Registration.** If (but without any obligation to do so) the Company proposes to register any of its Common Stock or other securities under the Act in connection with a public offering of such securities solely for cash (including a registration effected by the Company for stockholders other than the Holders but not including a registration relating solely to the sale of securities to participants in a Company stock plan, or a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company, the Company shall, subject to the provisions of Section 1.8, cause to be registered under the Act all of the Registrable Securities that each such Holder has request to be registered.

**1.4 Obligations of the Company.** Whenever required pursuant to this Section 1 to effect the registration of any Registrable Securities, the Company shall perform the following obligations as expeditiously as reasonably possible:

(a) The Company shall prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, to keep such registration statement effective for up to one hundred twenty (120) days.

(b) The Company shall prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement.

(c) The Company shall furnish to the Holders such numbers of copies of the prospectus, including a prospectus subject to completion, in conformity with the requirements of the Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) The Company shall use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, the Company shall enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) The Company shall notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Notwithstanding the foregoing, the Company shall have no obligation with respect to any registration requested pursuant to Sections 1.2 or 1.13 if the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to trigger the Company's obligation to initiate such registration as specified in subsection 1.2(a) or subsection 1.13(b)(iii), as applicable.

### **1.5 Obligations of the Investors.**

(a) It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

(b) In the event of any underwritten public offering, each Holder participating in such underwriting shall enter into and perform its obligations under an underwriting agreement in customary form with the managing underwriter of such offering.

**1.6 Expenses of Demand Registration.** All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Section 1.2, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the selling Holders not to exceed \$25,000, shall be borne by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating holders shall bear such expenses on a pro rata basis), unless the Holders of at least a majority of the Registrable Securities then outstanding agree to forfeit their right to one demand registration pursuant to Section 1.2; provided further, however, that if at the time of such withdrawal, the Holders have learned of a material adverse change in the operating results, financial condition or business of the Company from that known to the Holders at the time of the request and have withdrawn the request with promptness following disclosure by the Company of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 1.2.

**1.7 Expenses of Company Registration.** The Company shall bear and pay all expenses incurred in connection with any registration, filing or qualification of Registrable Securities with respect to the registrations pursuant to Section 1.3 for each Holder (which right may be assigned as provided in Section 1.14), including (without limitation) all registration, filing, and qualification fees, fees and disbursements of Company counsel, printers' and accounting fees relating or apportionable thereto and the reasonable fees and disbursements of one counsel for the selling Holders not to exceed \$25,000, but excluding underwriting discounts and commissions relating to Registrable Securities.

### **1.8 Underwriting Requirements.**

(a) In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under Section 1.3 to include any of

the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not, due to marketing factors, jeopardize the success of the offering by the Company.

(b) If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the Holders requesting inclusion in such registration according to the total amount of securities entitled to be included therein owned by each such Holder on a pro rata basis); provided, however, that any such limitation or "cut-back" shall be first applied to all shares proposed to be sold in such offering, other than for the account of the Company, which are not Registrable Securities.

(c) Notwithstanding the foregoing provisions of this Section 1.8, in no event shall the amount of securities of the selling Holders requested to be included in any offering under Section 1.3 be reduced below thirty percent (30%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's equity securities, in which case the Holders may be excluded entirely if the underwriters make the determination described above and if no other securities held by a stockholder of the Company are included.

1.9 Withdrawal Rights and Reallocation. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriters. If such Holder's shares are withdrawn from registration, or if the number of shares of Registrable Securities was previously reduced due to marketing factors, the Company shall offer to all Holders retaining the right to include securities in the registration the right to include additional Registrable Securities in the registration, with such shares being allocated on a pro rata basis among the Holders of Registrable Securities.

1.10 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

**1.11 Indemnification.** In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the officers, directors and general partners of each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the Securities Exchange Act of 1934, as amended (the "1934 Act"), against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act or other federal or state law, including any of the foregoing incurred in settlement of any litigation, commenced or threatened, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (each of which is referred to herein as a "Violation"):

(i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any prospectus subject to completion or final prospectus contained therein or any amendments or supplements thereto;

(ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or

(iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities law or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws. In addition, the Company will promptly reimburse each such Holder, officer, director or general partner, underwriter or controlling person for any legal or other expenses reasonably incurred by them, on an as-incurred basis, in connection with investigating or defending any such loss, claim, damage, liability, or action.

Notwithstanding the foregoing, the indemnity provisions contained in this Section 1.11(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the written consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation that results from reliance upon written information furnished expressly for use in connection with such registration by any such Holder, officer, director, general partner, underwriter or controlling person.

(b) To the extent permitted by law, each selling Holder shall indemnify and hold harmless the Company, each of its directors, each of its officers who have signed the registration statement, each person, if any, who controls the Company within the meaning of the Act, any underwriter and any Holder selling securities in such registration statement or any of its directors, officers or general partners or each person, if any, who controls such Holder, against any losses, claims, damages, or liabilities (joint or several) to which the Company (or any

director, officer, controlling person), or underwriter (or controlling person), or Holder (or director, officer, general partner or controlling person thereof) may become subject, under the Act, the 1934 Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or action in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation results from reliance upon written information furnished by such Holder expressly for use in connection with such registration.

Each such Holder will promptly reimburse any legal or other expenses reasonably incurred, on an as-incurred basis, by the Company (or any director, officer, controlling person), underwriter (or controlling person), Holder (or any director, officer, general partner, or controlling person thereof) in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 1.11(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the written consent of the Holder, which consent shall not be unreasonably withheld.

Notwithstanding the foregoing, the liability of each Holder under this Section 1.11(b) shall be limited to an amount equal to the aggregate proceeds of the shares sold by such Holder in the offering pursuant to which the Violation is claimed to have occurred, unless such liability arises out of or is based on willful misconduct of such Holder.

(c) Within a reasonable time after receipt by an indemnified party of notice of the commencement of any action (including any governmental action) under this Section 1.11, such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.11, deliver to the indemnifying party a written notice of the commencement thereof. Such indemnifying party shall have the right to participate in and subject to the consent of the indemnified party, which consent shall not be unreasonably withheld, the indemnifying party shall have the right to enter into settlement of such action, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense of such action with counsel mutually satisfactory to the parties; provided, however, that the indemnified party shall cooperate with the indemnifying party, and that if representation of an indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding, such indemnified party shall have the right to retain its own counsel, with the reasonable fees and reasonable expenses to be paid by the indemnifying party.

The failure of an indemnified party to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if such failure is prejudicial to the indemnifying party, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.11 to the extent such party is prejudiced. However, the omission of the indemnified party to deliver such written notice to the indemnifying party will

not relieve such indemnifying party of any liability that it may have to any indemnified party otherwise than under this Section 1.11.

(d) If the indemnification provided for in this Section 1.11 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, claim, damage, liability, or action referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, claim, damage, liability or action as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the violation of law or the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to acts of or information supplied by the indemnifying party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and of the Holders under this Section 1.11 shall survive the conversion, if any, of the Series A, B or C Preferred Stock and the completion of any offering of Registrable Securities in a registration statement under this Section 1 or otherwise.

**1.12 Reports Under the 1934 Act.** With a view to making available to the Holders the benefits of Rule 144 promulgated under the Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees:

(a) to make and keep public information available, as those terms are defined under SEC Rule 144, at all times after ninety (90) days after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public;

(b) to take such action, including the voluntary registration of the Company's Common Stock under Section 12 of the 1934 Act, as is necessary to enable the Holders to utilize Form S-3, subject to Section 1.13 herein, for the sale of their Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;



(c) to file with the SEC all reports and other documents required of the Company under the Act and the 1934 Act in a timely manner; and

(d) to furnish to any Holder, so long as such Holder owns Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Act and the 1934 Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the Company's most recent annual or quarterly report and (iii) such other information as may be reasonably requested by such Holder in order to avail itself of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such Form S-3.

**1.13 Form S-3 Registration.** In case the Company shall receive from any Holder or Holders holding in the aggregate at least twenty-five percent (25%) of the Registrable Securities, a written request that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company shall comply with the following obligations:

(a) The Company shall promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders. In the event the registration is proposed to be part of a firm commitment underwritten public offering, the substantive provisions of paragraph (b) of Section 1.2 hereof shall be applicable to each such registration initiated under this Section 1.13.

(b) As soon as practicable, the Company shall effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within 15 days after receipt of such written notice from the Company. Notwithstanding the foregoing, the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 1.13 if: (i) Form S-3 is not available for such offering by the Holders; (ii) the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than \$1,000,000; (iii) the Company furnishes to the Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such Form S-3 registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than 120 days after receipt of the request of the Holder or Holders under this Section 1.13; (iv) the Company has, within the twelve (12) month period

preceding the date of such request, already effected a registration on Form S-3 for the Holders pursuant to this Section 1.13; (v) the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance in a particular jurisdiction; or (vi) a registration statement respecting securities of the Company has been declared effective within 180 days of such request.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. All expenses incurred in connection with the registrations requested pursuant to this Section 1.13, including (without limitation) all registration, filing, qualification, printers' and accounting fees, reasonable fees and disbursements of one counsel for the selling Holder or Holders and counsel for the Company, but excluding any underwriters' discounts or commissions associated with Registrable Securities, shall be borne by the Company. Registrations effected pursuant to this Section 1.13 shall not be counted as demands for registration or registrations effected pursuant to Sections 1.2 or 1.3, respectively.

**1.14 Assignment of Registration Rights.** The rights to cause the Company to register Registrable Securities granted under this Section 1 may be assigned by a Holder to a transferee or assignee who acquires (i) 100,000 shares (as adjusted for stock splits, combinations, dividends and the like) of the Registrable Securities held by such Holder or, if less, (ii) all of the Registrable Securities then held by such Holder, provided in either case, the Company is, within a reasonable time prior to such transfer, furnished with written notice of the name and address of such proposed transferee or assignee and the securities with respect to which such registration rights are being assigned; provided further that such assignment shall be effective only if the transferee enters into a written agreement providing that such transferee shall be bound by the provisions of Section 1 of this Agreement. Notwithstanding the foregoing or any other provision contained herein to the contrary, the right to cause the Company to register Registrable Securities may be assigned by a Holder to any constituent partner of a partnership Holder and any affiliate, subsidiary or parent of a corporate Holder provided that such transferee agrees in writing to be bound by the terms and conditions of this Agreement.

**1.15 "Market Stand-Off" Agreement.**

Each Investor hereby agrees that it shall not, to the extent specified by the Company and an underwriter of Common Stock (or other securities) of the Company, sell, offer to sell, contract to sell (including without limitation any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company (other than securities already registered) during a reasonable and customary period of time not to exceed one hundred and eighty (180) days, as agreed to by the Company and the underwriters, following the effective date of the initial registration statement of the Company filed under the Act or any subsequent registration filed by the Company for a

period of two (2) years following the initial registration statement; provided, however, that all officers and directors of the Company enter into similar agreements.

In order to enforce the foregoing covenant, the Company may impose stop transfer instructions with respect to the securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such one hundred and eighty (180) day period.

**1.16 Termination of the Company's Obligations.** The rights to cause the Company to register securities granted to Holders pursuant to Sections 1.2 and 1.3 shall terminate as to any Holder, on the earlier of (i) three years following the consummation of the Company's initial public offering or (ii) such time as the Holder can provide an opinion acceptable to counsel to the Company that such Holder has the ability to sell all of the Registrable Securities owned by such stockholder under SEC Rule 144 within a six-month period.

**1.17 Limitations on Subsequent Registration Rights.** From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the outstanding Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company which would allow such holder or prospective holder (i) to include such securities in any registration filed under Section 1.2 or 1.3 hereof, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of his securities will not reduce the amount of the Registrable Securities of the Holders which is included or (ii) to make a demand registration which could result in such registration statement being declared effective prior to the earlier of either of the dates set forth in subsection 1.2(a) or within one hundred twenty (120) days of the effective date of any registration effected pursuant to Section 1.2.

## **2.0 COVENANTS.**

**2.1 Delivery of Financial Statements.** The Company shall, as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company, furnish to each Investor a consolidated profit and loss statement for such fiscal year, a consolidated balance sheet of the Company and a consolidated statement of stockholders' equity as of the end of such year, and a consolidated statement of cash flows for such year, such year-end financial reports to be prepared in accordance with generally accepted accounting principles and audited and certified by independent public accountants of nationally recognized standing selected by the Company.

**2.2 Additional Information Rights.** The Company shall furnish each Investor holding at least 100,000 shares of Series A, B or C Preferred Stock (including any shares of Common Stock issued upon the conversion of such Series A, B or C Preferred Stock):

(a) within thirty (30) days of the end of each month, an unaudited consolidated profit and loss statement, consolidated statement of cash flows and consolidated balance sheet for and as of the end of such month, and comparison to year-end results (if any) and projections (if any), all in reasonable detail;

(b) as soon as practicable, but in any event fifteen (15) days prior to the end of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, including balance sheets and statements of cash flows for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Company;

(c) such other information relating to the financial condition, business, prospects or corporate affairs of the Company as an Investor or any assignee of an Investor may from time to time request, provided, however, that (subject to any individual's right to information by virtue of such individual's position as a director of the Company) the Company shall not be obligated under this subsection (c) or any other subsection of this Section 2.2 to provide information which it reasonably deems in good faith to be a trade secret or similar confidential information; and

(d) such written information and financial statements as may be required to enable such Investor to resell any shares of the Company's stock under Rule 144A promulgated under the Act, or any successor statute or regulation.

**2.3 Limitation on Information Rights.** The rights to receive financial information set forth in Sections 2.1 and 2.2 above may be assigned by each Investor to a subsequent transferee or assignee of at least 100,000 shares (as adjusted for stock splits, combinations, dividends and the like) of such Investor's Series A, B or C Preferred Stock (or Common Stock issued upon conversion of such Series A, B or C Preferred Stock, or a combination thereof) or, if less, all of such Investor's Series A, B or C Preferred Stock (including any shares of Common Stock issued upon the conversion of such Series A, B or C Preferred Stock), provided that the transferee or assignee of such rights is not deemed by the Board of Directors, in its reasonable judgment, to be a current or potential competitor of the Company. Notwithstanding the foregoing or any other provision contained herein to the contrary, the information rights contained in Section 2.1 and 2.2 above may be assigned by a Holder to any constituent partner of a partnership Holder or any affiliate, subsidiary or parent of a corporate Holder provided that such transferee agrees in writing to be bound by the terms and conditions of this Agreement.

**2.4 Inspection.** The Company shall permit each Investor, at such Investor's expense, to visit and inspect the Company's properties, to examine its books of account and corporate records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Investor; provided, however, that the Company shall not be obligated pursuant to this Section 2.4 to provide access to any information which it reasonably deems in good faith to be a trade secret or confidential information.

**2.5 Right of First Refusal.** The Company hereby grants to each Holder who owns any Series A, B or C Preferred Stock (the "Shares") or any shares of Common Stock issued upon conversion of the Shares, the right of first refusal to purchase a pro rata share of New Securities (as defined in this Section 2.4) which the Company may, from time to time, propose to sell and issue. A Holder's pro rata share, for purposes of this right of first refusal, is the ratio of the number of shares of Common Stock owned by such Holder immediately prior to the issuance of New Securities, assuming full conversion of the Shares, to the total number of shares of Common Stock outstanding immediately prior to the issuance of New Securities, assuming full conversion of the Shares and exercise of all outstanding rights, options and warrants to acquire Common Stock of the Company. This right of first refusal shall be subject to the following provisions:

(a) **"New Securities"** shall mean any capital stock (including Common Stock and/or Preferred Stock) of the Company whether now authorized or not, and rights, options or warrants to purchase such capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; provided that the term "New Securities" does not include (i) Series A or B Preferred Stock; (ii) Series C Preferred Stock sold pursuant to the Series C Agreement; (iii) securities issued upon conversion of the Shares; (iv) securities issued pursuant to the acquisition of another business entity or business segment of any such entity by the Company by merger, purchase of substantially all the assets or other reorganization whereby the Company will own not less than fifty-one percent (51%) of the voting power of such business entity or business segment of any such entity; (v) any borrowing, direct or indirect, from financial institutions or other persons by the Company, whether or not presently authorized, including any type of loan or payment evidenced by any type of debt instrument, provided that such borrowing does not have any equity features including warrants, options or other rights to purchase capital stock and are not convertible into capital stock of the Company; (vi) securities issued to employees, consultants, officers or directors of the Company, other than James C. Clark, James L. Barksdale or Marc L. Andreessen, pursuant to any stock option, stock purchase or stock bonus plan, agreement or arrangement approved by the Board of Directors; (vii) securities issued to James H. Clark, James L. Barksdale or Marc L. Andreessen, provided such issuance is approved by a majority of the non-employee members of the Board of Directors (excluding Messrs. Clark, Barksdale and Andreessen); (viii) securities issued in connection with obtaining lease financing, whether issued to a lessor, guarantor or other person and is for purposes other than equity financing of the Company; (ix) securities issued in a firm commitment underwritten public offering pursuant to a registration under the Act, provided that in connection therewith all of the outstanding shares of the Company's Preferred Stock are automatically converted into Common Stock pursuant to either clause (A) or clause (B) of paragraph (b) of Section 3 of Part B of Article IV of the Company's Restated Certificate of Incorporation; (x) securities issued in connection with any stock split, stock dividend or recapitalization of the Company so long as such issuance results in adjustments to the conversion rate under the Restated Certificate of Incorporation of the Company with respect to the Preferred Stock; and (xi) any right, option or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to subsections (i) through (x) above.

(b) In the event the Company proposes to undertake an issuance of New Securities, it shall give each Holder written notice of its intention, describing the type of New Securities, and their price and the general terms upon which the Company proposes to issue the same. Each Holder shall have twenty (20) days after any such notice is effective to agree to purchase up to such Holder's pro rata share of such New Securities for the price and upon the terms specified in the notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased.

(c) In the event the Holders fail to exercise the right of first refusal, in full or in part, within said twenty (20)-day period, the Company shall have sixty (60) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within sixty (60) days from the date of said agreement) to sell the New Securities respecting which the Holders' right of first refusal option set forth in this Section 2.4 was not exercised, at a price and upon terms no more favorable to the purchasers thereof than specified in the Company's notice to Holders pursuant to Section 2.4(b). In the event the Company has not sold within said 60-day period or entered into an agreement to sell the New Securities within said 60-day period (or sold and issued New Securities in accordance with the foregoing within sixty (60) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities, without first again offering such securities to the Holders in the manner provided in Section 2.4(b) above.

(d) The right of first refusal granted under this Agreement shall expire upon, and shall not be applicable to, the first sale of Common Stock of the Company to the public effected pursuant to a registration statement filed with, and declared effective by, the SEC under the Act; provided that in connection therewith all of the outstanding shares of the Company's Preferred Stock are automatically converted into Common Stock pursuant to either clause (A) or clause (B) of paragraph (b) of Section 3 of Part B of Article IV of the Company's Restated Certificate of Incorporation.

(e) The right of first refusal set forth in this Section 2.5 may be assigned by a Holder to a transferee or assignee who acquires (i) 100,000 shares (as adjusted for stock splits, combinations, dividends and the like) of the Series A, B or C Preferred Stock (or Common Stock issued upon conversion of such Series A, B or C Preferred Stock, or a combination thereof) held by such Holder or, if less, (ii) all of the Series A, B or C Preferred Stock (or Common Stock issued upon conversion of such Series A, B or C Preferred Stock, or a combination thereof) then held by such Holder, provided in either case, the Company is, within a reasonable time prior to such transfer, furnished with written notice of the name and address of such proposed transferee or assignee and the securities with respect to which such rights of first refusal are being assigned; provided further that such assignment shall be effective only if the transferee enters into a written agreement providing that such transferee shall be bound by the provisions of Section 2.5 of this Agreement. Notwithstanding the foregoing or any other provision contained herein to the contrary, the right of first refusal may be assigned by a Holder to any constituent partner of a partnership Holder and any affiliate, subsidiary or parent of a

corporate Holder provided that such transferee agrees in writing to be bound by the terms and conditions of this Agreement.

## **2.6 Voting Agreement with Respect to the Board of Directors.**

(a) Each holder of outstanding Series C Preferred Stock (a "Series C Stockholder") agrees to vote, or cause to be voted, all of the shares of Series C Preferred Stock registered in its name in favor of and in order to elect a nominee reasonably acceptable to the Company's Board of Directors as the director which the holders of the Series C Preferred Stock are entitled to elect to the Company's Board of Directors pursuant to paragraph (b) of Section 5 of Part B of Article IV of the Company's Restated Certificate of Incorporation. Each Series C Stockholder further agrees that the director elected to fill any vacancy created in respect of the director so elected by the holders of the Series C Preferred Stock shall be reasonably acceptable to the Company's Board of Directors.

(b) All certificates representing any Series C Preferred Stock subject to the provisions of this Agreement shall have endorsed thereon a legend to substantially the following effect:

**"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO VOTING COVENANTS AS SET FORTH IN THAT CERTAIN INVESTORS' RIGHTS AGREEMENT DATED APRIL 5, 1995, A COPY OF WHICH MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE CORPORATION AT THE PRINCIPAL EXECUTIVE OFFICE OF THE CORPORATION."**

**2.7 Termination of Covenants.** Unless terminated earlier, the covenants set forth in these Sections 2.1, 2.2 and 2.4 shall terminate and be of no further force or effect upon the first occurrence when the sale of securities, pursuant to a registration statement filed by the Company under the Act in connection with the firm commitment underwritten offering of its securities to the general public, is consummated or when the Company first becomes subject to the periodic reporting requirements of Section 13 of the 1934 Act, or five years from the date hereof.

## **3.0 MISCELLANEOUS.**

**3.1 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents, made and to be performed entirely within the State of California.

**3.2 Successors and Assigns.** Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto (including transferees of any shares of

Series A, B or C Preferred Stock sold under their respective stock purchase agreements or any Common Stock issued upon conversion thereof).

**3.3 Entire Agreement.** This Agreement constitutes the full and entire understanding and agreement among the parties with regard to the subject matter hereof, and no party shall be liable or bound to any other party in any manner by any representations, warranties, covenants, or agreements except as specifically set forth herein. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided herein.

**3.4 Severability.** Any invalidity, illegality, or limitation of the enforceability with respect to any Investor of any one or more of the provisions of this Agreement, or any part thereof, whether arising by reason of the law of any such Investor's domicile or otherwise, shall in no way affect or impair the validity, legality, or enforceability of this Agreement with respect to any other Investor. In case any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall, to the extent practicable, be modified so as to make it valid, legal and enforceable and to retain as nearly as practicable the intent of the parties, and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**3.5 Amendment and Waiver.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the Holders of a majority of the Preferred Stock (or the Registrable Securities issued upon conversion thereof) then outstanding voting together as a class on an as converted basis, provided that the effect of such amendment or waiver is to treat all Holders equally. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Holder of Registrable Securities at the time outstanding (including securities exercisable for or convertible into Registrable Securities), each future holder of all such securities, and the Company.

**3.6 Delays or Omissions.** No delay or omission to exercise any right, power, or remedy accruing to any Investor or any permitted transferee upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on the Investors' part of any breach, default or noncompliance under this Agreement or any waiver on the Investors' part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing, and that all remedies, either under this Agreement, by law, or otherwise afforded to each Investor, shall be cumulative and not alternative.



3.7 Notices, etc. Unless otherwise provided, any notice required or permitted under this Agreement shall be given to the party to be so notified in writing and shall be deemed effective upon personal delivery, upon delivery by confirmed facsimile or electronic transmission (with duplicate original sent by United States mail), or three business days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address indicated for such party on Schedule A hereto (or, if to the Company, at the address of its principal executive offices), or at such other address as such party may designate by ten (10) days' advance written notice to the other parties.

3.8 Titles and Subtitles. The titles of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

3.9 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, expenses and necessary disbursements in addition to any other relief to which such party may be entitled.

3.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

3.11 Aggregation of Stock. All shares of Preferred Stock held or acquired by affiliated entities or persons shall be aggregated together for the purposes of determining the availability of any right under this Agreement.

3.12 Prior Agreement. This Agreement supersedes and replaces the Amended and Restated Investors' Rights Agreement between the Company and certain of the Investors dated as of December 9, 1994.

IN WITNESS WHEREOF, the parties have executed this Second Amended and Restated Investors' Rights Agreement as of the date first above written.

**COMPANY:**

**NETSCAPE COMMUNICATIONS CORPORATION**

**By:** \_\_\_\_\_

**James L. Barksdale, President and  
Chief Executive Officer**

**Address: 501 East Middlefield Road  
Mountain View, CA 94043**

**NETSCAPE COMMUNICATIONS CORPORATION**

**SIGNATURE PAGE**

**TO**

**SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby executes and delivers the Second Amended and Restated Investors' Rights Agreement (the "Agreement") to which this Signature Page is attached effective as of the date of the Agreement, which Agreement and Signature Page, together with all counterparts of said Agreement and Signature Pages of the other parties named in said Agreement, shall constitute one and the same document in accordance with the terms of said Agreement.

\_\_\_\_\_  
**Name of Stockholder**

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**SCHEDULE A****Schedule of Investors**

<b><u>Name and Address</u></b>	<b>Number of Shares of Preferred Stock</b>		
	<b><u>Series A</u></b>	<b><u>Series B</u></b>	<b><u>Series C</u></b>
Kleiner Perkins Caufield & Byers VII 4 Embarcadero Center, #3520 San Francisco, CA 94111		1,980,000	
KPCB VII Founders Fund 4 Embarcadero Center, #3520 San Francisco, CA 94111		220,000	
James H. Clark c/o Netscape Communications Corporation 501 East Middlefield Road Mountain View, CA 94043	4,000,000	500,000	
John Kohler 16033 Matilija Drive Los Gatos, CA 95030	66,000	44,444	
James Sha 18 Valley Oak Portola Valley, CA 94028	25,000	75,000	
RSA Data Security, Inc. 100 Marine Parkway, #500 Redwood City, CA 94065	60,000		
Paul Koontz 109 Los Charros Lane Portola Valley, CA 94028		11,111	
Robert V. Gunderson, Jr. 2200 Geng Road Two Embarcadero Place Palo Alto, CA 94303		4,445	

<u>Name and Address</u>	<u>Number of Shares of Preferred Stock</u>		
	<u>Series A</u>	<u>Series B</u>	<u>Series C</u>
Cliff Friedman Bear, Stearns & Co. 245 Park Avenue, 12th Floor New York, NY 10167		11,111	
Scott Siegler 558 North Bristol Avenue Los Angeles, CA 90049		11,111	
TCI Netscape Holdings, Inc. c/o TCI Technology Ventures Terrace Tower II 5619 DTC Parkway Englewood, CO 80111-3000 Attention: Charles Moldow			444,445
The Times Mirror Company Times Mirror Square 220 W. First Street Los Angeles, CA 90012 Attention: Scott Whiteside Michael Liebhold			444,445
Adobe Systems Incorporated 1585 Charleston Road Mountain View, CA 94039-7900 Attention: Bruce Nakao Colleen Pouliot, Esq.			444,445
Knight-Ridder Investment Company c/o Knight-Ridder, Inc. One Herald Plaza Miami, FL 33132 Attention: Tony Ridder			222,223
The Hearst Corporation 959 8th Avenue New York, NY 10019 Attention: Steve Horen			222,223

**EXHIBIT 10.2**

**NETSCAPE COMMUNICATIONS CORPORATION**  
**STOCK PURCHASE AGREEMENT**

AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, by and among Netscape Communications Corporation, a Delaware corporation (the "Corporation"), \_\_\_\_\_, the holder of a stock option ("Optionee") under the Corporation's 1994 Stock Option Plan (the "Plan"), and \_\_\_\_\_, Optionee's spouse.

All capitalized terms in this Agreement shall have the meaning assigned to them in this Agreement or in the attached Appendix, unless otherwise indicated.

**A. EXERCISE OF OPTION**

1. **Exercise.** Optionee hereby purchases \_\_\_\_\_ shares of Common Stock (the "Purchased Shares") pursuant to that certain option (the "Option") granted Optionee on \_\_\_\_\_ (the "Grant Date") to purchase up to \_\_\_\_\_ shares of Common Stock under the Plan at the exercise price of \$\_\_\_\_\_ per share (the "Exercise Price").

2. **Payment.** Concurrently with the delivery of this Agreement to the Corporate Secretary, Optionee shall pay the Exercise Price for the Purchased Shares in accordance with the provisions of the Option Agreement and shall deliver whatever additional documents may be required by the Option Agreement as a condition for exercise, together with a duly-executed blank Assignment Separate from Certificate (in the form attached hereto as **Exhibit I**) with respect to the Purchased Shares.

3. **Delivery of Certificates.** The certificates representing the Purchased Shares hereunder which are subject to the Repurchase Right shall be held in escrow by the Corporate Secretary in accordance with the provisions of Article G.

4. **Stockholder Rights.** Until such time as the Corporation actually exercises its Repurchase Right, First Refusal Right or Special Purchase Right under this Agreement, Optionee (or any successor in interest) shall have all the rights of a stockholder (including voting, dividend and liquidation rights) with respect to the Purchased Shares, including the Purchased Shares held in escrow under Article G, subject, however, to the transfer restrictions of Article D.

**B. SECURITIES LAW COMPLIANCE**

1. **Exemption from Registration.** The Purchased Shares have not been registered under the 1933 Act and are accordingly being issued to Optionee in reliance upon the exemption from such registration provided by Rule 701 of the SEC for stock issuances under compensatory benefit plans such as the Plan. Optionee hereby acknowledges receipt of a copy of the Plan in the form of Exhibit C to the Grant Notice.

**2. Restricted Securities.**

(a) Optionee hereby confirms that Optionee has been informed that the Purchased Shares are restricted securities under the 1933 Act and may not be resold or transferred unless the Purchased Shares are first registered under the Federal securities laws or unless an exemption from such registration is available. Accordingly, Optionee hereby acknowledges that Optionee is prepared to hold the Purchased Shares for an indefinite period and that Optionee is aware that Rule 144 of the SEC issued under the 1933 Act is not presently available to exempt the resale of the Purchased Shares from the registration requirements of the 1933 Act.

(b) Upon the expiration of the ninety (90)-day period immediately following the date on which the Corporation first becomes subject to the reporting requirements of the Exchange Act, the Purchased Shares, to the extent vested under Article E, may be sold (without registration) pursuant to the applicable requirements of Rule 144. If Optionee is at the time of such sale an affiliate of the Corporation for purposes of Rule 144 or was such an affiliate during the preceding three (3) months, then the sale must comply with all the requirements of Rule 144 (including the volume limitation on the number of shares sold, the broker/market-maker sale requirement and the requisite notice to the SEC); however, the two (2)-year holding period requirement of Rule 144 will not be applicable. If Optionee is not at the time of the sale an affiliate of the Corporation nor was such an affiliate during the preceding three (3) months, then none of the requirements of Rule 144 (other than the broker/market-maker sale requirement for Purchased Shares held for less than three (3) years following payment in cash of the Exercise Price therefor) will be applicable to the sale.

(c) Should the Corporation not become subject to the reporting requirements of the Exchange Act, then Optionee may, provided he or she is not at the time an affiliate of the Corporation (nor was such an affiliate during the preceding three (3) months), sell the Purchased Shares (without registration) pursuant to paragraph (k) of Rule 144 after the Purchased Shares have been held for a period of three (3) years following the payment of the Exercise Price for such shares.

**3. Disposition of Shares.** Optionee hereby agrees that Optionee shall make no disposition of the Purchased Shares (other than a permitted transfer under paragraph D.1) unless and until there is compliance with all of the following requirements:

(i) Optionee shall have provided the Corporation with a written summary of the terms and conditions of the proposed disposition.

(ii) Optionee shall have complied with all requirements of this Agreement applicable to the disposition of the Purchased Shares.



(iii) Optionee shall have provided the Corporation with written assurances, in form and substance satisfactory to the Corporation, that (a) the proposed disposition does not require registration of the Purchased Shares under the 1933 Act or (b) all appropriate action necessary for compliance with the registration requirements of the 1933 Act or of any exemption from registration available under the 1933 Act (including Rule 144) has been taken.

(iv) Optionee shall have provided the Corporation with written assurances, in form and substance satisfactory to the Corporation, that the proposed disposition will not result in the contravention of any transfer restrictions applicable to the Purchased Shares pursuant to the provisions of the Rules of the California Corporations Commissioner identified in paragraph B.5.

The Corporation shall not be required (i) to transfer on its books any Purchased Shares which have been sold or transferred in violation of the provisions of this Agreement or (ii) to treat as the owner of the Purchased Shares, or otherwise to accord voting, dividend or liquidation rights to, any transferee to whom the Purchased Shares have been transferred in contravention of this Agreement.

4. **Restrictive Legends.** In order to reflect the restrictions imposed by this Agreement upon the disposition of the Purchased Shares, the stock certificates for the Purchased Shares shall be endorsed with restrictive legends, including one or more of the following legends:

(i) "The shares represented by this certificate have not been registered under the Securities Act of 1933. The shares may not be sold or offered for sale in the absence of (a) an effective registration statement for the shares under such Act, (b) a 'no action' letter of the Securities and Exchange Commission with respect to such sale or offer or (c) satisfactory assurances to the Corporation that registration under such Act is not required with respect to such sale or offer."

(ii) "It is unlawful to consummate a sale or transfer of this security, or any interest therein, or to receive any consideration therefor, without the prior written consent of the Commissioner of Corporations of the State of California, except as permitted in the Commissioner's Rules."

(iii) "The shares represented by this certificate are unvested and accordingly may not be sold, assigned, transferred, encumbered, or in any manner disposed of except in conformity with the terms of a written

agreement dated \_\_\_\_\_, 199\_ between the Corporation and the registered holder of the shares (or the predecessor in interest to the shares). Such agreement grants certain repurchase rights and rights of first refusal to the Corporation (or its assignees) upon the sale, assignment, transfer, encumbrance or other disposition of the shares or upon termination of service with the Corporation. A copy of such agreement is maintained at the Corporation's principal corporate offices."

5. **Receipt of Commissioner Rules.** Optionee hereby acknowledges receipt of a copy of Section 260.141.11 of the Rules of the California Corporations Commissioner, a copy of which is attached as Exhibit II to this Agreement.

### **C. SPECIAL TAX ELECTION**

#### **1. Section 83(b) Election For Exercise of Non-Statutory Stock Option.**

If the Purchased Shares are acquired hereunder pursuant to the exercise of a Non-Statutory Option, as specified in the Grant Notice, then Optionee understands that under Code Section 83, the excess of the Fair Market Value of the Purchased Shares on the date any forfeiture restrictions applicable to such shares lapse over the Exercise Price paid for such shares will be reportable as ordinary income on the lapse date. For this purpose, the term "forfeiture restrictions" includes the right of the Corporation to repurchase the Purchased Shares pursuant to the Repurchase Right provided under Article E. Optionee understands that he/she may elect under Code Section 83(b) to be taxed at the time the Purchased Shares are acquired hereunder, rather than when and as such Purchased Shares cease to be subject to such forfeiture restrictions. Such election must be filed with the Internal Revenue Service within thirty (30) days after the date of this Agreement. Even if the Fair Market Value of the Purchased Shares on the date of this Agreement equals the Exercise Price paid (and thus no tax is payable), the election must be made to avoid adverse tax consequences in the future. **THE FORM FOR MAKING THIS ELECTION IS ATTACHED AS EXHIBIT III HERETO. OPTIONEE UNDERSTANDS THAT FAILURE TO MAKE THIS FILING WITHIN THE APPLICABLE THIRTY (30)-DAY PERIOD WILL RESULT IN THE RECOGNITION OF ORDINARY INCOME BY OPTIONEE AS THE FORFEITURE RESTRICTIONS LAPSE.**

#### **2. Conditional Section 83(b) Election For Exercise of Incentive Option.**

If the Purchased Shares are acquired hereunder pursuant to the exercise of an Incentive Option under the Federal tax laws, as specified in the Grant Notice, then the following tax principles shall be applicable to the Purchased Shares:

- (i) For regular tax purposes, no taxable income will be recognized at the time the Option is exercised.

(ii) The excess of (a) the Fair Market Value of the Purchased Shares on the date the Option is exercised or (if later) on the date any forfeiture restrictions applicable to the Purchased Shares lapse over (b) the Exercise Price paid for the Purchased Shares will be includible in Optionee's taxable income for alternative minimum tax purposes.

(iii) If Optionee makes a disqualifying disposition of the Purchased Shares, then Optionee will recognize ordinary income in the year of such disposition equal in amount to the excess of (a) the Fair Market Value of the Purchased Shares on the date the Option is exercised or (if later) on the date any forfeiture restrictions applicable to the Purchased Shares lapse over (b) the Exercise Price paid for the Purchased Shares. Any additional gain recognized upon the disqualifying disposition will be either short-term or long-term capital gain depending upon the period for which the Purchased Shares are held prior to the disposition.

(iv) For purposes of the foregoing, the term "forfeiture restrictions" will include the right of the Corporation to repurchase the Purchased Shares pursuant to the Repurchase Right under Article E. The term "disqualifying disposition" means any sale or other disposition<sup>1/</sup> of the Purchased Shares within two (2) years after the Grant Date or within one (1) year after the exercise date of the Option.

(v) In the absence of final Treasury Regulations relating to Incentive Options, it is not certain whether Optionee may, in connection with the exercise of the Option for any Purchased Shares at the time subject to forfeiture restrictions, file a protective election under Code Section 83(b) which would limit (a) Optionee's alternative minimum taxable income upon exercise and (b) Optionee's ordinary income upon a disqualifying disposition to the excess of the Fair Market Value of the Purchased Shares on the date the Option is exercised over the Exercise Price paid for the Purchased Shares. The appropriate form for making such a protective election is attached as Exhibit III to this Agreement and must be filed with the Internal Revenue Service within thirty (30) days after the date of this Agreement. However,

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<sup>1/</sup> Generally, a disposition of shares purchased under an Incentive Option includes any transfer of legal title, including a transfer by sale, exchange or gift, but does not include a transfer to the Optionee's spouse, a transfer into joint ownership with right of survivorship if Optionee remains one of the joint owners, a pledge, a transfer by bequest or inheritance or certain tax free exchanges permitted under the Code.

such election if properly filed will only be allowed to the extent the final Treasury Regulations permit such a protective election.

3. **FILING RESPONSIBILITY.** OPTIONEE ACKNOWLEDGES THAT IT IS OPTIONEE'S SOLE RESPONSIBILITY, AND NOT THE CORPORATION'S, TO FILE A TIMELY ELECTION UNDER SECTION 83(b), EVEN IF OPTIONEE REQUESTS THE CORPORATION OR ITS REPRESENTATIVES TO MAKE THIS FILING ON HIS OR HER BEHALF.

**D. TRANSFER RESTRICTIONS**

1. **Restriction on Transfer.** Optionee shall not transfer, assign, encumber or otherwise dispose of any of the Purchased Shares which are subject to the Repurchase Right under Article E. In addition, Purchased Shares which are released from the Repurchase Right shall not be transferred, assigned, encumbered or otherwise made the subject of disposition in contravention of the First Refusal Right under Article F or the market stand-off provisions of paragraph D.3. Such restrictions on transfer, however, shall not be applicable to (i) a gratuitous transfer of the Purchased Shares, provided and only if Optionee obtains the Corporation's prior written consent to such transfer, (ii) a transfer of title to the Purchased Shares effected pursuant to Optionee's will or the laws of intestate succession or (iii) a transfer to the Corporation in pledge as security for any purchase-money indebtedness incurred by Optionee in connection with the acquisition of the Purchased Shares.

2. **Transferee Obligations.** Each person (other than the Corporation) to whom the Purchased Shares are transferred by means of one of the permitted transfers specified in paragraph D.1 must, as a condition precedent to the validity of such transfer, acknowledge in writing to the Corporation that such person is bound by the provisions of this Agreement and that the transferred shares are subject to (i) both the Repurchase Right and the First Refusal Right granted hereunder and (ii) the market stand-off provisions of paragraph D.3, to the same extent such shares would be so subject if retained by Optionee.

3. **Market Stand-Off.**

(a) In connection with any underwritten public offering by the Corporation of its equity securities pursuant to an effective registration statement filed under the 1933 Act, including the Corporation's initial public offering, Owner shall not sell, make any short sale of, loan, hypothecate, pledge, grant any option for the purchase of, or otherwise dispose or transfer for value or otherwise agree to engage in any of the foregoing transactions with respect to, any Purchased Shares without the prior written consent of the Corporation or its underwriters. Such limitations shall be in effect for such period of time from and after the effective date of the final prospectus for the offering as may be requested

by the Corporation or such underwriters; provided, however, that in no event shall such period exceed one hundred eighty (180) days. The limitations of this paragraph D.3 shall in all events terminate two (2) years after the effective date of the Corporation's initial public offering.

(b) Owner shall be subject to the market stand-off provisions of this paragraph D.3 provided and only if the officers and directors of the Corporation are also subject to similar arrangements.

(c) In the event of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the Corporation's outstanding Common Stock effected as a class without the Corporation's receipt of consideration, then any new, substituted or additional securities distributed with respect to the Purchased Shares shall be immediately subject to the provisions of this paragraph D.3, to the same extent the Purchased Shares are at such time covered by such provisions.

(d) In order to enforce the limitations of this paragraph D.3, the Corporation may impose stop-transfer instructions with respect to the Purchased Shares until the end of the applicable stand-off period.

#### **E. REPURCHASE RIGHT**

1. Grant. The Corporation is hereby granted the right (the "Repurchase Right"), exercisable at any time during the sixty (60)-day period following the date Optionee ceases for any reason to remain in Service or (if later) during the sixty (60)-day period following the execution date of this Agreement, to repurchase at the Exercise Price all or (at the discretion of the Corporation and with the consent of Optionee) any portion of the Purchased Shares in which Optionee is not, at the time of his or her cessation of Service, vested in accordance with the vesting provisions of paragraph E.3 (such shares to be hereinafter called the "Unvested Shares").

2. Exercise of the Repurchase Right. The Repurchase Right shall be exercisable by written notice delivered to each Owner of the Unvested Shares prior to the expiration of the applicable sixty (60)-day period specified in paragraph E.1. The notice shall indicate the number of Unvested Shares to be repurchased and the date on which the repurchase is to be effected, such date to be not more than thirty (30) days after the date of notice. To the extent one or more certificates representing Unvested Shares may have been previously delivered out of escrow to Owner, Owner shall, prior to the close of business on the date specified for the repurchase, deliver to the Corporate Secretary the certificates representing the Unvested Shares to be repurchased, each certificate to be properly endorsed for transfer. The Corporation shall, concurrently with the receipt of such stock certificates (either from escrow in accordance with paragraph G.3 or from Owner as

herein provided), pay to Owner in cash or cash equivalents (including the cancellation of any purchase-money indebtedness), an amount equal to the Exercise Price previously paid for the Unvested Shares which are to be repurchased from Owner.

3. **Termination of the Repurchase Right.** The Repurchase Right shall terminate with respect to any Unvested Shares for which it is not timely exercised under paragraph E.2. In addition, the Repurchase Right shall terminate, and cease to be exercisable, with respect to any and all Purchased Shares in which Optionee vests in accordance with the vesting schedule specified in the Grant Notice. All Purchased Shares as to which the Repurchase Right lapses shall, however, continue to be subject to (i) the First Refusal Right of the Corporation and its assignees under Article F, (ii) the market stand-off provisions of paragraph D.3 and (iii) the Special Purchase Right under Article H.

4. **Aggregate Vesting Limitation.** If the Option is exercised in more than one increment so that Optionee is a party to one or more other Stock Purchase Agreements ("Prior Purchase Agreements") which are executed prior to the date of this Agreement, then the total number of Purchased Shares as to which Optionee shall be deemed to have a fully-vested interest under this Agreement and all Prior Purchase Agreements shall not exceed in the aggregate the number of Purchased Shares in which Optionee would otherwise at the time be vested, in accordance with the vesting provisions of paragraph E.3, had all the Purchased Shares been acquired exclusively under this Agreement.

5. **Fractional Shares.** No fractional shares shall be repurchased by the Corporation. Accordingly, should the Repurchase Right extend to a fractional share (in accordance with the vesting provisions of paragraph E.3) at the time Optionee ceases Service, then such fractional share shall be added to any fractional share in which Optionee is at such time vested in order to make one whole vested share no longer subject to the Repurchase Right.

6. **Additional Shares or Substituted Securities.** In the event of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class effected without the Corporation's receipt of consideration, any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which is by reason of any such transaction distributed with respect to the Purchased Shares shall be immediately subject to the Repurchase Right, but only to the extent the Purchased Shares are at the time covered by such right. Appropriate adjustments to reflect the distribution of such securities or property shall be made to the number and/or class of Purchased Shares subject to this Agreement and to the price per share to be paid upon the exercise of the Repurchase Right in order to reflect the effect of any such transaction upon the Corporation's capital structure; provided, however, that the aggregate price shall remain the same.

**7. Corporate Transaction.**

(a) Immediately prior to the consummation of a Corporate Transaction, the Repurchase Right shall automatically lapse in its entirety, except to the extent the Repurchase Right is to be assigned to the successor corporation (or its parent company) in connection with such Corporate Transaction.

(b) To the extent the Repurchase Right remains in effect following a Corporate Transaction, the right shall apply to the new capital stock or other property (including cash paid other than as a regular cash dividend) received in exchange for the Purchased Shares in consummation of the Corporate Transaction, but only to the extent the Purchased Shares are at the time covered by such right. Appropriate adjustments shall be made to the price per share payable upon exercise of the Repurchase Right to reflect the effect of the Corporate Transaction upon the Corporation's capital structure; provided, however, that the aggregate price shall remain the same.

**F. RIGHT OF FIRST REFUSAL**

1. **Grant.** The Corporation is hereby granted the right of first refusal (the "First Refusal Right"), exercisable in connection with any proposed transfer of the Purchased Shares in which Optionee has vested in accordance with the vesting provisions of Article E. For purposes of this Article F, the term "transfer" shall include any sale, assignment, pledge, encumbrance or other disposition of the Purchased Shares intended to be made by Owner, but shall not include any of the permitted transfers under paragraph D.1.

2. **Notice of Intended Disposition.** In the event any Owner of the Purchased Shares desires to accept a bona fide third-party offer for the transfer of any or all of such shares (the Purchased Shares subject to such offer to be hereinafter called the "Target Shares"), Owner shall promptly (i) deliver to the Corporate Secretary written notice (the "Disposition Notice") of the terms and conditions of the offer, including the purchase price and the identity of the third-party offeror, and (ii) provide satisfactory proof that the disposition of the Target Shares to such third-party offeror would not be in contravention of the provisions set forth in Articles B and D.

3. **Exercise of Right.** The Corporation (or its assignees) shall, for a period of twenty-five (25) days following receipt of the Disposition Notice, have the right to repurchase any or all of the Target Shares subject to the Disposition Notice upon the same terms and conditions as those specified therein or upon such other terms and conditions (not materially different from those specified in the Disposition Notice) to which Owner consents. Such right shall be exercisable by delivery of written notice (the "Exercise Notice") to Owner prior to the expiration of the twenty-five (25)-day exercise period. If such right is exercised with respect to all the Target Shares, then the Corporation (or its assignees)

shall effect the repurchase of such shares, including payment of the purchase price, not more than five (5) business days after delivery of the Exercise Notice; and at such time Owner shall deliver to the Corporation the certificates representing the Target Shares to be repurchased, each certificate to be properly endorsed for transfer. To the extent any of the Target Shares are at the time held in escrow under Article G, the certificates for such shares shall automatically be released from escrow and delivered to the Corporation for purchase.

Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the Corporation (or its assignees) shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If Owner and the Corporation (or its assignees) cannot agree on such cash value within ten (10) days after the Corporation's receipt of the Disposition Notice, the valuation shall be made by an appraiser of recognized standing selected by Owner and the Corporation (or its assignees) or, if they cannot agree on an appraiser within twenty (20) days after the Corporation's receipt of the Disposition Notice, each shall select an appraiser of recognized standing and the two (2) appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by Owner and the Corporation. The closing shall then be held on the later of (i) the fifth business day following delivery of the Exercise Notice or (ii) the fifth business day after such cash valuation shall have been made.

4. Non-Exercise of Right. In the event the Exercise Notice is not given to Owner within twenty-five (25) days following the date of the Corporation's receipt of the Disposition Notice, Owner shall have a period of thirty (30) days thereafter in which to sell or otherwise dispose of the Target Shares to the third-party offeror identified in the Disposition Notice upon terms and conditions (including the purchase price) no more favorable to such third-party offeror than those specified in the Disposition Notice; provided, however, that any such sale or disposition must not be effected in contravention of the provisions of Article B. To the extent any of the Target Shares are at the time held in escrow under Article G, the certificates for such shares shall automatically be released from escrow and surrendered to Owner. The third-party offeror shall acquire the Target Shares free and clear of the Repurchase Right under Article E and the First Refusal Right hereunder, but the acquired shares shall remain subject to (i) the securities law restrictions of paragraph B.2(a) and (ii) the market stand-off provisions of paragraph D.3. In the event Owner does not effect such sale or disposition of the Target Shares within the specified thirty (30)-day period, the First Refusal Right shall continue to be applicable to any subsequent disposition of the Target Shares by Owner until such right lapses in accordance with paragraph F.7.

5. Partial Exercise of Right. In the event the Corporation (or its assignees) makes a timely exercise of the First Refusal Right with respect to a portion, but not all, of the Target Shares specified in the Disposition Notice, Owner shall have the



option, exercisable by written notice to the Corporation delivered within five (5) days after Owner's receipt of the Exercise Notice, to effect the sale of the Target Shares pursuant to either of the following alternatives:

(i) sale or other disposition of all the Target Shares to the third-party offeror identified in the Disposition Notice, but in full compliance with the requirements of paragraph F.4, as if the Corporation did not exercise the First Refusal Right hereunder; or

(ii) sale to the Corporation (or its assignees) of the portion of the Target Shares which the Corporation (or its assignees) has elected to purchase, such sale to be effected in substantial conformity with the provisions of paragraph F.3.

Failure of Owner to deliver timely notification to the Corporation under this paragraph F.5 shall be deemed to be an election by Owner to sell the Target Shares pursuant to alternative (i) above.

**6. Recapitalization/Reorganization.**

(a) In the event of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other transaction affecting the outstanding Common Stock as a class effected without the Corporation's receipt of consideration, any new, substituted or additional securities or other property which is by reason of such transaction distributed with respect to the Purchased Shares shall be immediately subject to the First Refusal Right hereunder, but only to the extent the Purchased Shares are at the time covered by such right.

(b) In the event of a Reorganization, the First Refusal Right shall remain in full force and effect and shall apply to the new capital stock or other property received in exchange for the Purchased Shares in consummation of the Reorganization, but only to the extent the Purchased Shares are at the time covered by such right.

**7. Lapse.** The First Refusal Right under this Article F shall lapse and cease to have effect upon the earliest to occur of (i) the first date on which shares of the Common Stock are held of record by more than five hundred (500) persons, (ii) a determination is made by the Board that a public market exists for the outstanding shares of Common Stock or (iii) a firm commitment underwritten public offering, pursuant to an effective registration statement under the 1933 Act, covering the offer and sale of the Common Stock in the aggregate amount of at least ten million dollars (\$10,000,000). However, the market stand-off provisions of paragraph D.3 shall continue to remain in full force and effect following the lapse of the First Refusal Right hereunder.

## **G. ESCROW**

1. **Deposit.** Upon issuance, the certificates for the Purchased Shares shall be deposited in escrow with the Corporate Secretary to be held in accordance with the provisions of this Article G. Each deposited certificate shall be accompanied by a duly-executed Assignment Separate from Certificate in the form of Exhibit I. The deposited certificates, together with any other assets or securities from time to time deposited with the Corporate Secretary pursuant to the requirements of this Agreement, shall remain in escrow until such time or times as the certificates (or other assets and securities) are to be released or otherwise surrendered for cancellation in accordance with paragraph G.3. Upon delivery of the certificates (or other assets and securities) to the Corporate Secretary, Owner shall be issued an instrument of deposit acknowledging the number of Purchased Shares (or other assets and securities) delivered in escrow.

2. **Recapitalization.** In the event of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares, or other change affecting the Corporation's outstanding Common Stock as a class effected without the Corporation's receipt of consideration or in the event of a Corporate Transaction or Reorganization, any new, substituted or additional securities or other property which is by reason of such transaction distributed with respect to the Purchased Shares shall be immediately delivered to the Corporate Secretary to be held in escrow under this Article G, but only to the extent the Purchased Shares are at the time subject to the escrow requirements of paragraph G.1. However, all regular cash dividends on the Purchased Shares (or other securities at the time held in escrow) shall be paid directly to Owner and shall not be held in escrow.

3. **Release/Surrender.** The Purchased Shares, together with any other assets or securities held in escrow hereunder, shall be subject to the following terms and conditions relating to their release from escrow or their surrender to the Corporation for repurchase and cancellation:

(i) Should the Corporation (or its assignees) elect to exercise the Repurchase Right with respect to any Purchased Shares, then the escrowed certificates for such Purchased Shares (together with any other assets or securities attributable thereto) shall be delivered to the Corporation concurrently with the payment to Owner, in cash or cash equivalent (including the cancellation of any purchase-money indebtedness), of an amount equal to the aggregate Exercise Price for such Purchased Shares, and Owner shall cease to have any further rights or claims with respect to such Purchased Shares (or other assets or securities attributable to such Purchased Shares).

(ii) Should the Corporation (or its assignees) elect to exercise its First Refusal Right with respect to any vested Target Shares held at the

time in escrow hereunder, then the escrowed certificates for such Target Shares (together with any other assets or securities attributable thereto) shall, concurrently with the payment of the paragraph F.3 purchase price for such Target Shares to Owner, be surrendered to the Corporation, and Owner shall cease to have any further rights or claims with respect to such Target Shares (or other assets or securities attributable thereto).

(iii) Should the Corporation (or its assignees) elect not to exercise its First Refusal Right with respect to any Target Shares held at the time in escrow hereunder, then the escrowed certificates for such Target Shares (together with any other assets or securities attributable thereto) shall be surrendered to Owner for disposition in accordance with provisions of paragraph F.4.

(iv) As the interest of Optionee in the Purchased Shares (or any other assets or securities attributable thereto) vests in accordance with the provisions of Article E, the certificates for such vested shares (as well as all other vested assets and securities) shall be released from escrow upon Owner's request, but not more frequently than once every six (6) months.

(v) All purchased shares in which Optionee is vested (and any other vested assets and securities attributable thereto) shall be released within thirty (30) days after the earliest to occur of (a) Optionee's cessation of Service, (b) the termination of the Repurchase Right in accordance with the applicable provisions of Article E or (c) the termination of the First Refusal Right in accordance with paragraph F.7.

(vi) All Purchased Shares (or other assets or securities) released from escrow in accordance with the provisions of subparagraph (iv) or (v) above shall nevertheless remain subject to (a) the First Refusal Right, to the extent such right has not otherwise lapsed pursuant to paragraph F.7, (b) the market stand-off provisions of paragraph D.3 until such provisions terminate in accordance therewith and (c) the Special Purchase Right, to the extent such right has not otherwise lapsed pursuant to paragraph H.4.

#### **H. MARITAL DISSOLUTION OR LEGAL SEPARATION**

1. Grant. In connection with the dissolution of Optionee's marriage or the legal separation of Optionee and Optionee's spouse, the Corporation shall have the right (the "Special Purchase Right"), exercisable at any time during the thirty (30)-day period following the Corporation's receipt of the required Dissolution Notice under paragraph H.2, to purchase from Optionee's spouse, in accordance with the provisions of paragraph H.3,

all or any portion of the Purchased Shares which would otherwise be awarded to such spouse in settlement of any community property or other marital property rights such spouse may have in such shares.

2. **Notice of Decree or Agreement.** Optionee shall promptly provide the Corporate Secretary with written notice (the "Dissolution Notice") of (i) the entry of any judicial decree or order resolving the property rights of Optionee and Optionee's spouse in connection with their marital dissolution or legal separation or (ii) the execution of any contract or agreement relating to the distribution or division of such property rights. The Dissolution Notice shall be accompanied by a copy of the actual decree of dissolution or settlement agreement between Optionee and Optionee's spouse which provides for the award to the spouse of one or more Purchased Shares in settlement of any community property or other marital property rights such spouse may have in such shares.

3. **Exercise of Special Purchase Right.** The Special Purchase Right shall be exercisable by delivery of written notice (the "Purchase Notice") to Optionee and Optionee's spouse within thirty (30) days after the Corporation's receipt of the Dissolution Notice. The Purchase Notice shall indicate the number of shares to be purchased by the Corporation, the date such purchase is to be effected (such date to be not less than five (5) business days, nor more than ten (10) business days, after the date of the Purchase Notice) and the Fair Market Value to be paid for such Purchased Shares. Optionee (or Optionee's spouse, to the extent such spouse has physical possession of the Purchased Shares) shall, prior to the close of business on the date specified for the purchase, deliver to the Corporate Secretary the certificates representing the shares to be purchased, each certificate to be properly endorsed for transfer. To the extent any of the shares to be purchased by the Corporation are at the time held in escrow under Article G, the certificates for such shares shall be promptly delivered out of escrow to the Corporation. The Corporation shall, concurrently with the receipt of the stock certificates, pay to Optionee's spouse (in cash or cash equivalents) an amount equal to the Fair Market Value specified for such shares in the Purchase Notice.

If Optionee's spouse does not agree with the Fair Market Value specified for the shares in the Purchase Notice, then the spouse shall promptly notify the Corporation in writing of such disagreement and the fair market value of such shares shall thereupon be determined by an appraiser of recognized standing selected by the Corporation and the spouse. If they cannot agree on an appraiser within twenty (20) days after the date of the Purchase Notice, each shall select an appraiser of recognized standing, and the two (2) appraisers shall designate a third appraiser of recognized standing whose appraisal shall be determinative of such value. The cost of the appraisal shall be shared equally by the Corporation and Optionee's spouse. The closing shall then be held on the fifth business day following the completion of such appraisal; provided, however, that if the appraised value is more than twenty-five percent (25%) greater than the Fair Market Value specified for the

shares in the Purchase Notice, the Corporation shall have the right, exercisable prior to the expiration of such five (5) business-day period, to rescind the exercise of the Special Purchase Right and thereby revoke its election to purchase the shares awarded to the spouse.

4. **Lapse.** The Special Purchase Right under this Article H shall lapse and cease to have effect upon the earlier to occur of (i) the first date on which the First Refusal Right lapses or (ii) the expiration of the thirty (30)-day exercise period specified in paragraph H.3, to the extent the Special Purchase Right is not timely exercised in accordance with such paragraph.

## **I. GENERAL PROVISIONS**

1. **Assignment.** The Corporation may assign its Repurchase Right, its First Refusal Right and/or its Special Purchase Right to any person or entity selected by the Board, including (without limitation) one or more stockholders of the Corporation.

If the assignee of the Repurchase Right is other than (i) a wholly owned subsidiary of the Corporation or (ii) the parent corporation owning one hundred percent (100%) of the Corporation's outstanding capital stock, then such assignee must make a cash payment to the Corporation, upon the assignment of the Repurchase Right, in an amount equal to the excess (if any) of (i) the Fair Market Value of the Purchased Shares at the time subject to the assigned Repurchase Right over (ii) the aggregate repurchase price payable for the Purchased Shares thereunder.

2. **No Employment or Service Contract.** Nothing in this Agreement or in the Plan shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary) or Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason whatsoever, with or without cause.

3. **Notices.** Any notice required in connection with (i) the Repurchase Right, the Special Purchase Right or the First Refusal Right or (ii) the disposition of any Purchased Shares covered thereby shall be given in writing and shall be deemed effective upon personal delivery or upon deposit in the United States mail, registered or certified, postage prepaid and addressed to the party entitled to such notice at the address indicated below such party's signature line on this Agreement or at such other address as such party may designate by ten (10) days advance written notice under this paragraph I.3 to all other parties to this Agreement.

4. **No Waiver.** The failure of the Corporation (or its assignees) in any instance to exercise the Repurchase Right, or the failure of the Corporation (or its assignees) in any instance to exercise the First Refusal Right, or the failure of the Corporation (or its assignees) in any instance to exercise the Special Purchase Right shall not constitute a waiver of any other repurchase rights and/or rights of first refusal that may subsequently arise under the provisions of this Agreement or any other agreement between the Corporation and Optionee or Optionee's spouse. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

5. **Cancellation of Shares.** If the Corporation (or its assignees) shall make available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Purchased Shares to be repurchased in accordance with the provisions of this Agreement, then from and after such time, the person from whom such shares are to be repurchased shall no longer have any rights as a holder of such shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such shares shall be deemed purchased in accordance with the applicable provisions hereof, and the Corporation (or its assignees) shall be deemed the owner and holder of such shares, whether or not the certificates therefor have been delivered as required by this Agreement.

## **J. MISCELLANEOUS PROVISIONS**

1. **Optionee Undertaking.** Optionee hereby agrees to take whatever additional action and execute whatever additional documents the Corporation may deem necessary or advisable in order to carry out or effect one or more of the obligations or restrictions imposed on either Optionee or the Purchased Shares pursuant to the express provisions of this Agreement.

2. **Agreement is Entire Contract.** This Agreement constitutes the entire contract between the parties hereto with regard to the subject matter hereof. This Agreement is made pursuant to the provisions of the Plan and shall in all respects be construed in conformity with the express terms and provisions of the Plan.

3. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without resort to that State's conflict-of-laws rules.

4. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

5. **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and Optionee and Optionee's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person shall have become a party to this Agreement and have agreed in writing to join herein and be bound by the terms and conditions hereof.

6. **Power of Attorney.** Optionee's spouse hereby appoints Optionee his or her true and lawful attorney in fact, for him or her and in his or her name, place and stead, and for his or her use and benefit, to agree to any amendment or modification of this Agreement and to execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of this Agreement. Optionee's spouse further gives and grants unto Optionee as his or her attorney in fact full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as he or she might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that Optionee shall lawfully do and cause to be done by virtue of this power of attorney.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first indicated above.

**NETSCAPE COMMUNICATIONS CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**OPTIONEE**

Address: \_\_\_\_\_  
\_\_\_\_\_

The undersigned spouse of Optionee has read and hereby approves the foregoing Stock Purchase Agreement. In consideration of the Corporation's granting Optionee the right to acquire the Purchased Shares in accordance with the terms of such Agreement, the undersigned hereby agrees to be irrevocably bound by all the terms and provisions of such Agreement, including (specifically) the right of the Corporation (or its assignees) to purchase any and all interest or right the undersigned may otherwise have in such shares pursuant to community property laws or other marital property rights.

\_\_\_\_\_  
**OPTIONEE'S SPOUSE**

Address: \_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT I**

**ASSIGNMENT SEPARATE FROM CERTIFICATE**

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sell(s),  
assign(s) and transfer(s) unto Netscape Communications Corporation (the "Corporation"),  
\_\_\_\_\_ (\_\_\_\_\_) shares of the Common Stock of the Corporation  
standing in his or her name on the books of the Corporation represented by Certificate No.  
\_\_\_\_\_ herewith, and does hereby irrevocably constitute and appoint \_\_\_\_\_  
Attorney to transfer the said stock on the books of the Corporation with full power of  
substitution in the premises.

Dated: \_\_\_\_\_

Signature \_\_\_\_\_

**Instruction:** Please do not fill in any blanks other than the signature line. Please sign exactly as you would like your name to appear on the issued stock certificate. The purpose of this assignment is to enable the Corporation to exercise its Repurchase Right set forth in the Agreement without requiring additional signatures on the part of Optionee.

## **EXHIBIT II**

### **SECTION 260.141.11 TITLE 10, CALIFORNIA ADMINISTRATIVE CODE**

**260.141.11 Restriction on Transfer.** (a) The issuer of any security upon which a restriction on transfer has been imposed pursuant to Sections 260.102.6, 260.141.10 or 260.534 shall cause a copy of this section to be delivered to each issuee or transferee of such security at the time the certificate evidencing the security is delivered to the issuee or transferee.

(b) It is unlawful for the holder of any such security to consummate a sale or transfer of such security, or any interest therein, without the prior written consent of the Commissioner (until this condition is removed pursuant to Section 260.141.12 of these rules), except:

- (1) to the issuer;
- (2) pursuant to the order or process of any court;
- (3) to any person described in Subdivision (i) of Section 25102 of the Code or Section 260.105.14 of these rules;
- (4) to the transferor's ancestors, descendants or spouse, or any custodian or trustee for the account of the transferor or the transferor's ancestors, descendants, or spouse; or to a transferee by a trustee or custodian for the account of the transferee or the transferee's ancestors, descendants or spouse;
- (5) to holders of securities of the same class of the same issuer;
- (6) by way of gift or donation inter vivos or on death;
- (7) by or through a broker-dealer licensed under the Code (either acting as such or as a finder) to a resident of a foreign state, territory or country who is neither domiciled in this state to the knowledge of the broker-dealer, nor actually present in this state if the sale of such securities is not in violation of any securities law of the foreign state, territory or country concerned;
- (8) to a broker-dealer licensed under the Code in a principal transaction, or as an underwriter or member of an underwriting syndicate or selling group;
- (9) if the interest sold or transferred is a pledge or other lien given by the purchaser to the seller upon a sale of the security for which the Commissioner's written consent is obtained or under this rule not required;

(10) by way of a sale qualified under Sections 25111, 25112, 25113 or 25121 of the Code, of the securities to be transferred, provided that no order under Section 25140 or Subdivision (a) of Section 25143 is in effect with respect to such qualification;

(11) by a corporation to a wholly owned subsidiary of such corporation, or by a wholly owned subsidiary of a corporation to such corporation;

(12) by way of an exchange qualified under Section 25111, 25112 or 25113 of the Code, provided that no order under Section 25140 or Subdivision (a) of Section 25143 is in effect with respect to such qualification;

(13) between residents of foreign states, territories or countries who are neither domiciled nor actually present in this state;

(14) to the State Controller pursuant to the Unclaimed Property Law or to the administrator of the unclaimed property law of another state; or

(15) by the State Controller pursuant to the Unclaimed Property Law or by the administrator of the unclaimed property law of another state if, in either such case, such person (i) discloses to potential purchasers at the sale that transfer of the securities is restricted under this rule, (ii) delivers to each purchaser a copy of this rule, and (iii) advises the Commissioner of the name of each purchaser;

(16) by a trustee to a successor trustee when such transfer does not involve a change in the beneficial ownership of the securities;

(17) by way of an offer and sale of outstanding securities in an issuer transaction that is subject to the qualification requirement of Section 25110 of the Code but exempt from that qualification requirement by subdivision (f) of Section 25102; provided that any such transfer is on the condition that any certificate evidencing the security issued to such transferee shall contain the legend required by this section.

(c) The certificates representing all such securities subject to such a restriction on transfer, whether upon initial issuance or upon any transfer thereof, shall bear on their face a legend, prominently stamped or printed thereon in capital letters of not less than 10-point size, reading as follows:

**"IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES."**

### EXHIBIT III

#### SECTION 83(b) TAX ELECTION

This statement is being made under Section 83(b) of the Internal Revenue Code, pursuant to Treas. Reg. Section 1.83-2.

- (1) The taxpayer who performed the services is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer Ident. No.: \_\_\_\_\_

- (2) The property with respect to which the election is being made is \_\_\_\_\_ shares of the common stock of Netscape Communications Corporation.
- (3) The property was issued on \_\_\_\_\_, 199\_\_.
- (4) The taxable year in which the election is being made is the calendar year 199\_\_.
- (5) The property is subject to a repurchase right pursuant to which the issuer has the right to acquire the property at the original purchase price if for any reason taxpayer's employment with the issuer is terminated. The issuer's repurchase right lapses in a series of monthly installments over a 50 month period ending on \_\_\_\_\_, 199\_\_.
- (6) The fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse) is \$\_\_\_\_\_ per share.
- (7) The amount paid for such property is \$\_\_\_\_\_ per share.
- (8) A copy of this statement was furnished to Netscape Communications Corporation for whom taxpayer rendered the services underlying the transfer of property.
- (9) This statement is executed on \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Spouse (if any)

\_\_\_\_\_  
Taxpayer

*This election must be filed with the Internal Revenue Service Center with which taxpayer files his or her Federal income tax returns and must be made within thirty (30) days after the execution date of the Stock Purchase Agreement. This filing should be made by registered or certified mail, return receipt requested. Optionee must retain two (2) copies of the completed form for filing with his or her Federal and state tax returns for the current tax year and an additional copy for his or her records.*

The property described in the above Section 83(b) election is comprised of shares of common stock acquired pursuant to the exercise of an incentive stock option under Section 422 of the Internal Revenue Code (the "Code"). Accordingly, it is the intent of the Taxpayer to utilize this election to achieve the following tax results:

1. The purpose of this election is to have the alternative minimum taxable income attributable to the purchased shares measured by the amount by which the fair market value of such shares at the time of their transfer to the Taxpayer exceeds the purchase price paid for the shares. In the absence of this election, such alternative minimum taxable income would be measured by the spread between the fair market value of the purchased shares and the purchase price which exists on the various lapse dates in effect for the forfeiture restrictions applicable to such shares. The election is to be effective to the full extent permitted under the Code.

2. Section 421(a)(1) of the Code expressly excludes from income any excess of the fair market value of the purchased shares over the amount paid for such shares. Accordingly, this election is also intended to be effective in the event there is a "disqualifying disposition" of the shares, within the meaning of Section 421(b) of the Code, which would otherwise render the provisions of Section 83(a) of the Code applicable at that time. Consequently, the Taxpayer hereby elects to have the amount of disqualifying disposition income measured by the excess of the fair market value of the purchased shares on the date of transfer to the Taxpayer over the amount paid for such shares. Since Section 421(a) presently applies to the shares which are the subject of this Section 83(b) election, no taxable income is actually recognized for regular tax purposes at this time, and no income taxes are payable, by the Taxpayer as a result of this election.

**THIS PAGE 2 IS TO BE ATTACHED TO ANY SECTION 83(b) ELECTION FILED IN CONNECTION WITH THE EXERCISE OF AN INCENTIVE STOCK OPTION UNDER THE FEDERAL TAX LAWS.**

## **APPENDIX**

### **DEFINITIONS**

- A. **Board** shall mean the Corporation's Board of Directors.
- B. **Code** shall mean the Internal Revenue Code of 1986, as amended.
- C. **Common Stock** shall mean the Corporation's common stock.
- D. **Corporate Transaction** shall mean one or more of the following stockholder-approved transactions:
  - (i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or
  - (ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.
- E. **Exchange Act** shall mean the Securities Exchange Act of 1934, as amended.
- F. **Fair Market Value** of a share of Common Stock on any relevant date, prior to the initial public offering of the Common Stock, shall be determined by the Plan Administrator after taking into account such factors as it shall deem appropriate.
- G. **Grant Notice** shall mean the notice of grant of stock option pursuant to which Optionee has been informed of the basic terms of the Option.
- H. **Incentive Option** shall mean a stock option granted under the Plan which satisfies the requirements of Code Section 422.
- I. **1933 Act** shall mean the Securities Act of 1933, as amended.
- J. **Non-Statutory Option** shall mean an option not intended to meet the requirements of Code Section 422.
- K. **Option Agreement** shall mean the agreement between the Corporation and Optionee evidencing the Option.

L. Owner shall mean Optionee and all subsequent holders of the Purchased Shares who derive their chain of ownership through a permitted transfer from Optionee in accordance with paragraph D.1.

M. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

N. Reorganization shall mean any of the following transactions:

(i) a merger or consolidation in which the Corporation is not the surviving entity,

(ii) a sale, transfer or other disposition of all or substantially all of the Corporation's assets,

(iii) a reverse merger in which the Corporation is the surviving entity but in which the Corporation's outstanding voting securities are transferred in whole or in part to a person or persons other than those who held such securities immediately prior to the merger, or

(iv) any transaction effected primarily to change the state in which the Corporation is incorporated or to create a holding company structure.

O. SEC shall mean the Securities and Exchange Commission.

P. Service shall mean the provision of services to the Corporation or any Parent or Subsidiary by an individual in the capacity of an employee, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance, a non-employee member of the board of directors or a consultant.

Q. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each such corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**EXHIBIT 10.3**



**NETSCAPE COMMUNICATIONS CORPORATION**  
**1994 STOCK OPTION PLAN**

**(AS AMENDED THROUGH JANUARY 20, 1995)**

**I. PURPOSES OF THE PLAN**

This 1994 Stock Option Plan is intended to promote the interests of Netscape Communications Corporation, a Delaware corporation, by providing a method whereby eligible individuals who provide valuable services to the Corporation (or any Parent or Subsidiary) may be offered incentives and rewards which will encourage them to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Corporation and continue to render services to the Corporation (or any Parent or Subsidiary).

**II. DEFINITIONS**

For the purposes of this Plan, the following definitions shall be in effect:

- A. Board shall mean the Corporation's Board of Directors.
- B. Code shall mean the Internal Revenue Code of 1986, as amended.
- C. Committee shall mean a committee of two (2) or more Board members appointed by the Board to exercise one or more administrative functions under the Plan.
- D. Common Stock shall mean the Corporation's common stock.
- E. Corporate Transaction shall mean either of the following stockholder-approved transactions to which the Corporation is a party:
  - (i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those who held those securities immediately prior to such transaction, or
  - (ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.
- F. Corporation shall mean Netscape Communications Corporation, a Delaware corporation.

G. **Disability** shall mean the inability of an individual to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment and shall be determined by the Plan Administrator on the basis of such medical evidence as the Plan Administrator deems warranted under the circumstances. Disability shall be deemed to constitute Permanent Disability in the event that such Disability is expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

H. **Employee** shall mean an individual who is in the employ of the Corporation or any Parent or Subsidiary, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

I. **Exchange Act** shall mean the Securities Exchange Act of 1934, as amended.

J. **Exercise Date** shall mean the date on which the Corporation shall have received written notice of the option exercise.

K. **Fair Market Value** per share of Common Stock on any relevant date under the Plan shall be the value determined in accordance with the following provisions:

(i) If the Common Stock is not at the time listed or admitted to trading on any Stock Exchange but is traded on the Nasdaq National Market, the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as such price is reported by the National Association of Securities Dealers through the Nasdaq National Market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed or admitted to trading on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed nor admitted to trading on any Stock Exchange nor traded on the Nasdaq

National Market, then such Fair Market Value shall be determined by the Plan Administrator after taking into account such factors as the Plan Administrator shall deem appropriate.

L. Incentive Option shall mean a stock option which satisfies the requirements of Code Section 422.

M. Non-Statutory Option shall mean a stock option not intended to meet the requirements of Code Section 422.

N. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

O. Plan shall mean the Corporation's 1994 Stock Option Plan, as set forth in this document.

P. Plan Administrator shall mean either the Board or the Committee, to the extent the Committee is at the time responsible for the administration of the Plan in accordance with Article III.

Q. Service shall mean the provision of services to the Corporation or any Parent or Subsidiary by an individual in the capacity of an Employee, a non-employee member of the board of directors or a consultant.

R. Stock Exchange shall mean either the American Stock Exchange or the New York Stock Exchange.

S. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each such corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

T. 10% Stockholder shall mean the owner of stock (as determined under Code Section 424(d)) possessing ten percent (10%) or more of the total combined voting power of all classes of stock of the Corporation or any Parent or Subsidiary.

### **III. ADMINISTRATION OF THE PLAN**

A. The Plan shall be administered by the Board. However, any or all administrative functions otherwise exercisable by the Board may be delegated to the Committee. Members of the Committee shall serve for such period of time as the Board may determine and shall be subject to removal by the Board at any time. The Board may also at any time terminate the functions of the Committee and reassume all powers and authority previously delegated to the Committee.

B. The Plan Administrator shall have full power and authority (subject to the provisions of the Plan) to establish such rules and regulations as it may deem appropriate for proper administration of the Plan and to make such determinations under, and issue such interpretations of, the Plan and any outstanding options as it may deem necessary or advisable. Decisions of the Plan Administrator shall be final and binding on all parties who have an interest in the Plan or any outstanding option.

### **IV. ELIGIBILITY FOR OPTION GRANTS**

A. The persons eligible to receive option grants under the Plan are as follows:

- (i) Employees,
- (ii) non-employee members of the Board or the non-employee members of the board of directors of any Parent or Subsidiary, and
- (iii) consultants who provide valuable services to the Corporation (or any Parent or Subsidiary).

B. The Plan Administrator shall have full authority to determine which eligible individuals are to receive option grants under the Plan, the number of shares to be covered by each such grant, the status of the granted option as either an Incentive Option or a Non-Statutory Option, the time or times at which each option is to become exercisable, the vesting schedule (if any) applicable to the option shares and the maximum term for which the option is to remain outstanding.

### **V. STOCK SUBJECT TO THE PLAN**

A. The stock issuable under the Plan shall be shares of the Corporation's authorized but unissued or reacquired Common Stock. The maximum number of shares

which may be issued over the term of the Plan shall not exceed 4,038,336<sup>1/</sup> shares, subject to adjustment from time to time in accordance with the provisions of this Article V.

B. Shares subject to outstanding options shall be available for subsequent option grants under the Plan to the extent (i) the options expire or terminate for any reason prior to exercise in full or (ii) the options are cancelled in accordance with the cancellation-regrant provisions of Article IX of the Plan. All shares issued under the Plan, whether or not those shares are subsequently repurchased by the Corporation pursuant to its repurchase rights under the Plan, shall reduce on a share-for-share basis the number of shares of Common Stock available for subsequent option grants.

C. In the event any change is made to the Common Stock issuable under the Plan by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan and (ii) the number and/or class of securities and the exercise price per share in effect under each outstanding option in order to prevent the dilution or enlargement of benefits thereunder. The adjustments determined by the Plan Administrator shall be final, binding and conclusive. In no event shall any adjustments be made for the conversion of one or more outstanding shares of the Corporation's preferred stock into shares of the Common Stock.

## **VI. TERMS AND CONDITIONS OF OPTIONS**

Options granted pursuant to the Plan shall be authorized by action of the Plan Administrator and may, at the Plan Administrator's discretion, be either Incentive Options or Non-Statutory Options. Each granted option shall be evidenced by one or more instruments in the form approved by the Plan Administrator, provided, however, that each such instrument shall comply with the terms and conditions specified below. Each instrument evidencing an Incentive Option shall, in addition, be subject to the applicable provisions of Article VII.

### **A. Exercise Price**

1. The exercise price per share shall be fixed by the Plan Administrator. In no event, however, shall the exercise price per share be less than eighty-five percent (85%) of the Fair Market Value per share of Common Stock on the date of the option grant.

<sup>1/</sup> Includes the 892,003-share increase approved by the Board on January 30, 1995 and the 281,717-share increase approved by the Board on May 10, 1995, subject to stockholder approval within twelve (12) months of that date.

2. If the individual to whom the option is granted is a 10% Stockholder, then the exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value per share of Common Stock on the grant date.

3. The exercise price shall become immediately due upon exercise of the option and shall, subject to the provisions of Article X and the agreement evidencing the grant, be payable in cash or check made payable to the Corporation. Should the Corporation's outstanding Common Stock be registered under Section 12(g) of the Exchange Act at the time the option is exercised, then the exercise price may also be paid as follows:

(i) in shares of Common Stock held by the optionee for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

(ii) through a special sale and remittance procedure pursuant to which the optionee shall concurrently provide irrevocable written instructions (a) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such purchase and (b) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale transaction.

Except to the extent such sale and remittance procedure is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

**B. Term and Exercise of Options.** Each option granted under the Plan shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the stock option agreement. However, no option shall have a term in excess of ten (10) years measured from the grant date. The option shall be exercisable during the optionee's lifetime only by the optionee and shall not be assignable or transferable other than by will or by the laws of descent and distribution following the optionee's death.

**C. Effect of Termination of Service.**

1. Except to the extent otherwise provided pursuant to subsection C.2 below, the following provisions shall govern the exercise period applicable to any options held by the optionee at the time of cessation of Service or death:

(i) Should the optionee cease to remain in Service for any reason other than death or Disability, then the period during which each outstanding option held by such optionee is to remain exercisable shall be limited to the three (3)-month period following the date of such cessation of Service.

(ii) Should such Service terminate by reason of Disability, then the period during which each outstanding option held by the optionee is to remain exercisable shall be limited to the six (6)-month period following the date of such cessation of Service. However, should such Disability be deemed to constitute Permanent Disability, then the period during which each outstanding option held by the optionee is to remain exercisable shall be extended by an additional six (6) months so that the exercise period shall be limited to the twelve (12)-month period following the date of the optionee's cessation of Service by reason of such Permanent Disability.

(iii) Should the optionee die while holding one or more outstanding options, then the period during which each such option is to remain exercisable shall be limited to the twelve (12)-month period following the date of the optionee's death. During such limited period, the option may be exercised by the personal representative of the optionee's estate or by the person or persons to whom the option is transferred pursuant to the optionee's will or in accordance with the laws of descent and distribution.

(iv) Under no circumstances, however, shall any such option be exercisable after the specified expiration date of the option term.

(v) During the applicable post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares for which the option is exercisable on the date of the optionee's cessation of Service. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be exercisable for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the optionee's cessation of Service, terminate and cease to be outstanding with respect to any option shares for which the option is not at that time exercisable or in which the optionee is not otherwise at that time vested.

2. The Plan Administrator shall have full power and authority to extend the period of time for which the option is to remain exercisable following the optionee's cessation of Service or death from the limited period in effect under subsection

C.1 of this Article VI to such greater period of time as the Plan Administrator shall deem appropriate; provided, that in no event shall such option be exercisable after the specified expiration date of the option term.

D. Stockholder Rights. An optionee shall have no stockholder rights with respect to the shares subject to the option until such individual shall have exercised the option and paid the exercise price.

E. Unvested Shares. The Plan Administrator shall have the discretion to authorize the issuance of unvested shares of Common Stock under the Plan. Should the optionee cease Service while holding such unvested shares, the Corporation shall have the right to repurchase, at the exercise price paid per share, all or (at the discretion of the Corporation and with the consent of the optionee) any of those unvested shares. The terms and conditions upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the agreement evidencing such repurchase right. In no event, however, may the Plan Administrator impose a vesting schedule upon any option granted under the Plan or any shares of Common Stock subject to the option which is more restrictive than twenty percent (20%) per year vesting, beginning one (1) year after the grant date. All outstanding repurchase rights under the Plan shall terminate automatically upon the occurrence of any Corporate Transaction, except to the extent the repurchase rights are expressly assigned to the successor corporation (or parent thereof) in connection with the Corporate Transaction.

F. First Refusal Rights. Until such time as the Corporation's outstanding shares of Common Stock are first registered under Section 12(g) of the Exchange Act, the Corporation shall have the right of first refusal with respect to any proposed sale or other disposition by the optionee (or any successor in interest by reason of purchase, gift or other transfer) of any shares of Common Stock issued under the Plan. Such right of first refusal shall be exercisable in accordance with the terms and conditions established by the Plan Administrator and set forth in the agreement evidencing such right.

## VII. INCENTIVE OPTIONS

The terms and conditions specified below shall be applicable to all Incentive Options granted under the Plan. Except as modified by the provisions of this Article VII, all the provisions of the Plan shall be applicable to Incentive Options. Incentive Options may only be granted to individuals who are Employees. Options which are specifically designated as Non-Statutory shall not be subject to such terms and conditions.

A. Exercise Price. The exercise price per share of the Common Stock subject to an Incentive Option shall in no event be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the date of grant.



B. Dollar Limitation. The aggregate Fair Market Value of the Common Stock (determined as of the respective date or dates of grant) for which one (1) or more options granted to any Employee under this Plan (or any other option plan of the Corporation or any Parent or Subsidiary) may for the first time become exercisable as Incentive Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars (\$100,000). To the extent the Employee holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted. Should the applicable One Hundred Thousand Dollar (\$100,000) limitation in fact be exceeded in any calendar year, then the option shall nevertheless become exercisable for the excess number of shares in such calendar year as a Non-Statutory Option.

C. 10% Stockholder. If any individual to whom an Incentive Option is granted is a 10% Stockholder, then the option term shall not exceed five (5) years measured from the grant date.

#### VIII. CORPORATE TRANSACTION

A. Upon the occurrence of a Corporate Transaction, each option at the time outstanding under the Plan shall terminate and cease to be exercisable, except to the extent assumed by the successor corporation or parent thereof.

B. Each outstanding option which is assumed in connection with a Corporate Transaction or is otherwise to remain outstanding shall be appropriately adjusted, immediately after such Corporate Transaction, to apply and pertain to the number and class of securities which would have been issuable to the optionee in the consummation of such Corporate Transaction, had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to (i) the class and number of securities available for issuance under the Plan following the consummation of such Corporate Transaction and (ii) the exercise price payable per share, provided the aggregate exercise price payable for such securities shall remain the same.

C. The grant of options under this Plan shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

#### IX. CANCELLATION AND REGRANT OF OPTIONS

The Plan Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected option holders, the cancellation of any or all outstanding options under the Plan and to grant in substitution therefor new options under the Plan covering the same or different numbers of shares of Common Stock but with

an exercise price per share not less than (i) one hundred percent (100%) of the Fair Market Value per share of Common Stock on the new grant date in the case of a grant of an Incentive Option, (ii) one hundred ten percent (110%) of such Fair Market Value in the case of an option grant to a 10% Stockholder or (iii) eighty-five percent (85%) of such Fair Market Value in the case of all other grants.

## **X. LOANS**

A. The Plan Administrator may assist any optionee, other than a non-employee director, in the exercise of one or more options granted to the optionee by:

(i) authorizing the extension of a loan from the Corporation to the optionee, or

(ii) permitting the optionee to pay the exercise price in installments over a period of years.

B. The terms of any loan or installment method of payment (including the interest rate and terms of repayment) shall be established by the Plan Administrator in its sole discretion. Loans or installment payments may be authorized with or without security or collateral. The maximum credit available to each optionee may not exceed the sum of (i) the aggregate exercise price payable for the purchased shares (less the par value of such shares) plus (ii) any Federal, state and local income and employment tax liability incurred by the optionee in connection with such exercise.

C. The Plan Administrator may, in its absolute discretion, determine that one or more loans extended under this Article X shall be subject to forgiveness by the Corporation in whole or in part upon such terms and conditions as the Plan Administrator may in its discretion deem appropriate.

## **XI. NO EMPLOYMENT OR SERVICE RIGHTS**

Nothing in the Plan shall confer upon the optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary) or of the optionee, which rights are hereby expressly reserved by each, to terminate the optionee's Service at any time for any reason, with or without cause.

## **XII. AMENDMENT OF THE PLAN**

A. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects whatsoever. However, no such amendment or modification shall, without the consent of the holders, adversely affect their rights and obligations under their outstanding options. In addition, the Board shall not, without the

approval of the Corporation's stockholders, (i) increase the maximum number of shares issuable under the Plan, except for permissible adjustments under Article V, (ii) materially modify the eligibility requirements for option grants or (iii) otherwise materially increase the benefits accruing to option holders.

B. Options may be granted under this Plan to purchase shares of Common Stock in excess of the number of shares then available for issuance under the Plan, provided an amendment sufficiently increasing the number of shares of Common Stock available for issuance under the Plan is approved by the Corporation's stockholders within twelve (12) months after the date the excess grants are first made.

### **XIII. EFFECTIVE DATE AND TERM OF PLAN**

A. The Plan became effective when adopted by the Board on June 17, 1994 and was approved by the Corporation's stockholders on July 1, 1994. On January 5, 1995, the Board adopted and approved an increase in the maximum aggregate number of shares issuable over the term of the Plan from 1,702,500 to 2,864,616 shares, subject to stockholder approval of the 1,162,116-share increase within twelve (12) months of the date of approval by the Board. Options may be granted in reliance on the 1,162,116-share increase prior to approval of such increase by the Corporation's stockholders, but no option granted in reliance on such increase shall become exercisable, in whole or in part, unless and until the increase shall have been approved by the Corporation's stockholders. If such stockholder approval is not obtained within twelve (12) months after the date of the Board's adoption of the increase, then all options previously granted in reliance on such increase shall terminate and no further options shall be granted. Subject to such limitation, the Plan Administrator may grant options under the Plan at any time after the effective date and before the date fixed herein for termination of the Plan.

B. The Plan shall terminate upon the earliest of (i) the expiration of the ten (10) year period measured from the date the Plan is adopted by the Board, (ii) the date on which all shares available for issuance under the Plan shall have been issued or (iii) the termination of all outstanding options under Article VIII. Upon such Plan termination, each option and unvested share issuance outstanding under the Plan shall continue to have full force and effect in accordance with the provisions of the agreements evidencing that option or share issuance.

### **XIV. USE OF PROCEEDS**

Any cash proceeds received by the Corporation from the sale of shares pursuant to options granted under the Plan shall be used for general corporate purposes.

#### **XV. WITHHOLDING**

The Corporation's obligation to deliver shares upon the exercise of any options granted under the Plan shall be subject to the satisfaction by the optionee of all applicable Federal, state and local income and employment tax withholding requirements.

#### **XVI. REGULATORY APPROVALS**

The implementation of the Plan, the granting of any option hereunder and the issuance of Common Stock upon the exercise of any option shall be subject to the Corporation's procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the options granted under it and the Common Stock issued pursuant to it.

#### **XVII. FINANCIAL REPORTS**

The Corporation shall deliver at least annually to each individual holding an outstanding option under the Plan financial statements concerning the Corporation, unless the optionee is a key employee whose duties in connection with the Corporation assure such individual access to equivalent information.

**NETSCAPE COMMUNICATIONS CORPORATION**  
**STOCK OPTION AGREEMENT**

**RECITALS**

A. The Board has adopted the Plan for the purpose of attracting and retaining the services of selected Employees (including officers and directors), non-employee members of the Board and consultants who contribute to the financial success of the Corporation or any Parent or Subsidiary.

B. Optionee is an individual who is to render valuable services to the Corporation or any Parent or Subsidiary, and this Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the Corporation's grant of a stock option to Optionee.

C. All capitalized terms in this Agreement shall have the meaning assigned to them in the attached Appendix.

**NOW, THEREFORE, it is hereby agreed as follows:**

1. **Grant of Option.** Subject to and upon the terms and conditions set forth in this Agreement, the Corporation hereby grants to Optionee, as of the Grant Date, a stock option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term at the Exercise Price.

2. **Option Term.** This option shall have a maximum term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5 or 6.

3. **Limited Transferability.** This option shall be neither transferable nor assignable by Optionee other than by will or by the laws of descent and distribution following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee.

4. **Dates of Exercise.** This option shall become exercisable for the Option Shares in one or more installments as specified in the Grant Notice. As the option becomes exercisable for one or more such installments, those installments shall accumulate and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Paragraph 5 or 6.

5. **Cessation of Service.** The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(a) Should Optionee cease to remain in Service for any reason (other than death or Disability) while this option is outstanding, then the period for exercising this option shall be reduced to a three (3)-month period commencing with the date of such cessation of Service, but in no event shall this option be exercisable at any time after the Expiration Date. Upon the expiration of such three (3)-month period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding.

(b) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or in accordance with the laws of descent and distribution shall have the right to exercise this option. Such right shall lapse and this option shall cease to be exercisable upon the earlier of (i) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (ii) the Expiration Date. Upon the expiration of such twelve (12)-month period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding.

(c) Should Optionee cease Service by reason of Disability while this option is outstanding, then Optionee shall have a period of six (6) months (commencing with the date of such cessation of Service) during which to exercise this option. However, should such Disability be deemed to constitute Permanent Disability, then the period during which this option is to remain exercisable shall be extended by an additional six (6) months so that the exercise period shall be limited to the twelve (12)-month period following the date of Optionee's cessation of Service by reason of such Permanent Disability. In no event shall this option be exercisable at any time after the Expiration Date. Upon the expiration of the applicable six (6) or twelve (12)-month period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding.

**Note:** Exercise of this option on a date later than three (3) months following cessation of Service due to Disability will result in loss of favorable Incentive Option treatment, unless such Disability constitutes Permanent Disability. In the event that Incentive Option treatment is not available, this option will be treated as a Non-Statutory Option.

(d) During the limited period of post-Service exercisability applicable under subparagraph (a), (b) or (c) above, this option may not be exercised in the aggregate for more than the lesser of (i) the number of Option Shares for which the option is, at the time of Optionee's cessation of Service, exercisable in accordance with the exercise schedule specified in the Grant Notice or (ii) the number of Option Shares in which Optionee is, at the time of his/her cessation of Service, vested in accordance with the

vesting schedule specified in the Grant Notice. To the extent Optionee is not vested in the Option Shares at the time of his/her cessation of Service, this option shall immediately terminate and cease to be outstanding with respect to those shares.

**6. Special Termination of Option.**

(a) Upon the occurrence of a Corporate Transaction, this option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation or parent thereof.

(b) This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise make changes in its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

**7. Adjustment in Option Shares.**

(a) In the event any change is made to the outstanding Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

(b) If this option is to be assumed in connection with a Corporate Transaction or is otherwise to remain outstanding, then this option shall be appropriately adjusted, immediately after such Corporate Transaction, to apply and pertain to the number and class of securities which would have been issuable to Optionee in the consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction, and appropriate adjustments shall also be made to the Exercise Price payable per share, provided the aggregate Exercise Price payable hereunder shall remain the same.

**8. Privilege of Stock Ownership.** The holder of this option shall not have any stockholder rights with respect to the Option Shares until such individual shall have exercised the option and paid the Exercise Price.

**9. Manner of Exercising Option.**

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or in the case of exercise after Optionee's death, Optionee's executor, administrator, heir or legatee, as the case may be) must take the following actions:

(i) Execute and deliver to the Secretary of the Corporation a stock purchase agreement (the "Purchase Agreement") in substantially the form of Exhibit B to the Grant Notice.

(ii) Pay the aggregate Exercise Price for the purchased shares in one or more of the following alternative forms:

(A) full payment in cash or check made payable to the Corporation; or

(B) any other form which the Plan Administrator may, in its discretion, approve at the time of exercise in accordance with the provisions of Paragraph 15.<sup>1/</sup>

Should the outstanding Common Stock be registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, at the time the option is exercised, then the Exercise Price may also be paid as follows:

(C) in shares of Common Stock held by Optionee for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(D) to the extent the option is exercised for vested Option Shares, through a special sale and remittance procedure pursuant to which Optionee shall concurrently provide irrevocable written instructions (a) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such purchase and (b) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale transaction.

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<sup>1/</sup> Authorization of a loan or installment payment method under such provisions may, under currently proposed Treasury Regulations, result in the loss of incentive stock option treatment under the Federal tax laws.



(iii) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

Except to the extent the sale and remittance procedure is utilized in connection with the exercise of the option, payment of the Exercise Price must accompany the Purchase Agreement delivered to the Corporation.

(b) As soon after the Exercise Date as practical, the Corporation shall mail or deliver to or on behalf of Optionee (or the other person or persons exercising this option) a certificate or certificates representing the shares purchased under this Agreement, with the appropriate legends affixed thereto.

(c) In no event may this option be exercised for any fractional shares.

**10. REPURCHASE RIGHTS. OPTIONEE HEREBY AGREES THAT ALL OPTION SHARES ACQUIRED UPON THE EXERCISE OF THIS OPTION SHALL BE SUBJECT TO CERTAIN RIGHTS OF THE CORPORATION AND ITS ASSIGNS TO REPURCHASE SUCH SHARES IN ACCORDANCE WITH THE TERMS AND CONDITIONS SPECIFIED IN THE PURCHASE AGREEMENT.**

**11. Compliance with Laws and Regulations.**

(a) The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Common Stock may be listed at the time of such exercise and issuance.

(b) In connection with the exercise of this option, Optionee shall execute and deliver to the Corporation such representations in writing as may be requested by the Corporation in order for it to comply with the applicable requirements of Federal and state securities laws.

**12. Successors and Assigns.** Except to the extent otherwise provided in Paragraph 3 or 6, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, administrators, heirs, legal representatives and assigns of Optionee and the successors and assigns of the Corporation.

**13. Liability of Corporation.** The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-issuance or sale of the

Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

14. **Notices.** Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation in care of the Corporate Secretary at its principal corporate offices. Any notice -required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed to have been given or delivered upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

15. **Loans.** The Plan Administrator may, in its absolute discretion and without any obligation to do so, assist Optionee in the exercise of this option by (i) authorizing the extension of a loan to Optionee from the Corporation or (ii) permitting Optionee to pay the Exercise Price for the purchased Option Shares in installments over a period of years. The terms of any such loan or installment method of payment (including the interest rate, the requirements for collateral and the terms of repayment) shall be established by the Plan Administrator in its sole discretion.

16. **Construction.** This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the express terms and provisions of the Plan. All decisions of the Plan Administrator with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this option.

17. **Governing Law.** The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California without resort to that State's conflict-of-laws rules.

18. **Stockholder Approval.** If the Option Shares covered by this Agreement exceed, as of the Grant Date, the number of shares of Common Stock which may without stockholder approval be issued under the Plan, then this option shall be void with respect to such excess shares, unless stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock issuable under the Plan is obtained in accordance with the provisions of Article XII of the Plan.

19. **Additional Terms Applicable to an Incentive Option.** In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an Employee for any reason other than death or Permanent Disability or (ii) more than twelve (12)

months after the date Optionee ceases to be an Employee by reason of Permanent Disability.

(b) Should this option be designated as immediately exercisable in the Grant Notice, then this option shall not become exercisable in the calendar year in which granted if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which this option would otherwise first become exercisable in such calendar year would, when added to the aggregate value (determined as of the respective date or dates of grant) of the Common Stock and any other securities for which one or more other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars (\$100,000) in the aggregate. To the extent the exercisability of this option is deferred by reason of the foregoing limitation, the deferred portion will become exercisable in the first calendar year or years thereafter in which the One Hundred Thousand Dollar (\$100,000) limitation of this Paragraph 19(b) would not be contravened, but such deferral shall in all events end immediately prior to the effective date of a Corporate Transaction in which this option is not to be assumed, whereupon the option shall become exercisable as a Non-Statutory Option for the balance of the Option Shares.

(c) Should this option be designated as exercisable in installments in the Grant Notice, then no installment under this option (whether annual or monthly) shall qualify for favorable tax treatment as an Incentive Option if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which such installment first becomes exercisable hereunder would, when added to the aggregate value (determined as of the respective date or dates of grant) of any earlier installments of the Common Stock and any other securities for which this option or any other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars (\$100,000) in the aggregate. Should such One Hundred Thousand Dollar (\$100,000) limitation be exceeded in any calendar year, this option shall nevertheless become exercisable for the excess shares in such calendar year as a Non-Statutory Option.

(d) Should Optionee hold, in addition to this option, one or more other options to purchase Common Stock which become exercisable for the first time in the same calendar year as this option, then the foregoing limitations on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

20. Withholding Taxes. Optionee hereby agrees to make appropriate arrangements with the Corporation or Parent or Subsidiary employing Optionee for the satisfaction of all Federal, state and local income and employment tax withholding requirements applicable to the exercise of this option.

## **APPENDIX**

### **DEFINITIONS**

- A. **Board** shall mean the Corporation's Board of Directors.
- B. **Code** shall mean the Internal Revenue Code of 1986, as amended.
- C. **Common Stock** shall mean the Corporation's common stock.
- D. **Corporate Transaction** shall mean either of the following stockholder-approved transactions to which the Corporation is a party:
- (i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or
  - (ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.
- E. **Corporation** shall mean Netscape Communications Corporation, a Delaware corporation.
- F. **Disability** shall mean the inability of Optionee to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment and shall be determined by the Plan Administrator on the basis of such medical evidence as the Plan Administrator deems warranted under the circumstances. Disability shall be deemed to constitute Permanent Disability in the event that such Disability is expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months.
- G. **Employee** shall mean an individual who is in the employ of the Corporation or any Parent or Subsidiary, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.
- H. **Exercise Date** shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of this Stock Option Agreement.

I. **Exercise Price** shall mean the exercise price per share as specified in the Grant Notice.

J. **Expiration Date** shall mean the date on which the option expires as set forth in the Grant Notice.

K. **Fair Market Value** per share of Common Stock on any relevant date shall be the value determined in accordance with the following provisions:

(i) If the Common Stock is not at the time listed or admitted to trading on any Stock Exchange but is traded on the Nasdaq National Market, the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the National Association of Securities Dealers through the Nasdaq National Market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed or admitted to trading on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed nor admitted to trading on any Stock Exchange nor traded on the Nasdaq National Market, then such Fair Market Value shall be determined by the Plan Administrator after taking into account such factors as the Plan Administrator shall deem appropriate.

L. **Grant Date** shall mean the date of grant of the stock option as set forth in the Grant Notice.

M. **Grant Notice** shall mean the notice of grant of stock option accompanying this Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

N. **Incentive Option** shall mean a stock option which satisfies the requirements of Code Section 422.

O. Non-Statutory Option shall mean a stock option not intended to meet the requirements of Code Section 422.

P. Option Shares shall mean the number of shares of Common Stock subject to the option.

Q. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

R. Plan shall mean the Corporation's 1994 Stock Option Plan.

S. Plan Administrator shall mean either the Board or a committee of Board members, to the extent the committee is at the time responsible for the administration of the Plan in accordance with Article III of the Plan.

T. Service shall mean the provision of services to the Corporation or any Parent or Subsidiary by an individual in the capacity of an Employee, a non-employee member of the board of directors or a consultant.

U. Stock Exchange shall mean the American Stock Exchange or the New York Stock Exchange.

V. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each such corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**NETSCAPE COMMUNICATIONS CORPORATION**

**NOTICE OF GRANT OF STOCK OPTION**

Notice is hereby given of the following stock option grant (the "Option") to purchase shares of the Common Stock of Netscape Communications Corporation (the "Corporation"):

**Optionee:** 1~

**Grant Date:** 2~

**Vesting Commencement Date:** 3~

**Exercise Price:** \$4~ per share

**Number of Option Shares:** 5~ shares

**Expiration Date:** 6~

**Type of Option:**     \_\_\_ Incentive Stock Option  
                             \_\_\_ Non-Statutory Stock Option

**Date Exercisable:** Immediately Exercisable

**Vesting Schedule:** The Option Shares shall be unvested and subject to repurchase by the Corporation at the Exercise Price paid per share. Optionee shall acquire a vested interest in, and the Corporation's Repurchase Right will accordingly lapse with respect to, (i) twenty percent (20%) of the Option Shares upon completion of ten (10) months of Service (as defined in the attached Stock Purchase Agreement) measured from the Vesting Commencement Date and (ii) the balance of the Option Shares in equal successive monthly installments upon completion of each of the next forty (40) months of Service measured from and after the ten month anniversary of the Vesting Commencement Date. In no event shall any additional Option Shares vest after Optionee's cessation of Service.

Optionee understands and agrees that the Option is granted subject to and in accordance with the express terms and conditions of the Netscape Communications Corporation 1994 Stock Option Plan (the "Plan"). Optionee further agrees to be bound by the terms and conditions of the Plan and the terms and conditions of the Option as set forth in the Stock Option Agreement attached hereto as Exhibit A. Optionee understands that any Option Shares purchased under the Option will be subject to the terms and conditions set forth in the Stock Purchase Agreement attached hereto as Exhibit B.

Optionee hereby acknowledges receipt of a copy of the Plan in the form attached hereto as Exhibit C.

**REPURCHASE RIGHTS.** OPTIONEE HEREBY AGREES THAT ALL OPTION SHARES ACQUIRED UPON THE EXERCISE OF THE OPTION SHALL BE SUBJECT TO CERTAIN REPURCHASE RIGHTS AND RIGHTS OF FIRST REFUSAL EXERCISABLE BY THE CORPORATION AND ITS ASSIGNS UPON ANY PROPOSED SALE, ASSIGNMENT, TRANSFER, ENCUMBRANCE OR OTHER DISPOSITION OF THE OPTION SHARES OR UPON TERMINATION OF SERVICE WITH THE CORPORATION. THE TERMS AND CONDITIONS OF SUCH RIGHTS ARE SPECIFIED IN THE ATTACHED STOCK PURCHASE AGREEMENT.

**No Employment or Service Contract.** Nothing in this Agreement or in the Plan shall confer upon Optionee any right to continue in the Service of the Corporation for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation or Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason whatsoever, with or without cause.

Date: \_\_\_\_\_, 199\_\_

**NETSCAPE COMMUNICATIONS CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
**OPTIONEE**

Address: \_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENTS**

Exhibit A - Stock Option Agreement  
Exhibit B - Stock Purchase Agreement  
Exhibit C - 1994 Stock Option Plan



**EXHIBIT 10.4**

**NETSCAPE COMMUNICATIONS CORPORATION  
1995 STOCK PLAN**

1. Purposes of the Plan. The purposes of this Stock Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees and Consultants, and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights and Long-Term Performance Awards may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Applicable Laws" means the legal requirements relating to the administration of stock option plans under state corporate and securities law, the Code, and the applicable laws of any foreign jurisdiction or country where Options or Rights will be granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.

(f) "Common Stock" means the Common Stock of the Company.

(g) "Company" means Netscape Communications Corporation, a Delaware corporation.

(h) "Consultant" means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services and who is compensated for such services. The term "Consultant" shall not include Directors who are paid only a director's fee by the Company or who are not compensated by the Company for their services as Directors.

(i) "Continuous Status as an Employee or Consultant" means that the employment or consulting relationship with the Company, any Parent, or Subsidiary, is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted

in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 181st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(j) "Director" means a member of the Board.

(k) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(l) "Employee" means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(m) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(n) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System, the Fair Market Value of a Share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such system or exchange (or the exchange with the greatest volume of trading in Common Stock) on the last market trading day prior to the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is quoted on the NASDAQ System (but not on the Nasdaq National Market thereof) or is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

(o) **"Incentive Stock Option"** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(p) **"Long-Term Performance Award"** means an award under Section 12 below. A Long-Term Performance Award shall permit the recipient to receive a cash or stock bonus (as determined by the Administrator) in accordance with the terms of the recipient's individual grant. Long-Term Performance Awards may be based upon (i) the value of the Common Stock, (ii) the components of such value, (iii) the achievement of Company, Subsidiary and/or individual performance factors, or (iv) upon such other criteria as the Administrator may deem appropriate.

(q) **"Long-Term Performance Award Agreement"** means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Long-Term Performance Award grant. The Long-Term Performance Award Agreement is subject to the terms and conditions of the Plan.

(r) **"Nonstatutory Stock Option"** means an Option not intended to qualify as an Incentive Stock Option.

(s) **"Notice of Grant"** means a written notice evidencing certain terms and conditions of an individual Option or Right grant. The Notice of Grant is part of the Option Agreement.

(t) **"Officer"** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(u) **"Option"** means a stock option granted pursuant to the Plan.

(v) **"Option Agreement"** means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(w) **"Option Exchange Program"** means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.

(x) **"Optioned Stock"** means the Common Stock subject to an Option or Right.

(y) **"Optionee"** means an Employee or Consultant who holds an outstanding Option or Right.

(z) "Parent" means a "parent corporation", whether now or hereafter existing, as defined in Section 424(e) of the Code.

(aa) "Plan" means this 1995 Stock Plan.

(ab) "Restricted Stock" means shares of Common Stock acquired pursuant to a grant of Rights under Section 11 below.

(ac) "Restricted Stock Purchase Agreement" means a written agreement between the Company and the Optionee evidencing the terms and restrictions applying to stock purchased under a Stock Purchase Right. The Restricted Stock Purchase Agreement is subject to the terms and conditions of the Plan and the Notice of Grant.

(ad) "Right" means and includes Long-Term Performance Awards and Stock Purchase Rights granted pursuant to the Plan.

(ae) "Rule 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(af) "Section 16(b)" means Section 16(b) of the Securities Exchange Act of 1934, as amended.

(ag) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14 of the Plan.

(ah) "Stock Purchase Right" means the right to purchase Common Stock pursuant to Section 11 of the Plan, as evidenced by a Notice of Grant.

(ai) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. Subject to Section 14 of the Plan, the total number of Shares reserved and available for issuance under the Plan is 2,250,000 Shares, increased on the first day of each new fiscal year of the Company from and including the 1997 fiscal year by a number of Shares equal to 4% of the number of Shares outstanding as of the last business day preceding each such first day of each new fiscal year. However, the maximum number of Shares reserved and available for issuance pursuant to Incentive Stock Options is 2,250,000 Shares.

If an Option or Right expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued

under the Plan, whether upon exercise of an Option or Right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if Shares of Restricted Stock are repurchased by the Company at their original purchase price, and the original purchaser of such Shares did not receive any benefits of ownership of such Shares, such Shares shall become available for future grant under the Plan. For purposes of the preceding sentence, voting rights shall not be considered a benefit of Share ownership.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. If permitted by Rule 16b-3, the Plan may be administered by different bodies with respect to Directors, Officers who are not Directors, and Employees who are neither Directors nor Officers.

(ii) Administration With Respect to Directors and Officers Subject to Section 16(b). With respect to Option or Right grants made to Employees who are also Officers or Directors subject to Section 16(b) of the Exchange Act, the Plan shall be administered by (A) the Board, if the Board may administer the Plan in a manner complying with the rules under Rule 16b-3 relating to the disinterested administration of employee benefit plans under which Section 16(b) exempt discretionary grants and awards of equity securities are to be made, or (B) a committee designated by the Board to administer the Plan, which committee shall be constituted to comply with the rules under Rule 16b-3 relating to the disinterested administration of employee benefit plans under which Section 16(b) exempt discretionary grants and awards of equity securities are to be made. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the rules under Rule 16b-3 relating to the disinterested administration of employee benefit plans under which Section 16(b) exempt discretionary grants and awards of equity securities are to be made.

(iii) Administration With Respect to Other Persons. With respect to Option or Right grants made to Employees or Consultants who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a committee designated by the Board, which committee shall be constituted to satisfy Applicable Laws. Once appointed, such Committee shall serve in its designated capacity until otherwise directed by the Board. The Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(n) of the Plan;

(ii) to select the Consultants and Employees to whom Options and Rights may be granted hereunder;

(iii) to determine whether and to what extent Options and Rights or any combination thereof, are granted hereunder;

(iv) to determine the number of shares of Common Stock to be covered by each Option and Right granted hereunder;

(v) to approve forms of agreement for use under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Right or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to reduce the exercise price of any Option or Right to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option or Right shall have declined since the date the Option or Right was granted;

(viii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(ix) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(x) to modify or amend each Option or Right (subject to Section 16(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;

(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option or Right previously granted by the Administrator;

(xii) to institute an Option Exchange Program;

(xiii) to determine the terms and restrictions applicable to Options and Rights and any Restricted Stock; and

(xiv) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations shall be final and binding on all Optionees and any other holders of Options or Rights.

5. Eligibility. Nonstatutory Stock Options and Rights may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees. If otherwise eligible, an Employee or Consultant who has been granted an Option or Right may be granted additional Options or Rights.

6. Limitations.

(a) Each Option shall be designated in the written option agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) Neither the Plan nor any Option or Right shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options and Rights to Employees:

(i) No Employee shall be granted, in any fiscal year of the Company, Options and Rights to purchase more than 300,000 Shares and, with respect to Rights which



consist of cash, no Employee shall be granted in any fiscal year of the Company Rights for more than twice such Employee's annual salary or \$1,000,000, whichever is less.

(ii) In connection with his or her initial employment, an Employee may be granted Options and Rights to purchase up to an additional 300,000 Shares and, with respect to Rights which consist of cash, may be granted Rights for up to an additional \$1,000,000, which amounts shall not count against the limits set forth in subsection (i) above.

(iii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 14.

(iv) If an Option or Right is cancelled in the same fiscal year of the Company in which it was granted (other than in connection with a transaction described in Section 14), the cancelled Option or Right will be counted against the limit set forth in subsection (i) above. For this purpose, if the exercise price of an Option or Right is reduced, the transaction will be treated as a cancellation of the Option or Right and the grant of a new Option or Right.

7. Term of Plan. Subject to Section 20 of the Plan, the Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the shareholders of the Company as described in Section 20 of the Plan. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 16 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant; provided, however, that in the case of an Incentive Stock Option, the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Notice of Grant. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Notice of Grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all

classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be determined by the Administrator.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In so doing, the Administrator may specify that an Option may not be exercised until the completion of a service period.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which (A) in the case of Shares acquired upon exercise of an option, have been owned by the Optionee for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price;

(vi) a reduction in the amount of any Company liability to the Optionee, including any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 14 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it at the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for three (3) months following the Optionee's termination. In the case of an Incentive Stock Option, such period of time for exercise shall not exceed three (3) months from the date of termination. If, on the date of termination, the Optionee is not entitled to exercise the Optionee's entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

Notwithstanding the above, in the event of an Optionee's change in status from Consultant to Employee or Employee to Consultant, an Optionee's Continuous Status as an Employee or Consultant shall not automatically terminate solely as a result of such change in status. However, in such event, an Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option three months and one day following such change of status.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at the time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Rule 16b-3. Options granted to individuals subject to Section 16 of the Exchange Act ("Insiders") must comply with the applicable provisions of Rule 16b-3 and shall contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

#### 11. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing, by means of a Notice of Grant, of the terms, conditions and restrictions related to the offer, including the number of Shares that the offeree shall be entitled to purchase, the price to be paid, and the time within which the offeree

must accept such offer, which shall in no event exceed six (6) months from the date upon which the Administrator made the determination to grant the Stock Purchase Right. The offer shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) Repurchase Option. Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Restricted Stock purchase agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at a rate determined by the Administrator.

(c) Rule 16b-3. Stock Purchase Rights granted to Insiders, and Shares purchased by Insiders in connection with Stock Purchase Rights, shall be subject to any restrictions applicable thereto in compliance with Rule 16b-3. An Insider may only purchase Shares pursuant to the grant of a Stock Purchase Right, and may only sell Shares purchased pursuant to the grant of a Stock Purchase Right, during such time or times as are permitted by Rule 16b-3.

(d) Other Provisions. The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each purchaser.

(e) Rights as a Shareholder. Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a shareholder, and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 14 of the Plan.

## 12. Long-Term Performance Awards.

(a) Administration. Long-Term Performance Awards are cash or stock bonus awards that may be granted either alone or in addition to other awards granted under the Plan. The Administrator shall determine the nature, length and starting date of any performance period (the "Performance Period") for each Long-Term Performance Award, and shall determine the performance or employment factors, if any, to be used in the determination of Long-Term Performance Awards and the extent to which such Long-Term Performance Awards are valued or have been earned. Long-Term Performance Awards may vary from participant to participant and between groups of participants and may be based upon (i) the value of the Common Stock, (ii) the components of such value, (iii) the achievement of Company, Subsidiary, Parent and/or individual performance factors, or (iv) upon such other criteria as the Administrator may deem

appropriate. Performance Periods may overlap and participants may participate simultaneously with respect to Long-Term Performance Awards that are subject to different Performance Periods and different performance factors and criteria. Long-Term Performance Awards shall be confirmed by, and be subject to the terms of, a Long-Term Performance Award agreement. The terms of such awards need not be the same with respect to each participant.

At the beginning of each Performance Period, the Administrator may determine for each Long-Term Performance Award subject to such Performance Period the range of dollar values or number of shares of Common Stock to be awarded to the participant at the end of the Performance Period if and to the extent that the relevant measures of performance for such Long-Term Performance Award are met. Such dollar values or number of shares of Common Stock may be fixed or may vary in accordance with such performance or other criteria as may be determined by the Administrator.

(b) Adjustment of Awards. The Administrator may adjust the performance factors applicable to the Long-Term Performance Awards to take into account changes in legal, accounting and tax rules and to make such adjustments as the Administrator deems necessary or appropriate to reflect the inclusion or exclusion of the impact of extraordinary or unusual items, events or circumstances in order to avoid windfalls or hardships.

13. Non-Transferability of Options and Rights. An Option or Right may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

14. Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option and Right, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options or Rights have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or Right, as well as the price per share of Common Stock covered by each such outstanding Option or Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason

thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option or Right.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option or Right has not been previously exercised, it will terminate immediately prior to the consummation of such proposed action. The Board may, in the exercise of its sole discretion in such instances, declare that any Option or Right shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option or Right as to all or any part of the Optioned Stock, including Shares as to which the Option or Right would not otherwise be exercisable.

(c) Merger or Asset Sale. In the event of a merger of the Company with or into another corporation, or the sale of substantially all of the assets of the Company, each outstanding Option and Right shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the Option or Right, the Administrator shall, in lieu of such assumption or substitution, provide for the Optionee to have the right to exercise the Option or Right as to all or a portion of the Optioned Stock, including Shares as to which it would not otherwise be exercisable; provided, however, that in the case of a Long-Term Performance Award which is to consist, in whole or in part, of cash, the Administrator shall provide, in lieu of assumption or substitution, for such Long-Term Performance Award, or such portion thereof which is to consist of cash, to be payable in full to the Optionee. If the Administrator makes an Option or Right exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Optionee that the Option or Right shall be fully exercisable for a period of fifteen (15) days from the date of such notice, and the Option or Right shall terminate upon the expiration of such period. For the purposes of this paragraph, the Option or Right shall be considered assumed if, following the merger or sale of assets, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option or Right immediately prior to the merger or sale of assets, the consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets was not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option or Right, for each Share of Optioned Stock subject to the Option or Right, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets.

15. Date of Grant. The date of grant of an Option or Right shall be, for all purposes, the date on which the Administrator makes the determination granting such Option or Right, or

such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

**16. Amendment and Termination of the Plan.**

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Shareholder Approval. The Company shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Rule 16b-3 or with Section 422 of the Code (or any successor rule or statute or other applicable law, rule or regulation, including the requirements of any exchange or quotation system on which the Common Stock is listed or quoted). Such shareholder approval, if required, shall be obtained in such a manner and to such a degree as is required by the applicable law, rule or regulation.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

**17. Conditions Upon Issuance of Shares.**

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option or Right unless the exercise of such Option or Right and the issuance and delivery of such Shares shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, Applicable Laws, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option or Right, the Company may require the person exercising such Option or Right to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

**18. Liability of Company.**

(a) Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.



(b) Grants Exceeding Allotted Shares. If the Optioned Stock covered by an Option or Right exceeds, as of the date of grant, the number of Shares which may be issued under the Plan without additional shareholder approval, such Option or Right shall be void with respect to such excess Optioned Stock, unless shareholder approval of an amendment sufficiently increasing the number of Shares subject to the Plan is timely obtained in accordance with Section 16(b) of the Plan.

19. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

20. Shareholder Approval. Continuance of the Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the manner and to the degree required under applicable federal and state law.

**NETSCAPE COMMUNICATIONS CORPORATION**

**STOCK OPTION AGREEMENT**

Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Option Agreement.

**I. NOTICE OF STOCK OPTION GRANT**

[Optionee's Name and Address]

You have been granted an option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Grant Number \_\_\_\_\_

Date of Grant \_\_\_\_\_

Vesting Commencement Date \_\_\_\_\_

Exercise Price per Share \$ \_\_\_\_\_

Total Number of Shares Granted \_\_\_\_\_

Total Exercise Price \$ \_\_\_\_\_

Type of Option: \_\_\_\_\_ Incentive Stock Option

\_\_\_\_\_ Nonstatutory Stock Option

Term/Expiration Date: \_\_\_\_\_

**Vesting Schedule:**

This Option may be exercised, in whole or in part, in accordance with the following schedule:

[20% of the Shares subject to the Option shall vest ten months after the Vesting Commencement Date, and 2% of the Shares subject to the Option shall vest each month thereafter].

### Termination Period:

This Option may be exercised for 90 days after termination of the Optionee's employment or consulting relationship with the Company. Upon the death or Disability of the Optionee, this Option may be exercised for such longer period as provided in the Plan. In the event of the Optionee's change in status from Employee to Consultant or Consultant to Employee, this Option Agreement shall remain in effect. In no event shall this Option be exercised later than the Term/Expiration Date as provided above.

## **II. AGREEMENT**

1. Grant of Option. The Plan Administrator of the Company hereby grants to the Optionee named in the Notice of Grant attached as Part I of this Agreement (the "Optionee"), an option (the "Option") to purchase the number of Shares, as set forth in the Notice of Grant, at the exercise price per share set forth in the Notice of Grant (the "Exercise Price"), subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 16(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Grant as an Incentive Stock Option ("ISO"), this Option is intended to qualify as an Incentive Stock Option under Section 422 of the Code. However, if this Option is intended to be an Incentive Stock Option, to the extent that it exceeds the \$100,000 rule of Code Section 422(d) it shall be treated as a Nonstatutory Stock Option ("NSO").

### 2. Exercise of Option.

(a) Right to Exercise. This Option is exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Grant and the applicable provisions of the Plan and this Option Agreement. In the event of Optionee's death, Disability or other termination of Optionee's employment or consulting relationship, the exercisability of the Option is governed by the applicable provisions of the Plan and this Option Agreement.

(b) Method of Exercise. This Option is exercisable by delivery of an exercise notice, in the form attached as Exhibit A (the "Exercise Notice"), which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Plan. The Exercise Notice shall be signed by the Optionee and shall be delivered in person or by certified mail to the Secretary of the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by such aggregate Exercise Price.

No Shares shall be issued pursuant to the exercise of this Option unless such issuance and exercise complies with all relevant provisions of law and the requirements of any stock exchange or quotation service upon which the Shares are then listed. Assuming such compliance, for income tax purposes the Exercised Shares shall be considered transferred to the Optionee on the date the Option is exercised with respect to such Exercised Shares.

3. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) cash; or

(b) check; or

(c) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price; or

(d) surrender of other Shares which (i) in the case of Shares acquired upon exercise of an option, have been owned by the Optionee for more than six (6) months on the date of surrender, and (ii) have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares; or

(e) delivery of Optionee's promissory note (the "Note") in the form attached hereto as Exhibit C, in the amount of the aggregate Exercise Price of the Exercised Shares together with the execution and delivery by the Optionee of the Security Agreement attached hereto as Exhibit B. The Note shall bear interest at a rate no less than the "applicable federal rate" prescribed under the Code and its regulations at time of purchase, and shall be secured by a pledge of the Shares purchased by the Note pursuant to the Security Agreement.

4. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by the Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

5. Term of Option. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option Agreement.

6. Tax Consequences. Some of the federal and state tax consequences relating to this Option, as of the date of this Option, are set forth below. THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE

**SUBJECT TO CHANGE. THE OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.**

**(a) Exercising the Option.**

**(i) Nonstatutory Stock Option.** The Optionee may incur regular federal income tax and state income tax liability upon exercise of a NSO. The Optionee will be treated as having received compensation income (taxable at ordinary income tax rates) equal to the excess, if any, of the Fair Market Value of the Exercised Shares on the date of exercise over their aggregate Exercise Price. If the Optionee is an Employee or a former Employee, the Company will be required to withhold from his or her compensation or collect from Optionee and pay to the applicable taxing authorities an amount in cash equal to a percentage of this compensation income at the time of exercise, and may refuse to honor the exercise and refuse to deliver Shares if such withholding amounts are not delivered at the time of exercise.

**(ii) Incentive Stock Option.** If this Option qualifies as an ISO, the Optionee will have no regular federal income tax or state income tax liability upon its exercise, although the excess, if any, of the Fair Market Value of the Exercised Shares on the date of exercise over their aggregate Exercise Price will be treated as an adjustment to alternative minimum taxable income for federal tax purposes and may subject the Optionee to alternative minimum tax in the year of exercise. In the event that the Optionee undergoes a change of status from Employee to Consultant, any Incentive Stock Option of the Optionee that remains unexercised shall cease to qualify as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option on the ninety-first (91st) day following such change of status.

**(b) Disposition of Shares.**

**(i) NSO.** If the Optionee holds NSO Shares for at least one year, any gain realized on disposition of the Shares will be treated as long-term capital gain for federal income tax purposes.

**(ii) ISO.** If the Optionee holds ISO Shares for at least one year after exercise and two years after the grant date, any gain realized on disposition of the Shares will be treated as long-term capital gain for federal income tax purposes. If the Optionee disposes of ISO Shares within one year after exercise or two years after the grant date, any gain realized on such disposition will be treated as compensation income (taxable at ordinary income rates) to the extent of the excess, if any, of the lesser of (A) the difference between the Fair Market Value of the Shares acquired on the date of exercise and the aggregate Exercise Price, or (B) the difference between the sale price of such Shares and the aggregate Exercise Price.

**(c) Notice of Disqualifying Disposition of ISO Shares.** If the Optionee sells or otherwise disposes of any of the Shares acquired pursuant to an ISO on or before the later of (i) two years after the grant date, or (ii) one year after the exercise date, the Optionee shall

immediately notify the Company in writing of such disposition. The Optionee agrees that he or she may be subject to income tax withholding by the Company on the compensation income recognized from such early disposition of ISO Shares by payment in cash or out of the current earnings paid to the Optionee.

7. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee. This agreement is governed by Delaware law except for that body of law pertaining to conflict of laws.

By your signature and the signature of the Company's representative below, you and the Company agree that this Option is granted under and governed by the terms and conditions of the Plan and this Option Agreement. Optionee has reviewed the Plan and this Option Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option Agreement and fully understands all provisions of the Plan and Option Agreement. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and Option Agreement. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

OPTIONEE:

NETSCAPE COMMUNICATIONS  
CORPORATION

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

\_\_\_\_\_  
Residence Address

### **CONSENT OF SPOUSE**

The undersigned spouse of Optionee has read and hereby approves the terms and conditions of the Plan and this Option Agreement. In consideration of the Company's granting his or her spouse the right to purchase Shares as set forth in the Plan and this Option Agreement, the undersigned hereby agrees to be irrevocably bound by the terms and conditions of the Plan and this Option Agreement and further agrees that any community property interest shall be similarly bound. The undersigned hereby appoints the undersigned's spouse as attorney-in-fact for the undersigned with respect to any amendment or exercise of rights under the Plan or this Option Agreement.

\_\_\_\_\_  
Spouse of Optionee

## **EXHIBIT A**

### **NETSCAPE COMMUNICATIONS CORPORATION**

#### **EXERCISE NOTICE**

Netscape Communications Corporation  
501 East Middlefield Road  
Mountain View, California 94043

Attention: Secretary

1. **Exercise of Option.** Effective as of today, \_\_\_\_\_, 199\_\_, the undersigned ("Purchaser") hereby elects to purchase \_\_\_\_\_ shares (the "Shares") of the Common Stock of Netscape Communications Corporation (the "Company") under and pursuant to the 1995 Stock Plan (the "Plan") and the Stock Option Agreement dated \_\_\_\_\_, 19\_\_ (the "Option Agreement"). The purchase price for the Shares shall be \$\_\_\_\_\_, as required by the Option Agreement.

2. **Delivery of Payment.** Purchaser herewith delivers to the Company the full purchase price for the Shares.

3. **Representations of Purchaser.** Purchaser acknowledges that Purchaser has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. **Rights as Shareholder.** Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. A share certificate for the number of Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 14 of the Plan.

5. **Tax Consultation.** Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

6. **Entire Agreement; Governing Law.** The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan and the Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in



their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by Delaware law except for that body of law pertaining to conflict of laws.

Submitted by:

Accepted by:

PURCHASER:

NETSCAPE COMMUNICATIONS CORPORATION

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Its: \_\_\_\_\_

Address:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
501 East Middlefield Road  
Mountain View, California 94043

## **EXHIBIT B**

### **SECURITY AGREEMENT**

This Security Agreement is made as of \_\_\_\_\_, 19\_\_ between Netscape Communications Corporation, a Delaware corporation ("Pledgee"), and \_\_\_\_\_ ("Pledgor").

#### **Recitals**

Pursuant to Pledgor's election to purchase Shares under the Option Agreement dated \_\_\_\_\_ (the "Option"), between Pledgor and Pledgee under Pledgee's 1995 Stock Plan, and Pledgor's election under the terms of the Option to pay for such shares with his promissory note (the "Note"), Pledgor has purchased \_\_\_\_\_ shares of Pledgee's Common Stock (the "Shares") at a price of \$\_\_\_\_\_ per share, for a total purchase price of \$\_\_\_\_\_. The Note and the obligations thereunder are as set forth in Exhibit C to the Option.

NOW, THEREFORE, it is agreed as follows:

1. **Creation and Description of Security Interest.** In consideration of the transfer of the Shares to Pledgor under the Option Agreement, Pledgor, pursuant to the Delaware Commercial Code, hereby pledges all of such Shares (herein sometimes referred to as the "Collateral") represented by certificate number \_\_\_\_\_, duly endorsed in blank or with executed stock powers, and herewith delivers said certificate to the Secretary of Pledgee ("Pledgeholder"), who shall hold said certificate subject to the terms and conditions of this Security Agreement.

The pledged stock (together with an executed blank stock assignment for use in transferring all or a portion of the Shares to Pledgee if, as and when required pursuant to this Security Agreement) shall be held by the Pledgeholder as security for the repayment of the Note, and any extensions or renewals thereof, to be executed by Pledgor pursuant to the terms of the Option, and the Pledgeholder shall not encumber or dispose of such Shares except in accordance with the provisions of this Security Agreement.

2. **Pledgor's Representations and Covenants.** To induce Pledgee to enter into this Security Agreement, Pledgor represents and covenants to Pledgee, its successors and assigns, as follows:

a. **Payment of Indebtedness.** Pledgor will pay the principal sum of the Note secured hereby, together with interest thereon, at the time and in the manner provided in the Note.

b. Encumbrances. The Shares are free of all other encumbrances, defenses and liens, and Pledgor will not further encumber the Shares without the prior written consent of Pledgee.

c. Margin Regulations. In the event that Pledgee's Common Stock is now or later becomes margin-listed by the Federal Reserve Board and Pledgee is classified as a "lender" within the meaning of the regulations under Part 207 of Title 12 of the Code of Federal Regulations ("Regulation G"), Pledgor agrees to cooperate with Pledgee in making any amendments to the Note or providing any additional collateral as may be necessary to comply with such regulations.

3. Voting Rights. During the term of this pledge and so long as all payments of principal and interest are made as they become due under the terms of the Note, Pledgor shall have the right to vote all of the Shares pledged hereunder.

4. Stock Adjustments. In the event that during the term of the pledge any stock dividend, reclassification, readjustment or other changes are declared or made in the capital structure of Pledgee, all new, substituted and additional shares or other securities issued by reason of any such change shall be delivered to and held by the Pledgee under the terms of this Security Agreement in the same manner as the Shares originally pledged hereunder. In the event of substitution of such securities, Pledgor, Pledgee and Pledgeholder shall cooperate and execute such documents as are reasonable so as to provide for the substitution of such Collateral and, upon such substitution, references to "Shares" in this Security Agreement shall include the substituted shares of capital stock of Pledgor as a result thereof.

5. Options and Rights. In the event that, during the term of this pledge, subscription Options or other rights or options shall be issued in connection with the pledged Shares, such rights, Options and options shall be the property of Pledgor and, if exercised by Pledgor, all new stock or other securities so acquired by Pledgor as it relates to the pledged Shares then held by Pledgeholder shall be immediately delivered to Pledgeholder, to be held under the terms of this Security Agreement in the same manner as the Shares pledged.

6. Default. Pledgor shall be deemed to be in default of the Note and of this Security Agreement in the event:

a. Payment of principal or interest on the Note shall be delinquent for a period of 10 days or more; or

b. Pledgor fails to perform any of the covenants set forth in the Option or contained in this Security Agreement for a period of 10 days after written notice thereof from Pledgee.

In the case of an event of Default, as set forth above, Pledgee shall have the right to accelerate payment of the Note upon notice to Pledgor, and Pledgee shall thereafter be entitled to pursue its remedies under the Delaware Commercial Code.

7. Release of Collateral. Subject to any applicable contrary rules under Regulation G, there shall be released from this pledge a portion of the pledged Shares held by Pledgeholder hereunder upon payments of the principal of the Note. The number of the pledged Shares which shall be released shall be that number of full Shares which bears the same proportion to the initial number of Shares pledged hereunder as the payment of principal bears to the initial full principal amount of the Note.

8. Withdrawal or Substitution of Collateral. Pledgor shall not sell, withdraw, pledge, substitute or otherwise dispose of all or any part of the Collateral without the prior written consent of Pledgee.

9. Term. The within pledge of Shares shall continue until the payment of all indebtedness secured hereby, at which time the remaining pledged stock shall be promptly delivered to Pledgor, subject to the provisions for prior release of a portion of the Collateral as provided in paragraph 7 above.

10. Insolvency. Pledgor agrees that if a bankruptcy or insolvency proceeding is instituted by or against it, or if a receiver is appointed for the property of Pledgor, or if Pledgor makes an assignment for the benefit of creditors, the entire amount unpaid on the Note shall become immediately due and payable, and Pledgee may proceed as provided in the case of default.

11. Pledgeholder Liability. In the absence of willful or gross negligence, Pledgeholder shall not be liable to any party for any of his acts, or omissions to act, as Pledgeholder.

12. Invalidity of Particular Provisions. Pledgor and Pledgee agree that the enforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

13. Successors or Assigns. Pledgor and Pledgee agree that all of the terms of this Security Agreement shall be binding on their respective successors and assigns, and that the term "Pledgor" and the term "Pledgee" as used herein shall be deemed to include, for all purposes, the respective designees, successors, assigns, heirs, executors and administrators.

14. Governing Law. This Security Agreement shall be interpreted and governed under the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

"PLEDGOR"

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Address: \_\_\_\_\_  
\_\_\_\_\_

"PLEDGEE"

Netscape Communications Corporation,  
a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

"PLEDGEHOLDER"

\_\_\_\_\_  
Secretary of  
Netscape Communications Corporation

**EXHIBIT C**

**NOTE**

\$ \_\_\_\_\_

[City, State]

\_\_\_\_\_, 19\_\_

FOR VALUE RECEIVED, \_\_\_\_\_ promises to pay to Netscape Communications Corporation, a Delaware corporation (the "Company"), or order, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), together with interest on the unpaid principal hereof from the date hereof at the rate of \_\_\_\_\_ percent (\_\_\_\_ %) per annum, compounded semiannually.

Principal and interest shall be due and payable on \_\_\_\_\_, 19\_\_. Should the undersigned fail to make full payment of principal or interest for a period of 10 days or more after the due date thereof, the whole unpaid balance on this Note of principal and interest shall become immediately due at the option of the holder of this Note. Payments of principal and interest shall be made in lawful money of the United States of America.

The undersigned may at any time prepay all or any portion of the principal or interest owing hereunder.

This Note is subject to the terms of the Option, dated as of \_\_\_\_\_. This Note is secured in part by a pledge of the Company's Common Stock under the terms of a Security Agreement of even date herewith and is subject to all the provisions thereof.

The holder of this Note shall have full recourse against the undersigned, and shall not be required to proceed against the collateral securing this Note in the event of default.

In the event the undersigned shall cease to be an employee or consultant of the Company for any reason, this Note shall, at the option of the Company, be accelerated, and the whole unpaid balance on this Note of principal and accrued interest shall be immediately due and payable.

Should any action be instituted for the collection of this Note, the reasonable costs and attorneys' fees therein of the holder shall be paid by the undersigned.

\_\_\_\_\_  
\_\_\_\_\_

## 1995 STOCK PLAN

### NOTICE OF GRANT OF STOCK PURCHASE RIGHT

Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Notice of Grant.

[Grantee's Name and Address]

You have been granted the right to purchase Common Stock of the Company, subject to the Company's repurchase option and your ongoing Continuous Status as an Employee or Consultant (as described in the Plan and the attached Restricted Stock Purchase Agreement), as follows:

Grant Number	_____
Date of Grant	_____
Price Per Share	\$ _____
Total Number of Shares Subject to This Stock Purchase Right	_____
Expiration Date:	_____

**YOU MUST EXERCISE THIS STOCK PURCHASE RIGHT BEFORE THE EXPIRATION DATE OR IT WILL TERMINATE AND YOU WILL HAVE NO FURTHER RIGHT TO PURCHASE THE SHARES.** By your signature and the signature of the Company's representative below, you and the Company agree that this Stock Purchase Right is granted under and governed by the terms and conditions of the 1995 Stock Plan and the Restricted Stock Purchase Agreement, all of which are attached and made a part of this document. You further agree to execute the attached Restricted Stock Purchase Agreement as a condition to purchasing any shares under this Stock Purchase Right.

GRANTEE: **NETSCAPE COMMUNICATIONS CORPORATION**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

## **EXHIBIT A-1**

### **1995 STOCK PLAN**

#### **RESTRICTED STOCK PURCHASE AGREEMENT**

Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Purchase Agreement.

WHEREAS the Purchaser named in the Notice of Grant, (the "Purchaser") is an employee or consultant of the Company, and the Purchaser's continued participation is considered by the Company to be important for the Company's continued growth; and

WHEREAS in order to give the Purchaser an opportunity to acquire an equity interest in the Company as an incentive for the Purchaser to participate in the affairs of the Company, the Administrator has granted to the Purchaser stock purchase rights subject to the terms and conditions of the Plan and the Notice of Grant, which are incorporated herein by reference, and pursuant to this restricted stock purchase agreement (the "Agreement").

THEREFORE, the parties agree as follows:

1. **Sale of Stock.** The Company hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase shares of the Company's Common Stock (the "Shares"), at the per share purchase price and as otherwise described in the Notice of Grant.

2. **Payment of Purchase Price.** The purchase price for the Shares may be paid by delivery to the Company at the time of execution of this Agreement of cash, a check, or some combination thereof.

3. **Repurchase Option.**

(a) In the event the Purchaser's Continuous Status as an Employee or Consultant terminates for any or no reason (including death or disability) before all of the Shares are released from the Company's repurchase option (see Section 4), the Company shall, upon the date of such termination (as reasonably fixed and determined by the Company) have an irrevocable, exclusive option for a period of sixty (60) days from such date to repurchase up to that number of shares which constitute the Unreleased Shares (as defined in Section 4) at the original purchase price per share (the "Repurchase Price"). Said option shall be exercised by the Company by delivering written notice to the Purchaser or the Purchaser's executor (with a copy to the Escrow Holder) AND, at the Company's option, (i) by delivering to the Purchaser or the Purchaser's executor a check in the amount of the aggregate Repurchase Price, or (ii) by the Company canceling an amount of the Purchaser's indebtedness to the Company equal to the aggregate Repurchase Price, or (iii) by a combination of (i) and (ii) so that the combined payment and cancellation of indebtedness equals such aggregate Repurchase Price. Upon delivery of such notice and the payment of the aggregate Repurchase Price in any of the ways described above, the Company shall become the legal and beneficial owner of the Shares being



repurchased and all rights and interests therein or relating thereto, and the Company shall have the right to retain and transfer to its own name the number of Shares being repurchased by the Company.

(b) Whenever the Company shall have the right to repurchase Shares hereunder, the Company may designate and assign one or more employees, officers, directors or shareholders of the Company or other persons or organizations to exercise all or a part of the Company's purchase rights under this Agreement and purchase all or a part of such Shares; provided that if the Fair Market Value of the Shares to be repurchased on the date of such designation or assignment (the "Repurchase FMV") exceeds the aggregate Repurchase Price of such Shares, then each such designee or assignee shall pay the Company cash equal to the difference between the Repurchase FMV and the aggregate Repurchase Price of such Shares.

4. Release of Shares From Repurchase Option.

(a) [Twenty percent (20%) of the Shares shall be released from the Company's repurchase option twelve months after the date of grant of this Stock Purchase Right, and two percent (2%) of such Shares shall be released each month thereafter, provided in each case that the Purchaser's Continuous Status as an Employee or Consultant has not terminated prior to the date of any such release.]

(b) Any of the Shares which have not yet been released from the Company's repurchase option are referred to herein as "Unreleased Shares."

(c) The Shares which have been released from the Company's repurchase option shall be delivered to the Purchaser at the Purchaser's request (see Section 6).

5. Restriction on Transfer. Except for the escrow described in Section 6 or transfer of the Shares to the Company or its assignees contemplated by this Agreement, none of the Shares or any beneficial interest therein shall be transferred, encumbered or otherwise disposed of in any way until the release of such Shares from the Company's repurchase option in accordance with the provisions of this Agreement, other than by will or the laws of descent and distribution.

6. Escrow of Shares.

(a) To ensure the availability for delivery of the Purchaser's Unreleased Shares upon repurchase by the Company pursuant to the Company's repurchase option under Section 3 above, the Purchaser shall, upon execution of this Agreement, deliver and deposit with an escrow holder designated by the Company (the "Escrow Holder") the share certificates representing the Unreleased Shares, together with the stock assignment duly endorsed in blank, attached hereto as Exhibit A-2. The Unreleased Shares and stock assignment shall be held by the Escrow Holder, pursuant to the Joint Escrow Instructions of the Company and Purchaser attached as Exhibit A-3 hereto, until such time as the Company's repurchase option expires. As

a further condition to the Company's obligations under this Agreement, the spouse of Purchaser, if any, shall execute and deliver to the Company the Consent of Spouse attached hereto as Exhibit A-4.

(b) The Escrow Holder shall not be liable for any act it may do or omit to do with respect to holding the Unreleased Shares in escrow and while acting in good faith and in the exercise of its judgment.

(c) If the Company or any assignee exercises its repurchase option hereunder, the Escrow Holder, upon receipt of written notice of such option exercise from the proposed transferee, shall take all steps necessary to accomplish such transfer.

(d) When the repurchase option has been exercised or expires unexercised or a portion of the Shares has been released from such repurchase option, upon Purchaser's request the Escrow Holder shall promptly cause a new certificate to be issued for such released Shares and shall deliver such certificate to the Company or the Purchaser, as the case may be.

(e) Subject to the terms hereof, the Purchaser shall have all the rights of a shareholder with respect to such Shares while they are held in escrow, including without limitation, the right to vote the Shares and receive any cash dividends declared thereon. If, from time to time during the term of the Company's repurchase option, there is (i) any stock dividend, stock split or other change in the Shares, or (ii) any merger or sale of all or substantially all of the assets or other acquisition of the Company, any and all new, substituted or additional securities to which the Purchaser is entitled by reason of the Purchaser's ownership of the Shares shall be immediately subject to this escrow, deposited with the Escrow Holder and included thereafter as "Shares" for purposes of this Agreement and the Company's repurchase option.

7. Legends. The share certificate evidencing the Shares issued hereunder shall be endorsed with the following legend (in addition to any legend required under applicable state securities laws):

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER AND RIGHTS OF REPURCHASE AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE SHAREHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

8. Adjustment for Stock Split. All references to the number of Shares and the purchase price of the Shares in this Agreement shall be appropriately adjusted to reflect any stock split, stock dividend or other change in the Shares which may be made by the Company after the date of this Agreement.

9. Tax Consequences. The Purchaser has reviewed with the Purchaser's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. The Purchaser is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Purchaser understands that the Purchaser (and not the Company) shall be responsible for the Purchaser's own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement. The Purchaser understands that Section 83 of the Internal Revenue Code of 1986, as amended (the "Code"), taxes as ordinary income the difference between the purchase price for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" includes the right of the Company to buy back the Shares pursuant to its repurchase option. The Purchaser understands that the Purchaser may elect to be taxed at the time the Shares are purchased rather than when and as the Company's repurchase option expires by filing an election under Section 83(b) of the Code with the I.R.S. within 30 days from the date of purchase. The form for making this election is attached as Exhibit A-5 hereto.

THE PURCHASER ACKNOWLEDGES THAT IT IS THE PURCHASER'S SOLE RESPONSIBILITY AND NOT THE COMPANY'S TO FILE TIMELY THE ELECTION UNDER SECTION 83(b), EVEN IF THE PURCHASER REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE PURCHASER'S BEHALF.

10. General Provisions.

(a) This Agreement shall be governed by the laws of the State of Delaware. This Agreement, subject to the terms and conditions of the Plan and the Notice of Grant, represents the entire agreement between the parties with respect to the purchase of Common Stock by the Purchaser. Subject to Section 16(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Agreement, the terms and conditions of the Plan shall prevail. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Agreement.

(b) Any notice, demand or request required or permitted to be given by either the Company or the Purchaser pursuant to the terms of this Agreement shall be in writing and shall be deemed given when delivered personally or deposited in the U.S. mail, First Class with postage prepaid, and addressed to the parties at the addresses of the parties set forth at the end of this Agreement or such other address as a party may request by notifying the other in writing.

Any notice to the Escrow Holder shall be sent to the Company's address with a copy to the other party not sending the notice.

(c) The rights and benefits of the Company under this Agreement shall be transferable to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The

rights and obligations of the Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

(d) Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions, nor prevent that party from thereafter enforcing each and every other provision of this Agreement. The rights granted both parties herein are cumulative and shall not constitute a waiver of either party's right to assert all other legal remedies available to it under the circumstances.

(e) The Purchaser agrees upon request to execute any further documents or instruments necessary or desirable to carry out the purposes or intent of this Agreement.

(f) PURCHASER ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO SECTION 4 HEREOF IS EARNED ONLY BY CONTINUING SERVICE AS AN EMPLOYEE OR CONSULTANT AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED OR PURCHASING SHARES HEREUNDER). PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE OR CONSULTANT FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH PURCHASER'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE PURCHASER'S EMPLOYMENT OR CONSULTING RELATIONSHIP AT ANY TIME, WITH OR WITHOUT CAUSE.

By Purchaser's signature below, Purchaser represents that he or she is familiar with the terms and provisions of the Plan, and hereby accepts this Agreement subject to all of the terms and provisions thereof. Purchaser has reviewed the Plan and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands all provisions of this Agreement. Purchaser agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Agreement. Purchaser further agrees to notify the Company upon any change in the residence indicated in the Notice of Grant.

PURCHASER:

NETSCAPE COMMUNICATIONS CORPORATION

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

**EXHIBIT A-2**

**ASSIGNMENT SEPARATE FROM CERTIFICATE**

FOR VALUE RECEIVED I, \_\_\_\_\_, hereby sell, assign and transfer unto \_\_\_\_\_  
(\_\_\_\_\_) shares of the Common Stock of Netscape Communications Corporation standing in my name of the books of said corporation represented by Certificate No. \_\_\_\_\_ herewith and do hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

This Stock Assignment may be used only in accordance with the Restricted Stock Purchase Agreement between \_\_\_\_\_ and the undersigned dated \_\_\_\_\_, 19\_\_.

Dated: \_\_\_\_\_, 19\_\_

Signature: \_\_\_\_\_

**INSTRUCTIONS:** Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its "repurchase option," as set forth in the Agreement, without requiring additional signatures on the part of the Purchaser.

**EXHIBIT A-3**

**JOINT ESCROW INSTRUCTIONS**

\_\_\_\_\_, 19\_\_

Corporate Secretary  
Netscape Communications Corporation  
501 East Middlefield Road  
Mountain View, California 94043

Dear \_\_\_\_\_:

As Escrow Agent for both Netscape Communications Corporation, a Delaware corporation (the "Company"), and the undersigned purchaser of stock of the Company (the "Purchaser"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Restricted Stock Purchase Agreement ("Agreement") between the Company and the undersigned, in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company (referred to collectively for convenience herein as the "Company") exercises the Company's repurchase option set forth in the Agreement, the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price, and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver same, together with the certificate evidencing the shares of stock to be transferred, to the Company or its assignee, against the simultaneous delivery to you of the purchase price (by cash, a check, or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's repurchase option.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares as defined in the Agreement. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of this paragraph 3, Purchaser

shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Purchaser, but no more than once per calendar year, unless the Company's repurchase option has been exercised, you will deliver to Purchaser a certificate or certificates representing so many shares of stock as are not then subject to the Company's repurchase option. Within 90 days after cessation of Purchaser's continuous employment by or services to the Company, or any parent or subsidiary of the Company, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's repurchase option.

5. If at the time of termination of this escrow you should have in your possession any documents, securities, or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail with postage and fees prepaid, addressed to each of the other parties thereunto entitled at the following addresses or at such other addresses as a party may designate by ten days' advance written notice to each of the other parties hereto.

COMPANY: Netscape Communications Corporation  
501 East Middlefield Road  
Mountain View, California 94043

PURCHASER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ESCROW AGENT: Corporate Secretary  
Netscape Communications Corporation  
501 East Middlefield Road  
Mountain View, California 94043



16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware.

Very truly yours,

NETSCAPE COMMUNICATIONS CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

PURCHASER:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

ESCROW AGENT:

\_\_\_\_\_  
Corporate Secretary

**EXHIBIT A-4**

**CONSENT OF SPOUSE**

I, \_\_\_\_\_, spouse of \_\_\_\_\_, have read and approve the foregoing Agreement. In consideration of granting of the right to my spouse to purchase shares of Netscape Communications Corporation, as set forth in the Agreement, I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Agreement and agree to be bound by the provisions of the Agreement insofar as I may have any rights in said Agreement or any shares issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the foregoing Agreement.

Dated: \_\_\_\_\_, 19\_\_

\_\_\_\_\_

**EXHIBIT A-5**  
**ELECTION UNDER SECTION 83(b)**  
**OF THE INTERNAL REVENUE CODE OF 1986**

The undersigned taxpayer hereby elects, pursuant to the above-referenced Federal Tax Code, to include in taxpayer's gross income for the current taxable year, the amount of any compensation taxable to taxpayer in connection with his receipt of the property described below:

1. The name, address, taxpayer identification number and taxable year of the undersigned are as follows:

NAME : TAXPAYER: SPOUSE:

ADDRESS: :

IDENTIFICATION NO. : TAXPAYER: SPOUSE:

TAXABLE YEAR:

2. The property with respect to which the election is made is described as follows: \_\_\_\_\_ shares (the "Shares") of the Common Stock of Netscape Communications Corporation (the "Company").

3. The date on which the property was transferred is: \_\_\_\_\_, 19\_\_.

4. The property is subject to the following restrictions:

The Shares may be repurchased by the Company, or its assignee, on certain events. This right lapses with regard to a portion of the Shares based on the continued performance of services by the taxpayer over time.

5. The fair market value at the time of transfer, determined without regard to any restriction other than a restriction which by its terms will never lapse, of such property is:  
\$\_\_\_\_\_.

6. The amount (if any) paid for such property is:

\$\_\_\_\_\_.

The undersigned has submitted a copy of this statement to the person for whom the services were performed in connection with the undersigned's receipt of the above-described property. The transferee of such property is the person performing the services in connection with the transfer of said property.

The undersigned understands that the foregoing election may not be revoked except with the consent of the Commissioner.

Dated: \_\_\_\_\_, 19\_\_  
\_\_\_\_\_, Taxpayer

The undersigned spouse of taxpayer joins in this election.

Dated: \_\_\_\_\_, 19\_\_  
\_\_\_\_\_, Spouse of Taxpayer

**EXHIBIT 10.5**

## **NETSCAPE COMMUNICATIONS CORPORATION**

### **1995 EMPLOYEE STOCK PURCHASE PLAN**

The following constitute the provisions of the 1995 Employee Stock Purchase Plan of Netscape Communications Corporation

1. **Purpose.** The purpose of the Plan is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock of the Company through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Internal Revenue Code of 1986, as amended. The provisions of the Plan, accordingly, shall be construed so as to extend and limit participation in a manner consistent with the requirements of that section of the Code.

2. **Definitions.**

- (a) **"Board"** shall mean the Board of Directors of the Company.
- (b) **"Code"** shall mean the Internal Revenue Code of 1986, as amended.
- (c) **"Common Stock"** shall mean the Common Stock of the Company.
- (d) **"Company"** shall mean Netscape Communications Corporation, a Delaware corporation and any Designated Subsidiary of the Company.
- (e) **"Compensation"** shall mean all base straight time gross earnings, including commissions, overtime, shift premium, and bonuses, but excluding other compensation.
- (f) **"Designated Subsidiaries"** shall mean the Subsidiaries which have been designated by the Board from time to time in its sole discretion as eligible to participate in the Plan.
- (g) **"Employee"** shall mean any individual who is an Employee of the Company for tax purposes whose customary employment with the Company is at least twenty (20) hours per week and more than five (5) months in any calendar year. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company. Where the period of leave exceeds 90 days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated on the 91st day of such leave.
- (h) **"Enrollment Date"** shall mean the first day of each Offering Period.

(i) **"Exercise Date"** shall mean the last day of each Purchase Period.

(j) **"Fair Market Value"** shall mean, as of any date, the value of Common Stock determined as follows:

(1) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System, its Fair Market Value shall be the closing sale price for the Common Stock (or the mean of the closing bid and asked prices, if no sales were reported), as quoted on such exchange (or the exchange with the greatest volume of trading in Common Stock) or system on the date of such determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable, or;

(2) If the Common Stock is quoted on the NASDAQ System (but not on the Nasdaq National Market thereof) or is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean of the closing bid and asked prices for the Common Stock on the date of such determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable;

(3) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Board, or;

(4) For the purposes of the Enrollment Date under the first Offering Period under the Plan, the Fair Market Value of the Common Stock shall be the price to public as set forth in the final prospectus included within the Registration Statement on Form S-1 filed with the Securities and Exchange Commission for the initial public offering of the Common Stock.

(k) **"Offering Period"** shall mean the period of approximately twenty-four (24) months during which an option granted pursuant to the Plan may be exercised, commencing on the first Trading Day on or after February 1 and August 1 of each year and terminating on the last Trading Day in the periods ending twenty-four months later; provided, however, that the first Offering Period shall be the period of approximately twenty-three (23) months commencing with the first Trading Day on or after the date on which the Company's registration statement on Form S-1 (or any successor form thereof) is declared effective by the Securities and Exchange Commission and terminating on the last Trading Day in the period ending July 31, 1997. The duration and timing of Offering Periods may be changed pursuant to Section 4 of this Plan.

(l) **"Plan"** shall mean this Employee Stock Purchase Plan.

(m) **"Purchase Price"** shall mean an amount equal to 85% of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower.

(n) **"Purchase Period"** shall mean the approximately six month period commencing after one Exercise Date and ending with the next Exercise Date, except that the first Purchase Period of any Offering Period shall commence on the Enrollment Date and end with the next Exercise Date; provided, however, that the first Purchase Period of the first Offering Period under the Plan shall be the period of approximately five (5) months and two weeks commencing with the first Trading Day on or after the date on which the Company's registration statement on Form S-1 (or any successor thereof) is declared effective by the Securities and Exchange Commission and terminating on the last Trading Day in the period ending January 31, 1996.

(o) **"Reserves"** shall mean the number of shares of Common Stock covered by each option under the Plan which have not yet been exercised and the number of shares of Common Stock which have been authorized for issuance under the Plan but not yet placed under option.

(p) **"Subsidiary"** shall mean a corporation, domestic or foreign, of which not less than 50% of the voting shares are held by the Company or a Subsidiary, whether or not such corporation now exists or is hereafter organized or acquired by the Company or a Subsidiary.

(q) **"Trading Day"** shall mean a day on which national stock exchanges and the Nasdaq System are open for trading.

### 3. Eligibility.

(a) Any Employee (as defined in Section 2(g)), who shall be employed by the Company on a given Enrollment Date shall be eligible to participate in the Plan.

(b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Subsidiary, or (ii) which permits his or her rights to purchase stock under all employee stock purchase plans of the Company and its subsidiaries to accrue at a rate which exceeds twenty-five thousand dollars (\$25,000) worth of stock (determined at the fair market value of the shares at the time such option is granted) for each calendar year in which such option is outstanding at any time.

4. Offering Periods. The Plan shall be implemented by consecutive, overlapping Offering Periods with a new Offering Period commencing on the first Trading Day on or after February 1 and August 1 each year, or on such other date as the Board shall determine, and continuing thereafter until terminated in accordance with Section 19 hereof; provided, however, that the first Offering Period shall be the period of approximately 23 months commencing with the first Trading Day on or after the date on which the Company's registration statement on Form S-1 (or any successor form thereof) is declared effective by the Securities and Exchange Commission and terminating on the last Trading Day in the period ending July 31, 1997. The Board shall have the power to change the duration of Offering Periods (including the commencement dates thereof) with respect to future offerings without shareholder approval if such change is announced at least five (5) days prior to the scheduled beginning of the first Offering Period to be affected thereafter.

5. Participation.

(a) An eligible Employee may become a participant in the Plan by completing a subscription agreement authorizing payroll deductions in the form of Exhibit A to this Plan and filing it with the Company's payroll office prior to the applicable Enrollment Date.

(b) Payroll deductions for a participant shall commence on the first payroll following the Enrollment Date and shall end on the last payroll in the Offering Period to which such authorization is applicable, unless sooner terminated by the participant as provided in Section 10 hereof.

6. Payroll Deductions.

(a) At the time a participant files his or her subscription agreement, he or she shall elect to have payroll deductions made on each pay day during the Offering Period in an amount not exceeding ten percent (10%) of the Compensation which he or she receives on each pay day during the Offering Period, and the aggregate of such payroll deductions during the Offering Period shall not exceed ten percent (10%) of the participant's Compensation during said Offering Period.

(b) All payroll deductions made for a participant shall be credited to his or her account under the Plan and will be withheld in whole percentages only. A participant may not make any additional payments into such account.

(c) A participant may discontinue his or her participation in the Plan as provided in Section 10 hereof, or may increase or decrease the rate of his or her payroll deductions during the Offering Period by completing or filing with the Company a new subscription agreement authorizing a change in payroll deduction rate. The Board may, in its discretion, limit the number of participation rate changes during any Offering Period. The change in rate shall be effective with the first full payroll period following five (5) business days



after the Company's receipt of the new subscription agreement unless the Company elects to process a given change in participation more quickly. A participant's subscription agreement shall remain in effect for successive Offering Periods unless terminated as provided in Section 10 hereof.

(d) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) hereof, a participant's payroll deductions may be decreased to 0% at such time during any Purchase Period which is scheduled to end during the current calendar year (the "Current Purchase Period") that the aggregate of all payroll deductions which were previously used to purchase stock under the Plan in a prior Purchase Period which ended during that calendar year plus all payroll deductions accumulated with respect to the Current Purchase Period equal \$21,250. Payroll deductions shall recommence at the rate provided in such participant's subscription agreement at the beginning of the first Purchase Period which is scheduled to end in the following calendar year, unless terminated by the participant as provided in Section 10 hereof.

(e) At the time the option is exercised, in whole or in part, or at the time some or all of the Company's Common Stock issued under the Plan is disposed of, the participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock. At any time, the Company may, but will not be obligated to, withhold from the participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Common Stock by the Employee.

7. Grant of Option. On the Enrollment Date of each Offering Period, each eligible Employee participating in such Offering Period shall be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of the Company's Common Stock determined by dividing such Employee's payroll deductions accumulated prior to such Exercise Date and retained in the Participant's account as of the Exercise Date by the applicable Purchase Price; provided that in no event shall an Employee be permitted to purchase during each Purchase Period more than a number of Shares determined by dividing \$12,500 by the Fair Market Value of a share of the Company's Common Stock on the Enrollment Date; provided, however, that in the case of the first Offering Period under the Plan and notwithstanding the limit of \$12,500 in the preceding clause, in no event shall an Employee be permitted to purchase during each Purchase Period under the first Offering Period more than a number of Shares determined by dividing \$25,000 by the Fair Market Value of a share of the Company's Common Stock on the Enrollment Date; and provided further, that such purchase shall be subject to the limitations set forth in Sections 3(b) and 12 hereof. Exercise of the option shall occur as provided in Section 8 hereof, unless the participant has withdrawn pursuant to Section 10 hereof, and shall expire on the last day of the Offering Period.

8. Exercise of Option. Unless a participant withdraws from the Plan as provided in Section 10 hereof, his or her option for the purchase of shares will be exercised automatically on the Exercise Date, and the maximum number of full shares subject to option shall be purchased for such participant at the applicable Purchase Price with the accumulated payroll deductions in his or her account. No fractional shares will be purchased; any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full share shall be retained in the participant's account for the subsequent Purchase Period or Offering Period, subject to earlier withdrawal by the participant as provided in Section 10 hereof. Any other monies left over in a participant's account after the Exercise Date shall be returned to the participant. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

9. Delivery. As promptly as practicable after each Exercise Date on which a purchase of shares occurs, the Company shall arrange the delivery to each participant, as appropriate, of a certificate representing the shares purchased upon exercise of his or her option.

10. Withdrawal; Termination of Employment.

(a) A participant may withdraw all but not less than all the payroll deductions credited to his or her account and not yet used to exercise his or her option under the Plan at any time by giving written notice to the Company in the form of Exhibit B to this Plan. All of the participant's payroll deductions credited to his or her account will be paid to such participant promptly after receipt of notice of withdrawal and such participant's option for the Offering Period will be automatically terminated, and no further payroll deductions for the purchase of shares will be made for such Offering Period. If a participant withdraws from an Offering Period, payroll deductions will not resume at the beginning of the succeeding Offering Period unless the participant delivers to the Company a new subscription agreement.

(b) Upon a participant's ceasing to be an Employee (as defined in Section 2(g) hereof), for any reason, he or she will be deemed to have elected to withdraw from the Plan and the payroll deductions credited to such participant's account during the Offering Period but not yet used to exercise the option will be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 14 hereof, and such participant's option will be automatically terminated. The preceding sentence notwithstanding, a participant who receives payment in lieu of notice of termination of employment shall be treated as continuing to be an Employee for the participant's customary number of hours per week of employment during the period in which the participant is subject to such payment in lieu of notice.

11. Interest. No interest shall accrue on the payroll deductions of a participant in the Plan.

12. Stock.

(a) The maximum number of shares of the Company's Common Stock which shall be made available for sale under the Plan shall be 500,000, subject to adjustment upon changes in capitalization of the Company as provided in Section 18 hereof. If, on a given Exercise Date, the number of shares with respect to which options are to be exercised exceeds the number of shares then available under the Plan, the Company shall make a pro rata allocation of the shares remaining available for purchase in as uniform a manner as shall be practicable and as it shall determine to be equitable.

(b) The participant will have no interest or voting right in shares covered by his option until such option has been exercised.

(c) Shares to be delivered to a participant under the Plan will be registered in the name of the participant or in the name of the participant and his or her spouse.

13. Administration.

(a) Administrative Body. The Plan shall be administered by the Board or a committee of members of the Board appointed by the Board. The Board or its committee shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan. Every finding, decision and determination made by the Board or its committee shall, to the full extent permitted by law, be final and binding upon all parties.

(b) Rule 16b-3 Limitations. Notwithstanding the provisions of Subsection (a) of this Section 13, in the event that Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any successor provision ("Rule 16b-3") provides specific requirements for the administrators of plans of this type, the Plan shall be only administered by such a body and in such a manner as shall comply with the applicable requirements of Rule 16b-3. Unless permitted by Rule 16b-3, no discretion concerning decisions regarding the Plan shall be afforded to any committee or person that is not "disinterested" as that term is used in Rule 16b-3.

14. Designation of Beneficiary.

(a) A participant may file a written designation of a beneficiary who is to receive any shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such participant of such shares and cash. In addition, a participant may file a written designation of a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to exercise of the option. If a

participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the participant at any time by written notice. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

15. Transferability. Neither payroll deductions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 14 hereof) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 10 hereof.

16. Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

17. Reports. Individual accounts will be maintained for each participant in the Plan. Statements of account will be given to participating Employees at least annually, which statements will set forth the amounts of payroll deductions, the Purchase Price, the number of shares purchased and the remaining cash balance, if any.

18. Adjustments Upon Changes in Capitalization, Dissolution, Liquidation, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the Reserves as well as the price per share of Common Stock covered by each option under the Plan which has not yet been exercised shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration". Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no

issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Periods will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Board.

(c) Merger or Asset Sale. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each option under the Plan shall be assumed or an equivalent option shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Board determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, to shorten the Offering Periods then in progress by setting a new Exercise Date (the "New Exercise Date"). If the Board shortens the Offering Periods then in progress in lieu of assumption or substitution in the event of a merger or sale of assets, the Board shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for his option has been changed to the New Exercise Date and that his option will be exercised automatically on the New Exercise Date, unless prior to such date he has withdrawn from the Offering Period as provided in Section 10 hereof. For purposes of this paragraph, an option granted under the Plan shall be deemed to be assumed if, following the sale of assets or merger, the option confers the right to purchase, for each share of option stock subject to the option immediately prior to the sale of assets or merger, the consideration (whether stock, cash or other securities or property) received in the sale of assets or merger by holders of Common Stock for each share of Common Stock held on the effective date of the transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, however, that if such consideration received in the sale of assets or merger was not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Board may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the option to be solely common stock of the successor corporation or its parent equal in fair market value to the per share consideration received by holders of Common Stock and the sale of assets or merger.

19. Amendment or Termination.

(a) The Board of Directors of the Company may at any time and for any reason terminate or amend the Plan. Except as provided in Section 18 hereof, no such termination can affect options previously granted, provided that an Offering Period may be terminated by the Board of Directors on any Exercise Date if the Board determines that the termination of the Plan is in the best interests of the Company and its shareholders. Except as provided in Section 18 hereof, no amendment may make any change in any option theretofore granted which adversely affects the rights of any participant. To the extent necessary to comply

with Rule 16b-3 or under Section 423 of the Code (or any successor rule or provision or any other applicable law or regulation), the Company shall obtain shareholder approval in such a manner and to such a degree as required.

(b) Without shareholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the Board (or its committee) shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Board (or its committee) determines in its sole discretion advisable which are consistent with the Plan.

20. Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

21. Conditions Upon Issuance of Shares. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

22. Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board of Directors or its approval by the shareholders of the Company. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 19 hereof.

23. Automatic Transfer to Low Price Offering Period. To the extent permitted by Rule 16b-3 of the Exchange Act, if the Fair Market Value of the Common Stock on any Exercise Date in an Offering Period is lower than the Fair Market Value of the Common Stock

on the Enrollment Date of such Offering Period, then all participants in such Offering Period shall be automatically withdrawn from such Offering Period immediately after the exercise of their option on such Exercise Date and automatically re-enrolled in the immediately following Offering Period as of the first day thereof.

**EXHIBIT A**

**NETSCAPE COMMUNICATIONS CORPORATION**

**1995 EMPLOYEE STOCK PURCHASE PLAN**

**SUBSCRIPTION AGREEMENT**

\_\_\_\_ Original Application  
\_\_\_\_ Change in Payroll Deduction Rate  
\_\_\_\_ Change of Beneficiary(ies)

Enrollment Date: \_\_\_\_\_

1. \_\_\_\_\_ hereby elects to participate in the Netscape Communications Corporation 1995 Employee Stock Purchase Plan (the "Employee Stock Purchase Plan") and subscribes to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the Employee Stock Purchase Plan.
2. I hereby authorize payroll deductions from each paycheck in the amount of \_\_\_\_ % of my Compensation on each payday (1-10%) during the Offering Period in accordance with the Employee Stock Purchase Plan. (Please note that no fractional percentages are permitted.)
3. I understand that said payroll deductions shall be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Employee Stock Purchase Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my option.
4. I have received a copy of the complete "Netscape Communications Corporation 1995 Employee Stock Purchase Plan." I understand that my participation in the Employee Stock Purchase Plan is in all respects subject to the terms of the Plan. I understand that my ability to exercise the option under this Subscription Agreement is subject to obtaining shareholder approval of the Employee Stock Purchase Plan.
5. Shares purchased for me under the Employee Stock Purchase Plan should be issued in the name(s) of (Employee or Employee and spouse only): \_\_\_\_\_
6. I understand that if I dispose of any shares received by me pursuant to the Plan within 2 years after the Enrollment Date (the first day of the Offering Period during which I purchased such shares) or one year after the Exercise Date, I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in





Employee's Social  
Security Number:

\_\_\_\_\_

Employee's Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT SHALL REMAIN IN  
EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY  
ME.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Spouse's Signature (If beneficiary other than spouse)

**EXHIBIT B**

**NETSCAPE COMMUNICATIONS CORPORATION**

**1995 EMPLOYEE STOCK PURCHASE PLAN**

**NOTICE OF WITHDRAWAL**

The undersigned participant in the Offering Period of the Netscape Communications Corporation 1995 Employee Stock Purchase Plan which began on \_\_\_\_\_, 19\_\_ (the "Enrollment Date") hereby notifies the Company that he or she hereby withdraws from the Offering Period. He or she hereby directs the Company to pay to the undersigned as promptly as practicable all the payroll deductions credited to his or her account with respect to such Offering Period. The undersigned understands and agrees that his or her option for such Offering Period will be automatically terminated. The undersigned understands further that no further payroll deductions will be made for the purchase of shares in the current Offering Period and the undersigned shall be eligible to participate in succeeding Offering Periods only by delivering to the Company a new Subscription Agreement.

Name and Address of Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature:

\_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 10.6**

## NETSCAPE COMMUNICATIONS CORPORATION

### 1995 DIRECTOR OPTION PLAN

1. Purposes of the Plan. The purposes of this 1995 Director Option Plan are to attract and retain the best available personnel for service as Outside Directors (as defined herein) of the Company, to provide additional incentive to the Outside Directors of the Company to serve as Directors, and to encourage their continued service on the Board.

All options granted hereunder shall be nonstatutory stock options.

2. Definitions. As used herein, the following definitions shall apply:

- (a) "Board" means the Board of Directors of the Company.
- (b) "Code" means the Internal Revenue Code of 1986, as amended.
- (c) "Common Stock" means the Common Stock of the Company.
- (d) "Company" means Netscape Communications Corporation, a Delaware corporation.
- (e) "Continuous Status as a Director" means the absence of any interruption or termination of service as a Director.
- (f) "Director" means a member of the Board.
- (g) "Employee" means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. The payment of a Director's fee by the Company shall not be sufficient in and of itself to constitute "employment" by the Company.
- (h) "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- (i) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:
  - (i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System, the Fair Market Value of a Share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such system or exchange (or the exchange with the greatest volume of trading in Common Stock) on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable;

(ii) If the Common Stock is quoted on the NASDAQ System (but not on the National Market thereof) or regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Board; or

(iv) For purposes of the effective date of this Plan, Fair Market Value shall be the price to public as set forth in the final prospectus included within the Registration Statement on Form S-1 (or any successor form thereof) filed with the Securities and Exchange Commission for the initial public offering of the Common Stock.

(j) **"Inside Director"** means a Director who is also either an Employee or Consultant.

(k) **"Option"** means a stock option granted pursuant to the Plan.

(l) **"Optioned Stock"** means the Common Stock subject to an Option.

(m) **"Optionee"** means an Outside Director who receives an Option.

(n) **"Outside Director"** means a Director who is not an Employee.

(o) **"Parent"** means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(p) **"Plan"** means this 1995 Director Option Plan.

(q) **"Share"** means a share of the Common Stock, as adjusted in accordance with Section 10 of the Plan.

(r) **"Subsidiary"** means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Internal Revenue Code of 1986.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 10 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 50,000 Shares of Common Stock (the "Pool"). The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale

under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan shall not be returned to the Plan and shall not become available for future distribution under the Plan.

4. Administration and Grants of Options under the Plan.

(a) Procedure for Grants. The provisions set forth in this Section 4(a) shall not be amended more than once every six months, other than to comport with changes in the Code, the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder. All grants of Options to Outside Directors under this Plan shall be automatic and nondiscretionary and shall be made strictly in accordance with the following provisions:

(i) No person shall have any discretion to select which Outside Directors shall be granted Options or to determine the number of Shares to be covered by Options granted to Outside Directors.

(ii) Each Outside Director shall be automatically granted an Option to purchase 10,000 Shares (the "First Option") on the date on which the later of the following events occurs: (A) the effective date of this Plan, as determined in accordance with Section 6 hereof, or (B) the date on which such person first becomes an Outside Director, whether through election by the shareholders of the Company or appointment by the Board to fill a vacancy, or through such Inside Director ceasing to be an Inside Director but remaining a Director.

(iii) After the First Option has been granted to an Outside Director, such Outside Director shall thereafter be automatically granted an Option to purchase 2,500 Shares (a "Subsequent Option") on January 1 of each year provided he or she is then an Outside Director and if on such date, he or she shall have served on the Board for at least six (6) months.

(iv) Notwithstanding the provisions of subsections (ii) and (iii) hereof, any exercise of an Option made before the Company has obtained shareholder approval of the Plan in accordance with Section 16 hereof shall be conditioned upon obtaining such shareholder approval of the Plan in accordance with Section 16 hereof.

(v) The terms of a First Option granted hereunder shall be as follows:

(A) the term of the First Option shall be ten (10) years.

(B) the First Option shall be exercisable only while the Outside Director remains a Director of the Company, except as set forth in Sections 8 and 10 hereof.

(C) the exercise price per Share shall be 100% of the fair market value per Share on the date of grant of the First Option. In the event that the date of grant of the First Option is not a trading day, the exercise price per Share shall be the Fair Market Value on the next trading day immediately following the date of grant of the First Option.

(D) the First Option shall become exercisable as to twenty percent (20%) of the Shares subject to the First Option on the date ten (10) months after its date of grant, and shall become exercisable as to an additional two percent (2%) of the Shares subject to the First Option each month thereafter; provided, however, that the Optionee continues to serve as a Director on such dates.

(vi) The terms of a Subsequent Option granted hereunder shall be as follows:

(A) the term of the Subsequent Option shall be ten (10) years.

(B) the Subsequent Option shall be exercisable only while the Outside Director remains a Director of the Company, except as set forth in Sections 8 and 10 hereof.

(C) the exercise price per Share shall be 100% of the fair market value per Share on the date of grant of the Subsequent Option. In the event that the date of grant of the Subsequent Option is not a trading day, the exercise price per Share shall be the Fair Market Value on the next trading day immediately following the date of grant of the Subsequent Option.

(D) the Subsequent Option shall become exercisable as to one-twenty-fourth (1/24) of the Shares subject to the Subsequent Option at the end of each month after its date of grant, provided that the Optionee continues to serve as a Director on such dates.

(vii) In the event that any Option granted under the Plan would cause the number of Shares subject to outstanding Options plus the number of Shares previously purchased under Options to exceed the Pool, then the remaining Shares available for Option grant shall be granted under Options to the Outside Directors on a pro rata basis. No further grants shall be made until such time, if any, as additional Shares become available for grant under the Plan through action of the Board or the shareholders to increase the number of Shares which may be issued under the Plan or through cancellation or expiration of Options previously granted hereunder.

5. Eligibility. Options may be granted only to Outside Directors. All Options shall be automatically granted in accordance with the terms set forth in Section 4 hereof. An Outside Director who has been granted an Option may, if he or she is otherwise eligible, be granted an additional Option or Options in accordance with such provisions.

The Plan shall not confer upon any Optionee any right with respect to continuation of service as a Director or nomination to serve as a Director, nor shall it interfere in any way with any rights which the Director or the Company may have to terminate his or her directorship at any time.



6. Term of Plan. The Plan shall become effective upon the date on which the Company's registration statement on Form S-1 (or any successor form thereof) is declared effective by the Securities and Exchange Commission. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 11 of the Plan.

7. Form of Consideration. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall consist of (i) cash, (ii) check, (iii) other shares which (x) in the case of Shares acquired upon exercise of an Option, have been owned by the Optionee for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised, (iv) delivery of a properly executed exercise notice together with such other documentation as the Company and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price, or (v) any combination of the foregoing methods of payment.

8. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted hereunder shall be exercisable at such times as are set forth in Section 4 hereof; provided, however, that no Options shall be exercisable until shareholder approval of the Plan in accordance with Section 16 hereof has been obtained.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and full payment for the Shares with respect to which the Option is exercised has been received by the Company. Full payment may consist of any consideration and method of payment allowable under Section 7 of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. A share certificate for the number of Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 10 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares which thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Rule 16b-3. Options granted to Outside Directors must comply with the applicable provisions of Rule 16b-3 promulgated under the Exchange Act or any successor thereto and shall contain such additional conditions or restrictions as may be required thereunder to qualify Plan transactions, and other transactions by Outside Directors that otherwise could be matched with Plan transactions, for the maximum exemption from Section 16 of the Exchange Act.

(c) Termination of Continuous Status as a Director. Subject to Section 10 hereof, in the event an Optionee's Continuous Status as a Director terminates (other than upon the Optionee's death or total and permanent disability (as defined in Section 22(e)(3) of the Code)), the Optionee may exercise his or her Option, but only within three (3) months following the date of such termination, and only to the extent that the Optionee was entitled to exercise it on the date of such termination (but in no event later than the expiration of its ten (10) year term). To the extent that the Optionee was not entitled to exercise an Option on the date of such termination, and to the extent that the Optionee does not exercise such Option (to the extent otherwise so entitled) within the time specified herein, the Option shall terminate.

(d) Disability of Optionee. In the event Optionee's Continuous Status as a Director terminates as a result of total and permanent disability (as defined in Section 22(e)(3) of the Code), the Optionee may exercise his or her Option, but only within twelve (12) months following the date of such termination, and only to the extent that the Optionee was entitled to exercise it on the date of such termination (but in no event later than the expiration of its ten (10) year term). To the extent that the Optionee was not entitled to exercise an Option on the date of termination, or if he or she does not exercise such Option (to the extent otherwise so entitled) within the time specified herein, the Option shall terminate.

(e) Death of Optionee. In the event of an Optionee's death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance may exercise the Option, but only within twelve (12) months following the date of death, and only to the extent that the Optionee was entitled to exercise it on the date of death (but in no event later than the expiration of its ten (10) year term). To the extent that the Optionee was not entitled to exercise an Option on the date of death, and to the extent that the Optionee's estate or a person who acquired the right to exercise such Option does not exercise such Option (to the extent otherwise so entitled) within the time specified herein, the Option shall terminate.

9. Non-Transferability of Options. The Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

10. Adjustments Upon Changes in Capitalization, Dissolution, Merger, Asset Sale or Change of Control.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of Shares covered by each outstanding Option, the number of Shares which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per Share covered by each such outstanding Option, and the number of Shares issuable pursuant to the automatic grant provisions of Section 4 hereof shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option has not been previously exercised, it shall terminate immediately prior to the consummation of such proposed action.

(c) Merger or Asset Sale. In the event of a merger of the Company with or into another corporation, or the sale of substantially all of the assets of the Company, each outstanding Option shall become fully vested and exercisable, including as to Shares as to which it would not otherwise be exercisable. If an Option becomes fully vested and exercisable in the event of a merger or sale of assets, the Board shall notify the Optionee that the Option shall be fully exercisable for a period of thirty (30) days from the date of such notice, and the Option shall terminate upon the expiration of such period.

11. Amendment and Termination of the Plan.

(a) Amendment and Termination. Except as set forth in Section 4, the Board may at any time amend, alter, suspend, or discontinue the Plan, but no amendment, alteration, suspension, or discontinuation shall be made which would impair the rights of any Optionee under any grant theretofore made, without his or her consent. In addition, to the extent necessary and desirable to comply with Rule 16b-3 under the Exchange Act (or any other applicable law or regulation), the Company shall obtain shareholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) Effect of Amendment or Termination. Any such amendment or termination of the Plan shall not affect Options already granted and such Options shall remain in full force and effect as if this Plan had not been amended or terminated.

12. Time of Granting Options. The date of grant of an Option shall, for all purposes, be the date determined in accordance with Section 4 hereof.

13. Conditions Upon Issuance of Shares. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, state securities laws, and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares, if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned relevant provisions of law.

Inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

14. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

15. Option Agreement. Options shall be evidenced by written option agreements in such form as the Board shall approve.

16. Shareholder Approval. Continuance of the Plan shall be subject to approval by the shareholders of the Company at or prior to the first annual meeting of shareholders held subsequent to the granting of an Option hereunder. Such shareholder approval shall be obtained in the degree and manner required under applicable state and federal law.

## NETSCAPE COMMUNICATIONS CORPORATION

### DIRECTOR OPTION AGREEMENT

Netscape Communications Corporation, a Delaware corporation (the "Company"), has granted to \_\_\_\_\_ (the "Optionee"), an option to purchase a total of [ \_\_\_\_\_ ( \_\_\_\_\_ )] shares of the Company's Common Stock (the "Optioned Stock"), at the price determined as provided herein, and in all respects subject to the terms, definitions and provisions of the Company's 1995 Director Option Plan (the "Plan") adopted by the Company which is incorporated herein by reference. The terms defined in the Plan shall have the same defined meanings herein.

1. Nature of the Option. This Option is a nonstatutory option and is not intended to qualify for any special tax benefits to the Optionee.
2. Exercise Price. The exercise price is \$ \_\_\_\_\_ for each share of Common Stock.
3. Exercise of Option. This Option shall be exercisable during its term in accordance with the provisions of Section 8 of the Plan as follows:

(a) Right to Exercise.

(i) This Option shall become exercisable in installments cumulatively with respect to twenty percent (20%) of the Optioned Stock ten months after the date of grant, and as to an additional two percent (2%) of the Optioned Stock at the end of each month thereafter, so that one hundred percent (100%) of the Optioned Stock shall be exercisable 50 months after the date of grant; provided, however, that in no event shall any Option be exercisable prior to the date the stockholders of the Company approve the Plan.

(ii) This Option may not be exercised for a fraction of a share.

(iii) In the event of Optionee's death, disability or other termination of service as a Director, the exercisability of the Option is governed by Section 8 of the Plan.

(b) Method of Exercise. This Option shall be exercisable by written notice which shall state the election to exercise the Option and the number of Shares in respect of which the Option is being exercised. Such written notice, in the form attached hereto as Exhibit A, shall be signed by the Optionee and shall be delivered in person or by certified mail to the Secretary of the Company. The written notice shall be accompanied by payment of the exercise price.

4. **Method of Payment.** Payment of the exercise price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) cash;

(b) check; or

(c) surrender of other shares which (x) in the case of Shares acquired upon exercise of an Option, have been owned by the Optionee for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised; or

(d) delivery of a properly executed exercise notice together with such other documentation as the Company and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price.

5. **Restrictions on Exercise.** This Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulations, or if such issuance would not comply with the requirements of any stock exchange upon which the Shares may then be listed. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by any applicable law or regulation.

6. **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by the Optionee. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

7. **Term of Option.** This Option may not be exercised more than ten (10) years from the date of grant of this Option, and may be exercised during such period only in accordance with the Plan and the terms of this Option.

8. **Taxation Upon Exercise of Option.** Optionee understands that, upon exercise of this Option, he or she will recognize income for tax purposes in an amount equal to the excess of the then Fair Market Value of the Shares purchased over the exercise price paid for such Shares. Since the Optionee is subject to Section 16(b) of the Securities Exchange Act of 1934, as amended, under certain limited circumstances the measurement and timing of such income (and the commencement of any capital gain holding period) may be deferred, and the Optionee is advised to contact a tax advisor concerning the application of Section 83 in general and the availability a Section 83(b) election in particular in connection with the exercise of the Option. Upon a resale of such Shares by the Optionee, any difference between the sale price and the Fair

Market Value of the Shares on the date of exercise of the Option, to the extent not included in income as described above, will be treated as capital gain or loss.

DATE OF GRANT: \_\_\_\_\_

NETSCAPE COMMUNICATIONS CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_

Optionee acknowledges receipt of a copy of the Plan, a copy of which is attached hereto, and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under the Plan.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Optionee

## EXHIBIT A

### DIRECTOR OPTION EXERCISE NOTICE

NETSCAPE COMMUNICATIONS CORPORATION  
501 East Middlefield Road  
Mountain View, California 94043

Attention: Corporate Secretary

1. Exercise of Option. The undersigned ("Optionee") hereby elects to exercise Optionee's option to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of Netscape Communications Corporation (the "Company") under and pursuant to the Company's 1995 Director Option Plan and the Director Option Agreement dated \_\_\_\_\_ (the "Agreement").
2. Representations of Optionee. Optionee acknowledges that Optionee has received, read and understood the Agreement.
3. Federal Restrictions on Transfer. Optionee understands that the Shares must be held indefinitely unless they are registered under the Securities Act of 1933, as amended (the "1933 Act"), or unless an exemption from such registration is available, and that the certificate(s) representing the Shares may bear a legend to that effect. Optionee understands that the Company is under no obligation to register the Shares and that an exemption may not be available or may not permit Optionee to transfer Shares in the amounts or at the times proposed by Optionee.
4. Tax Consequences. Optionee understands that Optionee may suffer adverse tax consequences as a result of Optionee's purchase or disposition of the Shares. Optionee represents that Optionee has consulted with any tax consultant(s) Optionee deems advisable in connection with the purchase or disposition of the Shares and that Optionee is not relying on the Company for any tax advice.
5. Delivery of Payment. Optionee herewith delivers to the Company the aggregate purchase price for the Shares that Optionee has elected to purchase and has made provision for the payment of any federal or state withholding taxes required to be paid or withheld by the Company.
6. Entire Agreement. The Agreement is incorporated herein by reference. This Exercise Notice and the Agreement constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof. This Exercise Notice and the Agreement are governed by Delaware law except for that body of law pertaining to conflict of laws.



Submitted by:

OPTIONEE:

\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Accepted by:

NETSCAPE COMMUNICATIONS  
CORPORATIONS

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT 10.7**

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective the 4<sup>TH</sup> day of JAN, 1995, is entered into by Netscape Communications Corporation (the "Company") and James L. Barksdale (the "Executive").

### 1. EMPLOYMENT

**1.1 Duties.** The Company will employ Executive as its President and Chief Executive Officer. Executive will have such authority, subject to the Company's Articles of Incorporation and Bylaws, as may be granted from time to time by the Board of Directors. Executive will perform the duties customarily performed by the President and Chief Executive Officer of a corporation and such other duties as may be assigned from time to time by the Company's Board of Directors.

**1.2 Board of Directors.** Executive shall continue to serve as a member of the Board of Directors, and shall be compensated for such service pursuant to the terms of a letter agreement between the parties dated September 16, 1994.

**1.3 Chairman of the Board.** Executive may elect, at his discretion, to serve as Chairman of the Board of Directors. The Company will use its best efforts to have Executive elected, and re-elected, to such position throughout his employment with the Company.

### 2. ATTENTION AND EFFORT

Executive will devote his productive time, ability, attention and best efforts to the Company's business. It is agreed that Executive may devote reasonable periods of time to (a) engaging in personal investment activities, (b) serving on boards of directors of other corporations if approved in advance by the Company's Chairman (or Board of Directors, if Executive is Chairman) and (c) engaging in charitable or community service activities, as long as none of the foregoing additional activities materially interfere with Executive's duties under this Agreement. The Company hereby approves Executive continuing to serve on the boards of directors of JCom and The Prosus Corporation.

### 3. TERM OF EMPLOYMENT

**3.1 Commencement Date.** Executive shall commence full time employment as soon as reasonably practical, but not later than January 31, 1995, unless the Company otherwise agrees.

with a requested extension of Executive's current employment.

**3.3 Employment At Will.** Executive's employment with the Company is not for a specific term and can be terminated at any time by either the Company or Executive, with or without cause, by giving written notice to the other party.

#### **4. COMPENSATION**

During the term of employment, the Company agrees to compensate Executive as follows:

**4.1 Base Salary.** The Company shall pay Executive a base salary equivalent to One Hundred Thousand Dollars (\$100,000.00) per year, before all customary payroll deductions, payable at the same intervals as other officers of the Company are paid. The base salary may be adjusted in future years by the Board of Directors.

**4.2 Bonus.** In addition to base salary, Executive shall be entitled to participate in any bonus plan established by the Company.

**4.3 Stock Options and Stock Vesting.** On the date Executive commences employment with the Company, the Company shall grant Executive an option to purchase Two Million (2,000,000) shares of the Company's common stock (the "Stock Option"). The Stock Option shall be immediately exercisable for all of the option shares and shall have an exercise price per share determined as follows: (i) if Executive commences employment prior to February 24, 1995, the exercise price per share will be 22.5 cents (which the Company has determined is the current fair market value of the stock) and (ii) if Executive commences employment on or after February 24, 1995, the exercise price per share will be one tenth of the price paid per share of the Company's preferred stock in the Company's most recently completed preferred stock financing, computed as of the date Executive commences employment. One Million (1,000,000) of the option shares shall vest immediately, and the remaining One Million (1,000,000) shares shall vest at the rate of Twenty Thousand (20,000) shares per month upon the Executive's completion of each month of service with the Company (as either an employee or independent consultant) over the fifty (50) month period measured from the commencement date of his employment. The Company shall have the right to repurchase any unvested shares, at the exercise price paid per share (plus interest compounded at 10% per annum), at the time of Executive's termination of service. Except as otherwise modified by this Agreement, the Stock Option shall be governed by and subject to the provisions of the Company's

standard form Non-Qualified Stock Option Agreement, and the option shares shall be purchased pursuant to the terms of the Company's standard form Stock Purchase Agreement for common shareholders.

**4.4 TAX Protection.** Should the Executive exercise his Two Million (2,000,000) share option for one or more shares, and the Internal Revenue Service subsequently determines that the fair market value per share of the Company's common stock on the grant date was greater than the option exercise price paid for each such purchased share, with the result that such differential becomes taxable as ordinary income rather than long-term capital gain, then the Company shall reimburse Executive for the incremental tax liability (based on the excess of the ordinary income rate over the capital gain rate) incurred by Executive by reason of such ordinary income taxation plus any penalties attributable to that tax liability.

## **5. SPECIAL PROVISIONS**

**5.1 Change in Control.** Upon the occurrence of a Change in Control, the Company or any successor entity shall be obligated to continue Executive's service over the remainder of the vesting period in effect for the shares purchased or purchasable under the Stock Option so that Executive shall have the opportunity to vest in all those shares. Executive shall, however, have complete discretion in determining whether he is to render such service, and if so, whether it shall be performed as a full time employee, part time employee or independent consultant. The remaining terms of Executive's service during such vesting period, including any cash compensation payable for such service, shall be negotiated in good faith by the Company or successor entity and Executive at the time of the Change in Control. This Section 5.1 shall only become applicable in the event of a Change in Control, and in the absence of such Change in Control, Executive's employment shall remain "at will" in accordance with the provisions of Section 3.2 of this Agreement.

For purposes of this Agreement, a Change in Control shall be deemed to occur in the event of any of the following transactions: (A) a transaction or series of related transactions over a twelve (12) month period (excluding an initial public offering) in which securities constituting fifty percent (50%) or more of the Company's outstanding voting power are transferred to a person or persons other than the persons holding those securities immediately prior to such transaction or series of related transactions, (B) the acquisition of all or substantially all of the Company's assets, (C) the liquidation or

dissolution of the Company or (D) any other event reasonably determined by the Board of Directors to constitute a change in control for purposes of this Agreement.

**5.2 Partial Vesting Upon Death or Disability.** If Executive dies or becomes disabled so that it is necessary for him to step down from his position as President and Chief Executive Officer of the Company, then Executive shall immediately vest in twenty-five percent (25%) of all remaining unvested shares purchased or purchasable under the Stock Option.

#### **6. ANTI-DILUTION PROTECTION**

All equity holdings of Executive, whether in the form of stock or stock options, will be protected against any and all forms of dilution to the same extent as the greatest such protection afforded either Kleiner, Perkins, Caulfield & Byers, or James H. Clark.

#### **7. GIFTING OF SHARES**

The Company hereby consents to any gift of vested stock made by Executive to his spouse or any other member of his immediate family, provided the donee agrees to be bound by all the provisions of the Stock Purchase Agreement governing Executive's purchase of those shares.

#### **8. BENEFITS**

Executive shall be entitled to participate in all health care, insurance and other employee benefit plans generally available to executives of the Company. Executive shall also be entitled to vacation, holidays, and other fringe benefits provided to executives of the Company. To the extent the Company does not have a particular fringe benefit or benefit plan, Executive may arrange for the Company to purchase or provide it, so long as the overall level of benefits is reasonably consistent with those enjoyed by similarly situated executives in the industry.

#### **9. RELOCATION EXPENSES**

The Company will pay and/or provide Executive with the following relocation benefits: a.) the reasonable cost of relocating Executive and his family and their household goods from the Seattle, Washington area to the Mountain View, California area; b.) if Executive is unable to sell his family house in Seattle within a reasonable time period, the Company shall arrange with a relocation service to purchase his house using a mutually acceptable methodology to establish the purchase price; and c.) the Company will make Executive whole for any difference between the actual sales price and the fair market

value of his house in Seattle. This payment shall include any additional income taxes owed by Executive as a result of any of the above payments. For purposes of the Company's obligations under this Article, the fair market value of Executive's residence in Seattle shall be deemed equal to the average of two independent appraisals of the value of such residence, provided the appraised values are within ten percent (10%) of each other. Otherwise, a third independent appraisal will be obtained and the fair market value shall be determined by averaging the three appraised values. The Company shall pay for the appraisals.

#### **10. PROPRIETARY INFORMATION**

Executive will execute the Company's Proprietary Information and Inventions Agreement.

#### **11. INDEMNIFICATION**

Company shall defend, indemnify and hold Executive harmless from any and all liabilities, obligations, claims or expenses which arise in connection with or as a result of Executive's service as an officer, employee, or director of Company, to the fullest extent allowed by law, provided, however, that no such indemnification shall be provided Executive for any willful and intentional misconduct on his part.

#### **12. ARBITRATION**

Any dispute involving the interpretation or application of this Agreement shall be submitted to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, conducted by one arbitrator either mutually agreed upon by the parties or selected in accordance with the AAA Rules. The arbitration shall be conducted in Santa Clara County, California under the jurisdiction of the American Arbitration Association. The arbitrator shall have authority only to interpret and apply provisions of this Agreement, and shall have no authority to add to, subtract from, or modify terms of this Agreement. Any demand for arbitration must be made within sixty (60) days of the event(s) giving rise to the claim that the Agreement has been breached. In the event Executive is successful in pursuing any claim arising out of this Agreement, the Company shall pay all of the Executive's attorneys' fees and costs, including the compensation and expenses of the arbitrator. In all other cases, the Executive and Company shall each bear their own costs and attorney fees, except that the Company shall pay the costs of any arbitrator appointed hereunder.

**13. APPLICABLE LAW**

This Agreement shall in all respects, including all matters of construction, validity and performance, be construed in accordance with the laws of the State of California.

**14. SEVERABILITY**

If any portion of this Agreement is held to be invalid or unenforceable, the remaining covenants and restrictions or portion thereof shall remain in full force and effect.

**15. HEADINGS**

All headings used in this Agreement are for convenience only and shall not in any way affect the interpretation of this Agreement.

**16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter covered herein. All prior understandings and agreements between the parties with respect to such subject matter, whether oral or written, are hereby superseded and nullified, unless otherwise referenced in this Agreement. This Agreement may only be amended in writing, specifically identifying this Agreement and the provision(s) to be amended.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement effective on the date set forth above.

Netscape Communications Corporation



James H. Clark, President  
and Chief Executive Officer



James L. Barksdale

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**EXHIBIT 10.8**

## SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") effective this \_\_\_ day of February, 1995 (the "Effective Date"), is made between Netscape Communications Corporation ("Netscape"), with a business address at 501 East Middlefield Road, Mountain View, California 94043, and MCI Telecommunications Corporation ("MCI"), with a business address at 1133 19th Street N.W., Washington, DC 20036.

BACKGROUND

1. Netscape develops, markets, licenses and distributes client and server software for use in the Internet environment;
2. MCI desires to develop an electronic shopping mall (including the provision of transaction processing services to merchants and information content providers and the provision of access to and browsing capabilities on the mall for MCI customers), and also to provide MCI customers with access to and browsing capabilities with respect to the World Wide Web and the Internet generally;
3. Netscape desires to grant MCI, and MCI desires to accept a non-exclusive license to use Netscape's client and server software on the terms and conditions set forth herein in connection with such electronic shopping mall and to provide access to and browsing capabilities on the World Wide Web and the Internet.

The parties hereby agree as follows:

1. Definitions

- a. "Acceptance" shall have the meaning assigned to it on Attachment B.
- b. "Affiliate" shall mean, with respect to either party, a corporation, partnership, joint venture or other entity or person controlling, controlled by or under common control with such party. For purposes of this definition, the term "control" shall mean the direct or indirect beneficial ownership of more than 50% of the voting interests (representing the right to vote for the election of directors or other managing authority) in an entity.
- c. "Documentation" shall mean the documentation associated with the Software Products which may be in electronic and/or hard copy form as further described on Attachment A hereto.
- d. "Established User" shall mean any user who (a) accesses the MCI Mall by means of a Netscape Client distributed by MCI, (b) has been automatically and transparently identified by the Netscape Transaction Server, and (c) has been issued a unique identifier by such server. The term "Established User" shall also include users who access the MCI Mall by means of a Netscape Client distributed by Netscape or a third party ("Netscape Users"), but only to the extent such Netscape Users effect transactions on the MCI Mall. Additionally, for each Netscape User who effects a transaction on the MCI Mall, Netscape and MCI shall consider four additional Netscape Users to be "Established Users" for the purposes of this Agreement up to the total number of Netscape Users on the MCI Mall.

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- e. **"Major Update"** shall mean any update to the Software Products that involves the addition of substantial functionality, and is created by Netscape and designated by Netscape as a change in the number to the left of the decimal point of the number appearing after the product name. Major Updates exclude software releases that are designated by Netscape as new products, in accordance with generally accepted industry practices. Major Updates also exclude any customization work performed by Netscape for MCI which MCI funds, as provided below in Section 12.
- f. **"MCI Mall"** shall mean the service operated by MCI which uses the Software Products and through which MCI customers and others possessing the Netscape Client and Netscape-compatible clients may access various merchants' catalogs, storefronts and other product descriptions as well as information provided by content providers and may effect transactions with such merchants and content providers.
- g. **"Netscape Client"** shall mean the Netscape Client defined on Attachment A, including Updates thereto provided by Netscape to MCI under this Agreement.
- h. **"Netscape Merchant Server"** shall mean the Netscape Merchant Server defined on Attachment A, including Updates thereto provided by Netscape to MCI under this Agreement.
- i. **"Netscape Transaction Server"** shall mean the Netscape Transaction Server defined on Attachment A, including Updates thereto provided by Netscape to MCI under this Agreement.
- j. **"Netscape Servers"** shall mean the Netscape Merchant Server, the Netscape Transaction Server and the Netscape Staging Server collectively.
- k. **"Minor Update"** shall mean updates to the Software Products that do not involve the addition of substantial functionality, and are designated by Netscape as a change in the number to the right of the decimal point of the number appearing after the product name. Minor Updates exclude any customization work performed by Netscape for MCI which MCI funds, as provided below in Section 12.
- l. **"Software Products"** shall mean the Netscape Client and the Netscape Servers collectively. Additional platforms for the Software Products may be added from time to time pursuant to the mutual written agreement of the parties.
- m. **"Source Code"** shall mean programming statements or instructions written and expressed in any language from which statements or instructions are translated by an appropriate language processor into executable machine code.
- n. **"Specifications"** shall mean the specifications for version 1.A, 1.B of the Netscape Client and Netscape Servers attached hereto as Attachment A. The parties agree that following execution and delivery of this Agreement, they will work diligently to describe in more detail the basic functionality currently set forth in Attachment A, and that upon the parties' agreement, such additional descriptions shall be incorporated in Attachment A hereto and shall be included within the term "Specifications."
- o. **"Updates"** shall mean Major Updates and Minor Updates collectively.
- p. **"Cutoff Update"** shall mean the last Update delivered to MCI as of the Acceptance Anniversary Date.

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- q. **"Production Acceptance Date"** shall mean the date of MCI's Acceptance of Version 1.B of the Netscape Merchant Server, Netscape Transaction Server, Netscape Staging Server and the Netscape Client.
- r. **"Acceptance Anniversary Date"** shall mean the first anniversary of the Production Acceptance Date.
- s. **"Prepayment Amount"** shall mean the [REDACTED] described in Section 6(a)(i)(A).
- t. **"Prepaid Established Users"** shall mean Established Users whose license fees are included in the Prepayment Amount.
- u. **"Netscape Staging Server"** shall mean the Netscape Staging Server defined on Attachment A, including Updates thereto provided by Netscape to MCI under this Agreement.

## 2. Licenses

### 2.1 Software License. Subject to all of the terms and conditions of this Agreement, Netscape grants the following licenses:

- a. **Netscape Client.** Subject to section 2.1(c), Netscape hereby grants to MCI a non-exclusive, non-transferable (except as set forth in Section 20 (c) below), worldwide right and license to use, make copies, and distribute through sublicensing to end users the Netscape Client, only in object code form (subject to Sections 2.1(e) and 3 below), through MCI's normal channels of distribution for the MCI Mall, including Affiliates and joint ventures marketing MCI-branded products. Upon MCI's payment of the fees set forth below in Section 6 with respect to each Established User and only for so long as the use of the Netscape Client is in conformance with the terms of this Agreement and the license agreement accompanying such Netscape Client (as set forth in Section 2.2), (a) the sublicense granted by MCI to such Established User shall be fully-paid, perpetual and irrevocable, and (b) MCI's right to use the Netscape Client internally (including through its Affiliates) with respect to supporting such Established User shall be fully-paid, perpetual and irrevocable. MCI's right to copy and distribute the Netscape Client shall remain in effect for the term of this Agreement, and shall survive termination of this Agreement in the circumstances described in Section 10 (d) below.
- b. **Netscape Servers**
  - i. **License.** Netscape grants to MCI and its Affiliates (provided that they agree, in writing, to be bound in writing by the terms and conditions of this Agreement) a non-exclusive, non-transferable (except as set forth in Section 20 (c) below), and non-sublicensable worldwide right and license to [REDACTED] in connection with operating the MCI Mall (subject to the limitation set forth in Sections 2.1(b)(ii) below) and use for the purposes set forth in Section 2.1(c) below (but not to sublicense, sell, or otherwise distribute) the Netscape Servers. Upon MCI's payment of the fees set forth below in Section 6 with respect to each Established User and only for so long as the use of the Netscape Servers is in conformance with the terms of this Agreement, MCI's right to use the Netscape Servers with respect to such Established User shall be [REDACTED] perpetual and irrevocable.

ii. Database Software

- (A) Database Accessors. MCI acknowledges and agrees that the Netscape Client accesses the database software portion of the Netscape Servers through an intermediary software module commonly referred to as an "Accessor". MCI agrees that the pricing of the Netscape Servers is based upon the assumption that the ratio of the number of Accessors to the number of Established Users is [REDACTED] Accessors per [REDACTED] Established Users. Therefore, if MCI desires to increase access capacity to the database software through more than [REDACTED] Accessors, MCI will be required to pay Netscape additional charges as set forth in Section 6. The Accessors may be located on more than one physical machine, provided that the [REDACTED] number of Accessors per machine is [REDACTED].
- (B) Additional License Conditions. MCI further acknowledges and agrees that the database software will be provided to MCI only as runtime modules. MCI is prohibited from publishing any results of benchmark test run on the database software. MCI may not use the database software for timesharing or rental purposes. Within thirty (30) days after the end of each month, MCI will provide Netscape a report of new copies of the database software installed by MCI during such month and the serial numbers of MCI's computer systems on which such copies of the database software run. MCI will not copy the database portion of the Netscape Servers. When MCI desires a new copy of the Netscape Servers for the purposes permitted in Section 2.1(b)(i) above, MCI will notify Netscape and Netscape will promptly provide MCI with a new copy of the database portion.

- c. Use of Software Products. MCI may use the Software Products in connection with developing and operating the MCI Mall as contemplated hereunder and providing access to and browsing capabilities on World Wide Web and the Internet; provided that MCI will not sell service on the MCI Mall to any third party merchant or information provider on the basis of [REDACTED] unless such third party merchant or information provider has acquired a separate Server license from Netscape. MCI may also allow a third party access to the Software Products as MCI's agent, solely in order to operate the MCI Mall on behalf of MCI, subject to all the terms herein.
- d. No Right to Modify. Except as specifically set forth in Section 3 below or in this Section 2.1(d), Netscape grants to MCI no right to modify or create derivative works of the Software Products hereunder. MCI may add application code to the Netscape Server software, provided that the Netscape Client interacts with such new code through the CGI interface to the Netsite Servers. (For purposes of this Section, "Netsite Server" shall mean the layer of software within the Netscape Servers which is known as Netscape's Netsite Commerce server and which functions as the layer between the Netscape Client and the Merchant Server, Transaction Server and Staging Server.) The new code may not modify the database supplied by Netscape as part of the Netscape Servers without using the Netscape supported interfaces. MCI is explicitly permitted to create its own databases and other applications provide they do not interfere with the Netscape software. Netscape shall not be required to support any additional code and shall have no rights or interest in or to any such additional code.

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- a. **Source Code.** Netscape hereby grants to MCI a license to use the Source Code and accompanying documentation for the Software Products solely upon the occurrence of the events, and in accordance with the terms and conditions, set forth in Section 3 below.
- 2.2 **Sublicensing.** The Software Products are licensed and are not sold and may not be distributed, used or otherwise exploited except if and as expressly permitted hereunder. All sublicenses of the Netscape Client to end users by MCI will contain the terms and conditions that are as protective of proprietary rights of Netscape and its licensors as those set forth on Attachment C hereto. Netscape may amend such terms on written notice to MCI, and MCI will use such amended terms within forty-five (45) days for electronic versions of sublicense granted by MCI, and on MCI's next printing for printed versions. In the event the Software Products are distributed by MCI in an electronic form as contemplated in Section 5.1 below, sublicense agreements may also be provided to end users in an electronic form accompanying such electronic copies of the Software Products, and such electronic sublicensing, if it contains the terms and conditions provided by Netscape relating to electronic sublicensing will satisfy MCI's obligations under this §2.2.
- 2.3 **Documentation License.** Netscape will deliver to MCI a master copy of the Documentation for all Software Products (both a hard copy and an electronic on-line copy). Subject to all of the terms and conditions of this Agreement, Netscape hereby grants to MCI a non-exclusive and non-transferable worldwide right and license to use, make copies, and modify the Documentation to include MCI materials and to distribute such Documentation with the Netscape Client.
- 2.4 **Proprietary Rights.** Netscape owns and continues to own all right, title and interest, including without limitation world-wide copyrights, patent rights, trade secret rights, and any other intellectual property rights, in and to the Software Products.
- 3. **Escrow of Source Code for Software Products**
  - 3.1 **Escrow Agreement.** Within ten (10) calendar days following delivery to MCI of the Software Products and each Update of each Software Product, Netscape shall deposit with Data Securities International, Inc. ("DSI") a complete copy of the Source Code developed by Netscape for the relevant Software Products or Update, together with a complete copy of all existing Documentation relating thereto, and complete instructions for compiling and linking every part of such Source Code into executable code, for purposes of enabling verification that the Source Code delivered hereunder is complete, all pursuant to the terms of an Escrow Agreement (the "Escrow Agreement"), by and among Netscape, MCI and DSI, in substantially the form attached hereto as Attachment D. To the extent that the Release Events in this Agreement differ from those in Attachment D or Attachment F, this Agreement and Attachment F will govern. The parties will negotiate the remaining terms in good faith. Netscape shall give MCI prompt written notice of each deposit hereunder. MCI acknowledges that Netscape cannot offer MCI source code rights to components of the Software Products owned by third parties who restrict Netscape's ability to provide such source code access, including without limitation the database software.
  - 3.2 **Escrow Fees.** All fees and expenses charged by DSI in connection with the Escrow Agreement will be borne by Netscape, and MCI shall have no liability therefor.
  - 3.3 **Release Conditions.** All materials deposited with DSI hereunder shall be released to MCI solely upon the occurrence of one or more of the following events (each a "Release Event"):
    - a. if Netscape has Financial Difficulties, as defined in Subsection 10.b.iii below;

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## CONFIDENTIAL TREATMENT REQUESTED

- b. if Netscape experiences a Change of Control (as defined in Section 10.b(iv) below) and Netscape has received from MCI the Source Buyout Amount defined in Section 3.6 below; or
- c. as provided in Attachment F.

**3.4 Source Use.** Upon a release of deposited Source Code materials hereunder under Section 3.3, MCI, subject to all of the terms and conditions of this Agreement, shall have the right to use such Source Code internally solely for purposes of [REDACTED] to run the MCI Mall as contemplated herein. MCI has no right to use the Source Code for any other purposes. In particular, without limiting the foregoing, MCI has no right to use the Source Code to develop any product which might compete with Netscape's products. MCI will have no right to sublicense, distribute or otherwise transfer the Source Code to any third party. Notwithstanding the preceding sentence, if MCI has authorized a third party to operate the MCI Mall as permitted under Section 2.1(c) above, MCI may provide such third party with a copy of the source code, provided that such third party is bound by confidentiality obligations at least as protective of the source code as MCI is bound by herein, and that MCI shall be liable to Netscape for any disclosure of the source code by such third party. MCI will protect the confidentiality of all Source Code released hereunder and its accompanying Documentation in accordance with the provisions of Section 15 below.

**3.5 Release from Certain Obligations.** Upon a release of deposited Source Code pursuant to the terms of this Section, then for the released Source Code, Netscape shall be released from its obligations under Sections 4, 7, 9, 11(a), 12, and 13, provided that the warranties of §11(b)(i) will apply to actions prior to date of release, and the warranties of §11(b)(ii), (iii) and (iv) will apply to Software Products as they exist on the date of release, and MCI will be released from its obligation to pay any Maintenance Fee to Netscape with respect to the released source code. In addition, if source code is released under Section 3.3(b), MCI will also be released from its obligation to [REDACTED] after the date Netscape receives from MCI the Source Buyout Amount specified in Section 3.6. If source code is required to be returned, this §3.5 will be of no further effect.

**3.6 Source Buyout Amount.** The Source Buyout Amount will be determined as follows. Each party will appoint its own appraiser and the parties will agree on a third appraiser. Each of the appraisers will determine a buyout price for the source code taking into account, among other things, the use that MCI may make of the source code and the value MCI would derive from the source code, etc. The Source Buyout Amount will be the average of the three prices determined by the appraisers.

#### **4. Delivery, Installation, Testing and Acceptance.**

**4.1** Netscape will deliver golden masters of the Software Products to locations designated by MCI pursuant to the schedule set forth on Attachment A hereto.

**4.2** Following delivery of each Software Product, MCI may install such Software Product in such locations as MCI shall deem desirable for the MCI Mall. At MCI's request, Netscape shall assist MCI in installing each version of the Server Software Products in exchange for consulting fees as set forth below in Section 12. Following installation, the acceptance testing set forth on Attachment B hereto shall occur, and acceptance shall occur as provided on Attachment B. The parties acknowledge that assistance provided by Netscape for the initial installation now in progress has been or will be performed free of charge.

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## 5. Distribution and Use of the Software Products

5.1 **Distribution.** The parties will use their commercially reasonable efforts to jointly develop a plan for electronic distribution of copies of the Netscape Client to MCI customers. MCI will be solely responsible for and will bear all expenses related to any electronic or non-electronic forms of distribution of the Netscape Client that it undertakes.

5.2 **Restrictions on Use and Proprietary Notice.** In addition, except as expressly and unambiguously provided herein and as conditions of MCI's rights and licenses hereunder, MCI represents, warrants and agrees:

- a. Not to modify or create any derivative work of the Software Products or any portion thereof except (i) after release from escrow and pursuant to the terms and conditions set forth in Section 3 above; or (ii) to the extent permitted by Section 2.1(d).
- b. Not to delete, alter, add to or fail to reproduce in and on any Software Product, media, documentation, master or package materials Netscape's copyright or other proprietary notices appearing in materials provided to MCI by Netscape. This section shall not apply to trademarks and logos, which shall be governed by Section 5.3.
- c. Not to reverse assemble, decompile, or otherwise attempt to derive Source Code (or the underlying ideas, algorithms, structure or organization) from the Software Products or from any other information, provided that the foregoing shall not apply where and to the extent it is expressly prohibited by law.
- d. To, in addition to and without in any way limiting MCI's other obligations hereunder, use all reasonable methods to protect Netscape's rights with respect to the Software Products and Proprietary Information to the same extent it protects its own software, confidential information or rights.

## 5.3 Trademark and Branding.

- a. Trademark use and branding practices for the Netscape Client and the Netscape Servers shall be as set forth on Attachment E. MCI agrees not to register or translate Netscape's trademarks without Netscape's prior written consent. MCI need not use Netscape trademarks and/or trade names in any country in which their connotation is offensive or illegal and will work with Netscape to develop a mutually agreeable alternative.
- b. Netscape Review of MCI Materials. From time to time during the term of this Agreement, Netscape may request MCI to provide it with reasonable samples of Documentation, packaging, advertising and other materials developed and used by MCI in its distribution of the Netscape Client. Upon such reasonable request, MCI shall deliver to Netscape reasonable samples of such materials, and Netscape may review such materials solely for the purpose of verifying the accuracy of such materials with respect to the Software Products and the appropriate usage of Netscape's trademarks and proprietary notices (including without limitation trademark and copyright notices). In the event Netscape notifies MCI in writing that any such usage is inaccurate or incorrect, MCI shall correct all errors identified by Netscape for future distributions of such materials.

## 6. Pricing and Payment

- a. Pricing

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- (i) **Netscape Software.** MCI shall pay Netscape the prices set forth in this Section 6 for usage of the Netscape Servers by Established Users. Although for convenience this usage is measured below by the number of Established Users accessing such Servers, the parties recognize and agree that no separate or additional amounts shall be payable with respect to the Netscape Client software used or distributed by MCI, except as set forth in subsection 6(a)(i)(B) below.

- (A) The parties agree that MCI will pay to Netscape the following prices for Netscape Server usage by Established Users up to a total amount of [REDACTED] "Prepayment Amount"), and for Netscape Server usage by all Established Users thereafter until the parties renegotiate alternate prices in accordance with Section 8 below. The prices below will remain applicable to Prepaid Established Users as described in subsection 6(a)(i)(D) below.

Volumes Based on Established  
Users of the Software Products

Price per  
Established User

[REDACTED]

[REDACTED]

- (B) In addition, for each Established User whose Netscape Client software was distributed by MCI in a transaction in which MCI was paid for such client software, MCI shall pay Netscape an additional [REDACTED]
- (C) Such prices and any adjusted prices established pursuant to Section 8 below do not include TCP/IP, dialer and registration software or any other software which Netscape or MCI may license from third parties. MCI understands that if MCI makes a decision regarding the inclusion of such software, or a decision regarding hardware configurations, that results in additional expense to Netscape, then MCI shall bear the cost of such expense. Costs for the Oracle database shall be as described in Section 2.1b(ii) and Section 6(a)(ii) of this Agreement.
- (D) If a price renegotiation under Section 8 changes the applicable prices, then such price renegotiation shall not affect any Prepaid Users who become Established Users prior to the Acceptance Anniversary Date. Following the Acceptance Anniversary Date, MCI may choose to provide new Prepaid Established Users with (x) the Cutoff Release, in which case the amounts accrued against MCI's prepayment shall be the amounts set forth in this Section 6(a)(i)(A) and (B) if applicable; or (y) Updates subsequent to the Cutoff Update, in which case the amounts accrued against MCI's prepayment shall be the renegotiated prices under Section 8 or the otherwise then current price for such Update.

- (ii) **Database Software.** In addition to the prices specified in Section 6(a)(i) above, MCI shall reimburse Netscape for additional Accessor fees actually incurred by Netscape if the number of the Accessors through which the database software is accessed exceeds [REDACTED]

b. **Payment**

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- (i) **Netscape Software.** MCI agrees to prepay Netscape license fees equal to the Prepayment Amount at the rates set forth in Section 6(a). The Prepayment Amount will be due and payable to Netscape in nonrefundable installments as follows:

AmountDue Date

[REDACTED]

September 23, 1994 (receipt of which is hereby acknowledged by Netscape)

[REDACTED]

MCI's acceptance of the Initial Specification (MCI acknowledges acceptance of such Initial Specification and Netscape hereby acknowledges receipt of the foregoing amount)

[REDACTED]

Upon the later of January 1, 1995 or MCI's Acceptance of Version 1.A of the Netscape Client and Version 1.A of the Netscape Servers.

[REDACTED]

On the Production Acceptance Date.

Following the establishment of all Established Users whose license fees are included in the Prepayment Amount, MCI will pay Netscape monthly (at the applicable rates set forth in subsection 6(a) above or the price negotiated pursuant to Section 8 below, whichever is applicable) for all the Established Users that become established during a given month. Such payments will be due within thirty (30) days after the end of each such calendar month. MCI will maintain accurate records reflecting the number of Established Users of the Software Products and Netscape will have the right to cause such records to be audited in accordance with Section 13 below.

- (ii) **Database Software.** When the total number of the Accessors through which the database software is accessed exceeds [REDACTED] any given month, MCI will reimburse Netscape for additional Accessor fees [REDACTED] for increased database capacity within thirty (30) days after the end of each such month. MCI will keep and maintain accurate records reflecting the number of Accessors that reside in the Netscape Servers and Netscape will have the right to cause such records to be audited in accordance with Section 13 below.

c. **Taxes**

MCI shall be responsible for and shall pay all taxes (except for taxes based upon Netscape's income, revenues or gross receipts), duties and other governmental assessments or levies arising in connection with the licenses granted or services performed under this Agreement. All payments under this Agreement shall be made in U.S. dollars in the United States. All payments more than ninety (90) days late will be assessed a service fee of one percent (1%) per month, to the extent allowed by law.

7. **Maintenance and Minor Updates**

- 7.1 **Maintenance and Minor Updates.** In exchange for Netscape's annual maintenance as provided below, MCI agrees to pay to Netscape an annual maintenance fee (the "Annual Maintenance

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Fee") described in subsections 7.1(a) and 7.1(b) below. The maintenance provided by Netscape shall consist of second line telephone technical support of the Software Products, as well as Minor Updates and bug fixes to the Software Products, all in accordance with Attachment F ("Support") hereto, hereby incorporated herein. Subject to the foregoing, MCI will be solely responsible for providing maintenance and support to its customers. The Annual Maintenance Fee will be payable quarterly with the first quarter beginning immediately after the expiration of the ninety (90) day warranty period described in Section 11 below. To determine quarterly amounts due, MCI will take the cumulative number of Established Users licensed at the beginning of a given quarter and the cumulative number licensed at the end of that same quarter and will divide by two, arriving at an average number of Software Product Established Users. MCI will then multiply such average by an amount equal to twenty-five percent (25%) of the then-current Annual Maintenance Fee per Established User to arrive at the amount due for such quarter. All payments will be made within thirty (30) days following the end of each such quarter. Major Updates distributed by Netscape during the term of this Agreement will be made available to MCI pursuant to the pricing terms set forth in Section 9 below.

- a. the initial Annual Maintenance Fee shall be [REDACTED] per Established User.
- b. Prior to the Acceptance Anniversary Date, the parties will work to develop a mutually acceptable [REDACTED] for pricing support based on [REDACTED] the MCI Mall. The parties agree to renegotiate support pricing as specified in Section 8(d).

7.2 **Equipment Loan.** MCI has purchased certain equipment and delivered it to Netscape for its use in developing and maintaining the MCI Mall under this Agreement. A list of such equipment is provided in Attachment A-2. In addition, from time to time, MCI will purchase and deliver to Netscape such additional equipment as is mutually agreed to be necessary for Netscape to continue such development and maintenance. Netscape may not use such equipment for development of its core products. All such equipment will be owned by MCI, will be used by Netscape solely for MCI in connection with this Agreement, and will be maintained by MCI. Netscape will bear the risk of loss of or damage to the equipment, except for normal wear and tear, and will provide insurance coverage therefor. Netscape will return all equipment to one or more locations designated by MCI upon termination or expiration of this Agreement for any reason. If there is a partial release of Source Code pursuant to §3.3, then MCI may request a return of equipment related solely to support of the released Source Code.

#### 8. Renegotiated Agreement Guidelines

Upon each anniversary of the Production Acceptance Date, either party will have the right to request a renegotiation of the pricing terms set forth in this Agreement. In the event of such renegotiation, if the parties do not agree in writing to a different result, MCI shall receive the following pricing:

- a. Upon the Anniversary Acceptance Date (i.e., covering year 2 from the Production Acceptance Date) the lower of [REDACTED] of the [REDACTED] price, as appropriate for each group of users referenced in Section 6(a)(i), set forth in Section 6(a), or Netscape's then current Most Favored Customer Pricing for the Software Product [REDACTED]. Most Favored Customer Pricing shall mean the lowest price at which Netscape licenses the Software Products to any other Netscape customer purchasing similar quantities of Software Product licenses with a similar Netscape Servers/Accessors ratio, on similar terms and conditions, taking into account all the principal elements of the transaction, provided that the prices charged to any customer which Netscape can demonstrate to MCI has made an initial equity investment in

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Netscape or paid prepaid license fees of more than [REDACTED] for the Software Products will not be taken into account to determine the Most Favored Customer Pricing.

- b. Upon each of the second through the seventh anniversaries of the Production Acceptance Date, the lower of [REDACTED] the prices fixed for MCI for the previous applicable one year time period, or Netscape's then current [REDACTED] for the Software Products.
- c. In the event Netscape changes its licensing or pricing model in the future (i.e., implements for other customers a licensing or pricing model not based on the number of users accessing the licensed servers), then MCI shall have the right to license Software Products hereunder based on such alternative licensing or pricing model then in use by Netscape, on a Most Favored Customer Pricing basis, as defined above. If additional or revised terms and conditions are necessary to carry out the intent of these Most Favored Customer Pricing provisions, the parties shall negotiate such additional terms and conditions in good faith.
- d. With respect to support pricing [REDACTED] of the metric described in Section 7.1(b) above, or, if no [REDACTED] is agreed upon [REDACTED] of the amount determined in accordance with Section 7.1(d).

### 9. Major Update Pricing

Until the Acceptance Anniversary Date, MCI will receive [REDACTED] updates of the Software Products, if any, for all Established Users whose license fees were included in the Prepayment Amount. For all other MCI Established Users of the Software Products that become established prior to the Acceptance Anniversary Date, and with respect to whom MCI has previously paid applicable license fees pursuant to Section 6(b) above, the fee charged to MCI for [REDACTED] the new version to update such Established Users shall be not more than [REDACTED] of the price paid for the Version 1.B Software Products, as determined pursuant to Section 6 above.

### 10. Term of the Agreement: Termination

#### a. Term

The term of this Agreement shall commence on the Effective Date and shall continue in effect for eight (8) years from the Production Acceptance Date; provided, however, that both parties will have the opportunity to renegotiate pricing on each anniversary of the Production Acceptance Date, in accordance with the guidelines set forth in Section 8 above.

#### b. Termination for Cause

In addition, this Agreement may be terminated by either party for cause immediately upon the occurrence of any of the following events:

- i. If the other party completely ceases to do business relating to the subject matter herein, or otherwise terminates its business operations relating to the subject matter herein.
- ii. If the other party materially breaches any material provision of this Agreement and fails to cure such breach within sixty (60) days (or immediately in the case of a breach of Section 13 (Confidentiality)) of

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notice describing the breach, or, if such breach is not curable within such time, the breaching party fails to undertake and pursue diligently efforts to cure such breach.

- iii. If the other party is involved in Financial Difficulties as evidenced:
- A. by its commencement of a voluntary case under any applicable bankruptcy code or statute, or by its authorizing by appropriate proceedings the commencement of such a voluntary case;
  - B. by its failure to achieve dismissal of any involuntary case under any applicable bankruptcy code or statute within sixty (60) calendar days after initiation of such case;
  - C. by its seeking relief as a debtor under any applicable law of any jurisdiction relating to the liquidation or reorganization of debtors, or by consenting to or acquiescing in such relief;
  - D. by the entry of an order by a court of competent jurisdiction finding it to be bankrupt or insolvent, or ordering or approving its liquidation, reorganization or assuming custody of, or appointing a receiver or other custodian for, all or a substantial part of its property or assets; or
  - E. by its making an assignment for the benefit of, or entering into a composition with its creditors, or appointing or consenting to the appointment of a receiver or other custodian for all or a substantial part of its property.

Notwithstanding the foregoing, the parties expressly agree that, in the event of a Netscape Financial Difficulty as described above, all licenses granted under this Agreement shall survive and shall be governed by Section 365(n) of the U.S. Bankruptcy Code or any successor statute. The parties further agree that the Escrow Agreement attached hereto as Attachment D shall be deemed to be a "supplementary agreement" as contemplated under Section 365(n) of the U.S. Bankruptcy Code.

- iv. If a Change of Control (as defined below) occurs with respect to the other party and if: (a) the acquiring or surviving entity is a direct competitor of the unaffected party [REDACTED] or (b) following written request by the unaffected Party, the acquiring or surviving entity fails to provide, within ten (10) calendar days after receipt of request from the unaffected party, a written statement to the unaffected party confirming that it will cause this Agreement to be performed as if the Change of Control had not occurred. For purposes of this Section, "Change of Control" with respect to a party shall mean: (A) the acquisition by any person or entity other than an Affiliate of the party of more than fifty percent (50%) of the outstanding voting securities of the party (whether directly, indirectly, beneficially or of record); and (B) the reorganization of the party, or the merger or consolidation of the party with or into another person or entity, if immediately after such merger, consolidation or reorganization, securities having fifty percent (50%) or more of the total voting power of all securities of the surviving entity in such merger,

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consolidation or reorganization are not owned in the aggregate by the party, the shareholders who were shareholders of the party immediately prior to such merger, consolidation or reorganization, and/or any person that was an Affiliate of the party immediately prior to such merger, consolidation or reorganization. Notwithstanding the foregoing, in no event will an initial public offering or an subsequent public offering be deemed to be a Change of Control.

c. **MCI's Additional Right to Terminate**

In addition, MCI may terminate this Agreement if any of the Software Products are found by a court of competent jurisdiction to infringe intellectual property rights of any third party.

d. **Effect of Termination**

- i. **Survival of Licenses if Source Code Released.** In the event MCI terminates this Agreement for cause for a reason which is also specified as a Release Event and source code is released under terms of Section 3.3, all licenses and rights granted to MCI under Section 2 of this Agreement shall [REDACTED] In such event and with respect to the released Source Code, MCI agrees to continue to be bound by its obligations under Section 3.4, 3.5, 5, 6 (if source code is released under Section 3.3(a) or 3.3(c), but not if such release is under Section 3.3(b)), 10(d), 14, 15, 17, 19, and 20(c)(ii) and 20(d).
- ii. **Survival of Sublicenses.** In the event this Agreement expires or is terminated for whatever cause, the licenses to all Software Products distributed prior to such termination or expiration shall survive.
- iii. **Cumulative Remedies.** Neither termination nor the survival of licenses as provided above shall be the sole remedy under this Agreement and, whether or not such provisions apply, all other remedies will remain available.
- iv. **Nonrefundability of License Fees.** All prepaid royalties and royalties that have been paid by MCI to Netscape prior to the termination or expiration of this Agreement are and will remain nonrefundable.
- v. **Limited Right to Distribute.** Unless Subparagraph [REDACTED] otherwise applies, MCI's right to distribute the Netscape Client shall terminate on the [REDACTED] following the termination date.
- vi. **Survival Provisions.** The following sections of this Agreement, in addition to other provisions specified elsewhere in this Agreement, will survive the termination or expiration of this Agreement: Sections 2.4, 5.2, 10 (d), 11(b)(ii),(iii),(iv) provided that such warranties will apply only to the date of termination, 12(g) and the second and third sentences of 12(i), 15, 16, 17, 19, and 20 (c)(ii) and 20(d).

11. **Warranties**

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- a. For the period of ninety (90) days from MCI's Acceptance of Version 1.A of each of the Software Products, with respect to such versions (the "Warranty Period"), Netscape warrants that such Software Products conform and will conform in all material respects to the Specifications. The foregoing warranty will be void if the Software Products are used in the hardware/software environment not specified in the Specifications or otherwise approved, authorized or expressly permitted by Netscape. During the Warranty Period, Netscape shall provide MCI at no charge with telephone technical support and bug fixes and the other services provided on Attachment F hereto. Following the Warranty Period, Netscape shall provide MCI with support for the Software Products in accordance with Section 7 above and Attachment F referenced therein. Netscape's warranty obligation under this Section extends only to MCI, but not to MCI's customers.
- b. Netscape further warrants to MCI that: (i) it has not and will not during the term hereof enter into agreements or commitments inconsistent with the rights and licenses granted to MCI in Section 2 above; (ii) Netscape owns or has licensed the Software Products and all intellectual property rights therein, and has the full power and authority to license and deliver copies of the Software Products to MCI as contemplated hereunder; (iii) the Software Products do not infringe any intellectual property or trade secret rights of third parties; and (iv) Netscape has not incorporated in the Software Products, and, to Netscape's knowledge, the Software Products do not contain any "time bombs," "worms," "viruses," "locks," "drop-dead devices" or other routines or components to permit unauthorized access, disable the software or data, harm the system on which the software is run, or perform any other actions which would impair the value or operation of the Software Products.
- c. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE IN THIS SECTION 11, NETSCAPE MAKES NO WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE SOFTWARE PRODUCTS OR ANY SERVICES OR LICENSES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 12. Consulting Services.

### a. General

MCI will have the option of requesting consulting services from Netscape on an hourly-plus-expenses basis. Such consulting services will not involve the development of Netscape's core products. The development by Netscape of the Software Products described above shall be considered development of Netscape's core products. Upon receipt of such requests from MCI, Netscape agrees promptly to submit a proposal to MCI setting forth the rates of the individuals required for the services, as well as a nonbinding, good faith estimate of the total costs of the proposed services. If MCI accepts such proposal, Netscape shall work diligently to complete the desired services, and MCI will cooperate with Netscape, all pursuant to mutually agreed upon terms, conditions and pricing.

### b. Project Manager

Netscape shall provide MCI with a dedicated Project Manager for the Consulting Services. The Project Manager for the Initial Consulting Services shall be appointed, and Netscape will notify MCI of his name promptly after the Effective Date and MCI shall

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have the reasonable right to approve such Project Manager. The Project Manager shall be dedicated to MCI projects hereunder, but shall remain an employee of Netscape and shall not be construed as an employee of MCI for any purpose. Netscape shall not charge MCI for the management services of the Project Manager. However, any non-managerial consulting services provided by the Project Manager will be charged to MCI. Netscape may change the Project Manager from time to time with MCI's consent.

## c. Hourly Rates

Depending on the seniority of the consultants required for the services, the rates in effect for the one year period following the Effective Date will be [REDACTED] per hour, as described in Attachment H. Thereafter, the rates in effect shall be no greater than the standard rates then charged by Netscape to third parties for similar services.

## d. Revised Estimates

The Netscape Project Manager will alert the MCI project manager as soon as practicable, in the event that budget or resources have not been correctly estimated. Netscape will use its best efforts to provide enough advanced notice to enable MCI to evaluate whether or not to proceed with the project based on the revised estimates.

## e. Consulting Services Retainer

Netscape acknowledges receipt of an initial, non-refundable consulting fee of [REDACTED] from MCI. The parties agree that Netscape may retain [REDACTED] as a retainer against consulting expenses for consulting services to be performed under this Agreement, provided that upon termination of the Agreement for any reason, all unused portions of such retainer shall be promptly returned to MCI.

## f. Project Management

Weekly status reports will be generated by Netscape and bi-weekly project status meetings or conference calls will occur between the parties.

## g. Ownership of Materials

Subject to Subparagraph i, below, all materials produced by Netscape or by MCI in connection with Netscape's performance of the Consulting Services shall be the sole and exclusive property of MCI, and MCI shall own the intellectual property rights therein.

## i. Product Customization Projects: Ownership

The parties acknowledge that as part of the consulting services rendered hereunder, MCI may request Netscape to develop certain customized software for MCI. If Netscape accepts such request and notifies MCI that Netscape reasonably believes that such customized software may be incorporated as or become one or part of its core products, and MCI does not fund such developments, Netscape will own such developments and MCI shall have no right or interest in such development except as licensed hereunder or otherwise. If Netscape accepts such request and notifies MCI that such customized software will not be incorporated as part of its core product, and if MCI pays for all of Netscape's nonrecoverable engineering expenses associated with such development, MCI will be the sole and exclusive owner of such customized, MCI-specific software and of all copyright and other intellectual property rights therein. In the event Netscape does not

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accept MCI's request, MCI may proceed to develop such customized software either itself or through a third party and will be the sole and exclusive owner of all software produced. The parties hereby agree that MCI may perform either directly or through one or more subcontractors customization with respect to the integration of TCP/IP, dialer and registration software into the Software Products. MCI will be solely responsible for such integration and Netscape will have no responsibility for supporting any part of such integrated Software Products that is not provided by Netscape under this Agreement. MCI or its subcontractors will own all new software developed in connection with such customization activity, and Netscape shall make commercially reasonable efforts to cooperate with MCI and its subcontractor(s) with respect to such customization activity.

**13. Training.****a. Netscape Client.**

In connection with the license to MCI of the Netscape Client, Netscape shall provide to MCI, at places and times requested by MCI, a reasonable number of training courses for MCI customer service representatives who will be providing first level support for Netscape Client end users. Each training course shall be one (1) day in duration, and shall permit up to the number of MCI attendees that can reasonably be accommodated in the available facilities.

**b. Netscape Servers.**

In connection with the license to MCI of the Netscape Servers, Netscape shall provide to MCI, at places and times requested by MCI, a reasonable number of training courses for personnel who will be operating the Netscape Servers. Each training course shall be three (3) days in duration, and shall permit up to the number of MCI attendees that can reasonably be accommodated in the available facilities.

**c. Costs.**

Netscape shall [REDACTED] for the development of any course set forth above in Subparagraph a. or b for the development of training materials associated therewith; provided, that Netscape may assess MCI [REDACTED] for [REDACTED] that Netscape can demonstrate to MCI arose from development of MCI-specific components of the training course or materials. Netscape may charge MCI for the Netscape trainers' time in connection with the presentation of the training courses listed above, at the rates set forth in Attachment H hereto. MCI will also pay Netscape for the copies of training materials distributed at such training courses and will reimburse Netscape for reasonable and documented travel expenses incurred in connection with the presentation of the training course, so long as such expenses are incurred in accordance with MCI company travel policies.

**d. Merchant Training.**

At MCI's request from time to time, Netscape shall provide training or assist MCI in providing training to merchants on the MCI Mail. If such training or assistance is requested by MCI, MCI shall pay Netscape for such training or assistance at the consulting rates set forth on Attachment H hereto.

#### 14. Books and Records

Each party shall keep complete and accurate books and records of its activities hereunder for a period of seven (7) years after the date when such activities took place. Specifically, MCI shall keep books and records relating to its sublicensing of the Netscape Client software, Established Users, and other customers and end users of the Software Products which MCI has the capability to track and does routinely track. Netscape shall keep books and records documenting the hours spent and personnel involved in the performance of all Consulting Services hereunder and documenting additional fees due to Oracle by reason of MCI's use of the database software hereunder. Each party shall have the right (at its expense, upon seven (7) business days written notice and during the other party's normal business hours) to have an independent certified public accountant inspect and audit the books and records of the other party described above for the purpose of verifying any reports, information or payments provided or due hereunder. All underpayments, if any, revealed by such audit shall be paid to Netscape within thirty (30) days of the audit results. If such audit reveals an underpayment to Netscape in excess of five percent (5%), or if such audit reveals an overcharge to MCI for Consulting Services, then the party making the error shall bear one-half the cost of the audit. Each party may exercise its right to audit no more than once per year.

#### 15. Confidentiality

As used in this Agreement, the term "Confidential Information" shall mean any information disclosed by one party to the other pursuant to this Agreement which is in written, graphic, machine readable or other tangible form and is marked "Confidential", "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information may also include oral information disclosed by one party to the other pursuant to this Agreement, provided that such information is designated as confidential at the time of disclosure and reduced to a written summary by the disclosing party, within thirty (30) days after its oral disclosure, which is marked in a manner to indicate its confidential nature and delivered to the receiving party. MCI's "Confidential Information" shall also include third party information about specific financial transactions, including without limitation, credit card numbers and customer names ("Financial Transaction Information"), residing on or processed through the Netscape Server software licensed to MCI hereunder.

Each party recognizes the importance to the other party of information identified by the other party (the "Disclosing Party") as Proprietary Information. Accordingly, each party agrees as follows:

- a. The party receiving (or with respect to Financial Transaction Information having access to) Confidential Information of the other party (the "Receiving Party") agrees (i) to hold the Disclosing Party's Confidential Information in confidence as a fiduciary and to take all reasonable precautions to protect such Confidential Information (including without limitation all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to divulge (except pursuant to a sublicense agreement as permitted hereunder which contains confidentiality obligations that are no less restrictive than those contained Attachment C) any such Confidential Information or any information derived therefrom to any third person except contractors under a confidentiality obligation to such Party (which is no less restrictive than those contained herein), and (iii) not to make any use whatsoever at any time of such Confidential Information except as expressly authorized in this Agreement. Any employee or contractor given access to any such Confidential Information must have a legitimate "need to know" and shall be similarly bound in writing. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to.

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information the Receiving Party can document (i) is in or (through no improper action or inaction by the Receiving Party or any Affiliate, agent or employee thereof) enters the public domain, or (ii) was in its possession or known by it prior to receipt from the Disclosing Party, or (iii) was rightfully disclosed to it by another person without restriction, or (iv) was independently developed by it without use of the Confidential Information.

- b. Immediately upon termination of this Agreement, the Receiving Party will turn over to the Disclosing Party all Confidential Information of the Disclosing Party and all documents or media containing any such Confidential Information and any and all copies or extracts thereof; provided, that this subparagraph shall not require the return of any of the Software Products, including Source Code and documentation, which MCI has a right to continue using following termination in accordance with the terms of this Agreement.
- c. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law and under this Agreement.
- d. If either party receives Source Code of the other party, then the following the Receiving Party shall keep the Source Code in a secure environment with restricted access.

#### 16. Patent, Copyright and Trademark Infringement

Netscape shall hold MCI and its Affiliates, and their respective directors, officers, agents, employees and representatives harmless from all liability resulting from infringement by, or alleged infringement by, the Software Products of any U.S. trademark, any patent issued as of the Effective Date or any copyright or misappropriation of any trade secret. MCI agrees that it shall notify Netscape of all threats, claims and proceedings related to any such suit within a reasonable time after such threat, claim or proceeding comes to the attention of MCI. Netscape shall have sole control of the defense and/or settlement of any such suit, and MCI shall furnish to Netscape, upon request, information available to MCI for such defense, and shall provide Netscape with reasonable assistance.

If MCI's use of any Software Products under the terms of this Agreement is, or in Netscape's opinion is likely to be, enjoined due to the type of infringement specified above, then Netscape may, at its sole option and expense, either (i) procure for MCI the right to continue using such Software Products under the terms of this Agreement; or (ii) replace or modify such Software Products so that they are noninfringing and substantially equivalent in function to the enjoined Software Products.

The foregoing obligation of Netscape does not apply with respect to any Software Products or portions or components thereof: (a) which are not supplied by Netscape; (b) which are modified after shipment, if the alleged infringement relates to such modification, and if such modification was not authorized, expressly permitted or performed by Netscape; (c) which are combined with other products, processes or materials, if the alleged infringement relates to such combination and if Netscape did not authorize or expressly permit the combination; or (d) where MCI's use of the Software Products is incident to an infringement not resulting primarily from the Software Products or is not in accordance with the license granted under this Agreement.

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THE FOREGOING IS MCI'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY WARRANTIES OF NONINFRINGEMENT.

17. Limited Liability

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEITHER PARTY NOR ITS LICENSOR(S) WILL BE LIABLE TO THE OTHER PARTY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE OF THE FEES PAID TO NETSCAPE HEREUNDER DURING THE ONE YEAR PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE, OR (II) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST DATA OR (III) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. THE INFRINGEMENT INDEMNITY PROVIDED BY NETSCAPE IN SECTION 16 ABOVE SHALL BE EXCLUDED FROM THE LIMITATION ON LIABILITY PROVIDED IN THIS SECTION 17. If Netscape exercises its option in §16(i) or (ii) above to procure or replace the Software Products, this Section 17 shall not be interpreted to require MCI to pay any portion of resulting fees.

18. Insurance

During the term of this Agreement, Netscape shall maintain the following insurance:

- a. Comprehensive or Commercial General Liability Insurance naming Netscape and its Affiliates as the named insureds, and naming MCI and its Affiliates as additional insureds, covering among other things blanket contractual liability coverage, with limits of not less than \$2,000,000 combined single limit for personal injury and property damage; and
- b. Workers' Compensation Insurance as required by applicable law; and
- c. Umbrella coverage of \$1,000,000 per occurrence.

Netscape shall furnish to MCI certificates of insurance with respect to the above-referenced coverage naming MCI and its Affiliates as additional insureds with respect to general liability.

19. Export Control. MCI agrees to use its commercially reasonable efforts to comply with all export laws, restrictions and regulations of the Department of Commerce and other United States or foreign agency or authority in its distribution of the Software Products. MCI shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to its own export from the U.S. and reexport of the Software Products. If the U.S. Government or any competent agency thereof notifies Netscape that MCI's export or reexport of any such materials or products violates any such restriction, law or regulations, then Netscape shall promptly notify MCI of such violation, and MCI shall promptly either bring the exporting activity into compliance with such restrictions, law and regulations or cease the exporting activity.

20. General

a. Announcements

Netscape and MCI will jointly develop press releases/other announcements and will agree upon the appropriate timing and venue for such releases/ announcements.

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b. Joint Marketing

Netscape will use its commercially reasonable efforts to maintain a vendor-neutral position with respect to referring content providers to MCI or to other Netscape customers.

c. Assignment

The rights and obligations of the parties under this Agreement may not be assigned or transferred except (i) rights to receipt of money may be assigned; (ii) MCI may assign this Agreement to any Affiliate of MCI; and (iii) Netscape may subcontract work with regard to the consulting services or other development and support obligations hereunder, provided that MCI must approve in writing in advance all such subcontracting. Any attempted assignment without the requisite consent shall be null and void.

d. Governing Law/Dispute Resolution

This Agreement and all disputes hereunder shall be governed by the substantive law of the State of California, without regard to the conflicts of law provisions therein. All disputes hereunder which cannot be amicably resolved by the parties, except those solely concerned with Netscape's intellectual property rights in the Software Products, shall be settled exclusively by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in Bethesda, Maryland and shall be conducted by a single arbitrator who shall be a lawyer familiar with computer software development and license agreements. The decision of the arbitrator shall be final and binding upon the parties and may be enforced by either party in any court of competent jurisdiction. Each party shall bear the cost of preparing and presenting its case. The costs of the arbitration, including the fees and expenses of the arbitrator, will be shared equally by the parties unless the award otherwise provides. This provision shall not be construed to prohibit either party from seeking preliminary or permanent injunctive relief in any court of competent jurisdiction.

e. Amendment and Waiver

Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the written consent of the parties. However, it is the intention of the parties that this Agreement be controlling over additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by both parties, and that waivers and amendments shall be effective only if made by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver.

f. Headings

Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

g. Attachments

The Attachments referred to in this Agreement are incorporated herein by reference.

h. Notices

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## CONFIDENTIAL TREATMENT REQUESTED

Notices under this Agreement shall be sufficient only if personally delivered, delivered by a major commercial rapid delivery courier service, sent by facsimile, or mailed by U.S. mail, to a party at its address first set forth herein or as amended by notice pursuant to this Subsection. If not received sooner, notice by mail shall be deemed received five (5) days after deposit in the U.S. mails. Notice sent by courier shall be deemed received one day after it is sent; notice sent by facsimile shall be deemed received on the day it is sent.

i. Entire Agreement

This Agreement, including all Attachments hereto, supersedes all proposals, oral or written, all prior and contemporaneous agreement, negotiations, conversations, or discussions between or among the parties relating to the subject matter of this Agreement and all past dealing or industry custom.

j. Severability

If any provision of this Agreement is held to be illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

k. Equity Participation by MCI

If any of the [REDACTED] offers to make an equity investment in Netscape and such offer is accepted by Netscape (the "Investment Offer"), Netscape will immediately notify MCI of the Investment Offer and provide an opportunity to MCI to purchase additional shares of such equity under the same terms and conditions, and up to the maximum number, as the offer made by any Listed Company. MCI must respond to such notice within thirty (30) days after receipt thereof. If MCI does not respond within the thirty day period, MCI will be deemed to have made the decision not to make such investment in Netscape. This Section 20(k) shall terminate and be of no further effect and MCI shall have no further right to participate in any future equity investments in Netscape upon the first to occur of the following: (i) a failure by MCI to participate in an amount equal to fifty percent (50%) of the full extent permitted in an Investment; (ii) a public offering of voting equity securities of Netscape; or (iii) the consummation of a Change of Control transaction of Netscape. In addition, this Section 20(k) shall not apply to any transaction contemplated by clauses (ii) or (iii) above.

l. Non-Solicitation of Netscape Employees

MCI agrees not to solicit, directly or indirectly, employees of Netscape for employment, or as consultants or contractors during the term of this Agreement. Nothing in this provision is intended to limit the ability of MCI to hire employees of Netscape as employees, consultants or contractors where such hiring opportunity was publicly advertised. The Parties acknowledge that certain Netscape employees will be dedicated to supporting and performing customization services for MCI hereunder.

m. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which shall together be considered the same document.

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IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the Effective Date.

NETSCAPE COMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

By: 

James L. Barksdale

By: \_\_\_\_\_

J. Robert Harcharik

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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2/15/95

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the Effective Date.

NETSCAPE COMMUNICATIONS CORPORATION

By:   
James L. Barkdale

Its: PRESIDENT

Date: \_\_\_\_\_

MCI TELECOMMUNICATIONS CORPORATION

By:   
J. Robert Hirschark

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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**ATTACHMENTS**

- A            Software Products; Specifications**
- A-1        Additional Requirements Document (for Specification)**
- A-2        Equipment Loaned by MCI**
- B            Acceptance Procedures**
- C            Sublicense Terms and Conditions**
- D            Escrow Agreement**
- E            Trademark Use and Branding**
- F            Support**
- G            Competitors**
- H            Consulting Rates**

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## **ATTACHMENT A SPECIFICATION**

### **Baseline Specifications for marketplaceMCI Version 1.A**

#### **Introduction**

This document is based on meetings and email exchanges between MCI and Netscape Communications. Two major deliverables are anticipated, one in February, 1995 and one in May, 1995. There are several major components to the Netscape system used to implement marketplaceMCI:

Client  
Merchant Server  
Transaction Server  
Staging Server  
MED (on Merchant Enabling Device)

It should be noted that these systems, particularly those in the server category have evolved considerably with experience in testing and use, so that even these specifications must be considered approximate. The Merchant, Transaction and Staging Servers are all based on the Netsite product, tailored for specific functional requirements.

A note on nomenclature: most Netscape deliverables come with version numbers such as 1.0.5, 1.1. To avoid confusion, this document refers to 1.A and 1.B as the base deliverables for the February and May time frames. The 1.A baseline is derived from 1.0.5 which has been refined with testing.

#### **Overall Client Specifications - version 1.A**

1. Basic functionality, equivalent to NCSA Mosaic Cross-platform Consistent GUI
2. Standard Netscape Navigator menus, icons, directory content ( MCI Branding done on a T&E basis)
3. "Kiosk mode" based on MCI/NCOM negotiations.
4. Multiple docs on screen.
5. Bookmarks
6. History
7. Use of standard HTML and HTTP.
8. Clear indications to user of what is happening, in particular progress indication on current up/download.

9. High degree of concurrency (multiple connections)[it has subsequently been noted that concurrency is not always conducive to high performance and needs to be controllable which Netscape has done by making configurable the maximum number of simultaneous TCP connections]

10. JPEG and GIF handling inline

11. Easy to use (by casual, non-Internet-expert, users) install process after network download.

12. Support for multiple (10) Client Cookies to handle shopping carts/discrete one time on-line info delivery, etc.

13. Secure mode of operation for on-line transactions between the Client and Transaction Server. Initially using HTTPS and SSL.

14. The MCI logo shall be located at the far right of the "Directory Buttons".

15. The Netscape logo shall be (a) located on the tool bar, and (b) a bit-map, rather than a functional button.

16. Feature number 1.18 in the document titled "MCI Requirements for Netscape" dated 8 February, 1995 and attached hereto as Attachment A-1 (the "Additional Requirements Document") shall be included in the Netscape Client functionality for version 1.A.

#### **Overall Client Specifications - Version 1.B**

1. Security enhancements, including client-requested secure sessions. (SHTTP compatibility will be included as soon as practical, but not necessarily as part of the 1.B deliverable.)

2. Profile selection and editing capability (multiple profiles on same machine). Profile handling by per-user directories and command-line arguments to Netscape. Viewing stored profile as part of a generalized per-user object store.

3. Contents of profile/ object store to include Credit card numbers, Private keys, Shipping address, Profile password, shopping preferences: clothing sizes, Order and transaction history for user.

4. Recognition of electronic receipts and automatic incorporation of them into profile/object store.

5. Support for the following platforms -- Windows 3.1, Macintosh, X-Version (Sun Solaris, IBM, HP, SGI, DEC OSF/1)

6. The color palette to be available in the client is attached hereto as Attachment A-1.1. If all the images share the specified 216 color palette, dithering is not required. A stronger solution (such as a color map management strategy) may become available in the release following Version 1.B.

#### **Overall Merchant Server Specifications - Version 1.A**

February 16, 1995

1. Functional equivalent of NCSA httpd (HTTP server) 1.3 for the Netsite portion
2. Installation of Netsite to be similar to the MCOM standard Netsite Product. Ability to define port, various directory structures, system administrator name and password, access control, log directory etc.
3. Secure communications between Netsite and Netscape over HTTPS (Secure HTTP) developed by NCOM, using RSA based security mechanism (Public, Private Key pairs), additional security features such as Session Keys, Nonce as provided by NCOM. Non-secure Communication over HTTP.
4. Meta HTML Interface for use by Merchants to develop HTML Pages (Includes Meta HTML Parser and documentation)
5. Netsite to Relational Database interface.
6. Dynamic generation/re-generation of HTML pages based on data changes in the database.
7. Shopping Cart Mechanism, Automatic transparent identification of client.
8. Database Schemas for supporting the Merchant Server , White and Yellow pages.
9. Generic Product Order form, Review Shopping Cart Page.
10. Tools to load data into the Relational database based on the Name/Value Pair format and the EDI-like format.
11. Reporting Tool to determine the number of hits on pages.
12. Merchant Server data reports per MCI Billing Requirements doc dated 12/23.
13. Documentation on Netsite as well as procedural documentation on the Merchant Server.
14. Installer for non-Netsite components of the Merchant Server
15. Available only on the SPARC Solaris Platform

#### **Merchant Server Specification - Version 1.B**

1. Ability to architecturally support multiple homogeneous and/or heterogeneous Merchant Servers for High Availability.
2. Ability to handle one time discrete on-line delivery of information
3. Dynamic generation/re-generation of HTML pages based on data changes in the relevant template as described in point 1.215 of Attachment A-1.
4. Provide cross links from the bud page as described in point 1.12 of attachment A-1.
5. The ability to delete a merchant from the database as described in point 1.16 of attachment A-1.

6. Shipping options will be applicable in per product basis, as described in point 1.17 of attachment A-1.

7. Netscape and MCI will work together to find a resolution to MCI's desire to have multiple prices per bud page as described in point 1.20 of attachment A-1.

8. A bud page will be generated after an ADD PRODUCT, ADD SKU operation as described in point 1.21 of attachment A-1.

9. Support yellow and white pages queries as described in points 2.11 and 2.12 of attachment A-1

10. SHTTP compatibility will be included as soon as practical, but not necessarily as part of the 1.B deliverable.

11. "No action" areas in mapped images, as described in point 1.9 from Attachment A-1 will be provided.

#### **Transaction Server Specification - Version 1.A**

1. Features similar to the Netsite Features described in the Merchant Server Section.

2. Security Components such as HTTPS, Public Private Keys, Session Keys, Nonce

3. Netsite to Relational Database Interface

4. Interface to Merchant Server for Price Checks.

5. Transaction Logs

6. Standard Forms for "Check Order", "Invoices, "Receipts"

7. SPARC Solaris Release

8. Installer for non-Netsite components

9. Transaction Server Database Schema

10. HTML Forms for Customer Service Queries

11. Transaction Server to Merchant Premise Name/Value Pair, PEM encoder and SMTP based mailer. Transaction server to generate purchase orders signed under the Transaction Server secret key and encrypted with a session key generated for confidentiality and applied using the RC4 algorithm. The purchase orders, after signing and encrypting, will be sent via PEM/SMTP to the merchant premises MED system. MCI will obtain the PEM encoder pursuant to an agreement to be entered into between MCI and Trusted Information Systems, Inc.

12. MCI will have access to all the raw data collected by the Transaction Server for the purpose of monitoring and billing, on a read-only basis through the appropriate Netscape-supplied interface(s).

13. Documentation on Netsite as well as procedural documentation on the Transaction Server.

#### **Transaction Server Specification - version 1.B**

1. Architectural support for High Availability. (This means multiple servers)
2. Operation on separate shadowed servers without side effects visible to merchants or customers
3. Pricing information available at order time and adjustable for location-dependent prices, per-customer price schedules, taxation variations, and shipping charges.
4. EDI format translator for Merchant fulfillment.
5. Transaction Server to Credit Card Authorization API. Multiple credit card service interfaces available, including FDC/Envoy and others to be determined and agreed by Netscape and MCI. This will include points 2.1 through 2.8 and points 2.13 and 2.14 all from attachment A-1.

#### **Staging Server Specification - Version 1.A**

1. Database similar to Merchant Server Database
2. Transport of data from Merchant Premise to Staging Server in Secure form using PEM/SMTP transport.
3. Loading and parsing of Merchant data based on the Name/Value Pair format.
4. Approval Process of Staging Server data based on viewing SS data via Netscape (via an ACL ) and approval of data by HTML form.
5. Queuing transactions to be loaded at time requested by Merchant [a particular item can only be "in one queue" for update at a time. Until the update has happened, the item cannot be marked for price or other change].
6. Transfer of Data from Staging Server to Merchant Server.
7. Documentation on Netsite as well as procedural documentation on the Staging Server.

#### **Staging Server Specification - Version 1.B**

1. Ability to load multiple homogeneous/heterogeneous Merchant servers
2. Support for Pseudo-EDI input format.
3. Approved changes in the staging server database will be schedulable on a per change basis. Multiple changes to the same database entry will be possible with different effective times.

## **MED Specification - Version 1.A**

The "MED" (Merchant Enabling Device) is a Solaris/Sparc-based workstation on the merchant premises and is intended to be the recipient of purchase orders generated by customers in the marketplaceMCI system and also to be a conduit for transmitting new product graphic and database content from the merchant to the staging server. All transactions between the MED and marketplaceMCI are secured using Privacy-Enhanced Mail (PEM) transported using the Internet Standard Simple Mail Transport Protocol (SMTP), enhanced with the Multipurpose Internet Mail Extension (MIME) capability. MCI will obtain the PEM software pursuant to an agreement to be entered into between MCI and Trusted Information Systems, Inc.

1. MED will accept PEM/SMTP purchase orders, validate them, and forward them in accordance with Merchant requirements. MCI is responsible for handling the purchase orders once they have been received and validated/decrypted. The procedures will include provision for failure recovery (handshaking protocols). Netscape will provide access to the Netscape MED source code to satisfy MCI and customer security requirements. Enough documentation will be provided to enable MCI or its customers to implement the merchant side of the purchase order receipt system.

## **MED Specification Version 1.B**

1. MED will generate PEM/SMTP staging server database updates and forward them to the staging server. MED will be equipped with required software to serve as a content development tool.

## **Additional Server Requirements**

In addition to the above, the parties have agreed that certain of the features included in the Additional Requirements Document (attachment A-1) shall be included in Version 1.A of the Netscape Servers as follows:

- 1.0 Page Layout\* (see note below)
- 1.1 Enlarge Description Fields
- 1.2 PO Memo field
- 1.3 Bud page comment
- 1.4 MS reload
- 1.5 TS log everything
- 1.7 Blank database field (SKU field will be alphanumeric)
- 1.8 Additional MLE documentation
- 1.11 SKU attributes in PO
- 1.13 Increase SKU attribute size
- 1.14 N:V pair database dump
- 1.15 Email address in PO
- 1.24 Product attribute token

\*NOTE: 1.0 page layout was to be provided in the 2/22 delivery of Version 1.A of the Netscape Servers provided that final specifications were delivered by MCI to Netscape by Saturday 2/11/95. Netscape has not yet received final specifications. Netscape will therefore try to incorporate the final specifications when received from MCI but cannot guarantee such inclusion.

2/15/95

**ATTACHMENT A-1  
ADDITIONAL REQUIREMENTS DOCUMENT  
(FOR THE SPECIFICATION)**

**CONFIDENTIAL TREATMENT REQUESTED**

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## ATTACHMENT A-1.1

### Overall Client Specifications, Version 1.B, Item 6

Netscape uses 20 system colors for all its graphics and UI. The remaining colors are used for rendering of images in the page. In the MCI case, this is reduced by one color for the orange logo color. Support for JPEG images in an 8-bit colorspace requires either a two pass color sequence or a color cube. Use of a two-pass color reduction could offset the performance improvements of using jpeg. Our current implementation uses a color cube. The colors in this cube are attached below.

One benefit of this is you can place several images (gifs or otherwise) on the same page and they will all be rendered in reasonable colors, possibly dithered. If we allocated colors for GIFs as they arrived, pages with multiple images could easily find only the 1st image rendered in anything resembling correct color, with the rest in apparently random technicolor.

---216 entry color cube for dithering in 8-bit Windows Netscape---

index 0 r 0 g 0 b 0  
index 1 r 0 g 0 b 51  
index 2 r 0 g 0 b 102  
index 3 r 0 g 0 b 153  
index 4 r 0 g 0 b 204  
index 5 r 0 g 0 b 255  
index 6 r 0 g 51 b 0  
index 7 r 0 g 51 b 51  
index 8 r 0 g 51 b 102  
index 9 r 0 g 51 b 153  
index 10 r 0 g 51 b 204  
index 11 r 0 g 51 b 255  
index 12 r 0 g 102 b 0  
index 13 r 0 g 102 b 51  
index 14 r 0 g 102 b 102  
index 15 r 0 g 102 b 153  
index 16 r 0 g 102 b 204  
index 17 r 0 g 102 b 255  
index 18 r 0 g 153 b 0  
index 19 r 0 g 153 b 51  
index 20 r 0 g 153 b 102  
index 21 r 0 g 153 b 153  
index 22 r 0 g 153 b 204  
index 23 r 0 g 153 b 255  
index 24 r 0 g 204 b 0  
index 25 r 0 g 204 b 51  
index 26 r 0 g 204 b 102  
index 27 r 0 g 204 b 153  
index 28 r 0 g 204 b 204  
index 29 r 0 g 204 b 255  
index 30 r 0 g 255 b 0

February 21, 1995

index 31 r 0 g 255 b 51  
index 32 r 0 g 255 b 102  
index 33 r 0 g 255 b 153  
index 34 r 0 g 255 b 204  
index 35 r 0 g 255 b 255  
index 36 r 51 g 0 b 0  
index 37 r 51 g 0 b 51  
index 38 r 51 g 0 b 102  
index 39 r 51 g 0 b 153  
index 40 r 51 g 0 b 204  
index 41 r 51 g 0 b 255  
index 42 r 51 g 51 b 0  
index 43 r 51 g 51 b 51  
index 44 r 51 g 51 b 102  
index 45 r 51 g 51 b 153  
index 46 r 51 g 51 b 204  
index 47 r 51 g 51 b 255  
index 48 r 51 g 102 b 0  
index 49 r 51 g 102 b 51  
index 50 r 51 g 102 b 102  
index 51 r 51 g 102 b 153  
index 52 r 51 g 102 b 204  
index 53 r 51 g 102 b 255  
index 54 r 51 g 153 b 0  
index 55 r 51 g 153 b 51  
index 56 r 51 g 153 b 102  
index 57 r 51 g 153 b 153  
index 58 r 51 g 153 b 204  
index 59 r 51 g 153 b 255  
index 60 r 51 g 204 b 0  
index 61 r 51 g 204 b 51  
index 62 r 51 g 204 b 102  
index 63 r 51 g 204 b 153  
index 64 r 51 g 204 b 204  
index 65 r 51 g 204 b 255  
index 66 r 51 g 255 b 0  
index 67 r 51 g 255 b 51  
index 68 r 51 g 255 b 102  
index 69 r 51 g 255 b 153  
index 70 r 51 g 255 b 204  
index 71 r 51 g 255 b 255  
index 72 r 102 g 0 b 0  
index 73 r 102 g 0 b 51  
index 74 r 102 g 0 b 102  
index 75 r 102 g 0 b 153  
index 76 r 102 g 0 b 204  
index 77 r 102 g 0 b 255  
index 78 r 102 g 51 b 0  
index 79 r 102 g 51 b 51  
index 80 r 102 g 51 b 102  
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index 82 r 102 g 51 b 204  
index 83 r 102 g 51 b 255  
index 84 r 102 g 102 b 0

index 85 r 102 g 102 b 51  
index 86 r 102 g 102 b 102  
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index 89 r 102 g 102 b 255  
index 90 r 102 g 153 b 0  
index 91 r 102 g 153 b 51  
index 92 r 102 g 153 b 102  
index 93 r 102 g 153 b 153  
index 94 r 102 g 153 b 204  
index 95 r 102 g 153 b 255  
index 96 r 102 g 204 b 0  
index 97 r 102 g 204 b 51  
index 98 r 102 g 204 b 102  
index 99 r 102 g 204 b 153  
index 100 r 102 g 204 b 204  
index 101 r 102 g 204 b 255  
index 102 r 102 g 255 b 0  
index 103 r 102 g 255 b 51  
index 104 r 102 g 255 b 102  
index 105 r 102 g 255 b 153  
index 106 r 102 g 255 b 204  
index 107 r 102 g 255 b 255  
index 108 r 153 g 0 b 0  
index 109 r 153 g 0 b 51  
index 110 r 153 g 0 b 102  
index 111 r 153 g 0 b 153  
index 112 r 153 g 0 b 204  
index 113 r 153 g 0 b 255  
index 114 r 153 g 51 b 0  
index 115 r 153 g 51 b 51  
index 116 r 153 g 51 b 102  
index 117 r 153 g 51 b 153  
index 118 r 153 g 51 b 204  
index 119 r 153 g 51 b 255  
index 120 r 153 g 102 b 0  
index 121 r 153 g 102 b 51  
index 122 r 153 g 102 b 102  
index 123 r 153 g 102 b 153  
index 124 r 153 g 102 b 204  
index 125 r 153 g 102 b 255  
index 126 r 153 g 153 b 0  
index 127 r 153 g 153 b 51  
index 128 r 153 g 153 b 102  
index 129 r 153 g 153 b 153  
index 130 r 153 g 153 b 204  
index 131 r 153 g 153 b 255  
index 132 r 153 g 204 b 0  
index 133 r 153 g 204 b 51  
index 134 r 153 g 204 b 102  
index 135 r 153 g 204 b 153  
index 136 r 153 g 204 b 204  
index 137 r 153 g 204 b 255  
index 138 r 153 g 255 b 0

index 139 r 153 g 255 b 51  
index 140 r 153 g 255 b 102  
index 141 r 153 g 255 b 153  
index 142 r 153 g 255 b 204  
index 143 r 153 g 255 b 255  
index 144 r 204 g 0 b 0  
index 145 r 204 g 0 b 51  
index 146 r 204 g 0 b 102  
index 147 r 204 g 0 b 153  
index 148 r 204 g 0 b 204  
index 149 r 204 g 0 b 255  
index 150 r 204 g 51 b 0  
index 151 r 204 g 51 b 51  
index 152 r 204 g 51 b 102  
index 153 r 204 g 51 b 153  
index 154 r 204 g 51 b 204  
index 155 r 204 g 51 b 255  
index 156 r 204 g 102 b 0  
index 157 r 204 g 102 b 51  
index 158 r 204 g 102 b 102  
index 159 r 204 g 102 b 153  
index 160 r 204 g 102 b 204  
index 161 r 204 g 102 b 255  
index 162 r 204 g 153 b 0  
index 163 r 204 g 153 b 51  
index 164 r 204 g 153 b 102  
index 165 r 204 g 153 b 153  
index 166 r 204 g 153 b 204  
index 167 r 204 g 153 b 255  
index 168 r 204 g 204 b 0  
index 169 r 204 g 204 b 51  
index 170 r 204 g 204 b 102  
index 171 r 204 g 204 b 153  
index 172 r 204 g 204 b 204  
index 173 r 204 g 204 b 255  
index 174 r 204 g 255 b 0  
index 175 r 204 g 255 b 51  
index 176 r 204 g 255 b 102  
index 177 r 204 g 255 b 153  
index 178 r 204 g 255 b 204  
index 179 r 204 g 255 b 255  
index 180 r 255 g 0 b 0  
index 181 r 255 g 0 b 51  
index 182 r 255 g 0 b 102  
index 183 r 255 g 0 b 153  
index 184 r 255 g 0 b 204  
index 185 r 255 g 0 b 255  
index 186 r 255 g 51 b 0  
index 187 r 255 g 51 b 51  
index 188 r 255 g 51 b 102  
index 189 r 255 g 51 b 153  
index 190 r 255 g 51 b 204  
index 191 r 255 g 51 b 255  
index 192 r 255 g 102 b 0

February 21, 1995

index 193 r 255 g 102 b 51  
index 194 r 255 g 102 b 102  
index 195 r 255 g 102 b 153  
index 196 r 255 g 102 b 204  
index 197 r 255 g 102 b 255  
index 198 r 255 g 153 b 0  
index 199 r 255 g 153 b 51  
index 200 r 255 g 153 b 102  
index 201 r 255 g 153 b 153  
index 202 r 255 g 153 b 204  
index 203 r 255 g 153 b 255  
index 204 r 255 g 204 b 0  
index 205 r 255 g 204 b 51  
index 206 r 255 g 204 b 102  
index 207 r 255 g 204 b 153  
index 208 r 255 g 204 b 204  
index 209 r 255 g 204 b 255  
index 210 r 255 g 255 b 0  
index 211 r 255 g 255 b 51  
index 212 r 255 g 255 b 102  
index 213 r 255 g 255 b 153  
index 214 r 255 g 255 b 204  
index 215 r 255 g 255 b 255

**ATTACHMENT A-2  
EQUIPMENT LOANED BY MCI TO NETSCAPE**

**One Sparcstation 1000; 12 Gigs of Disk and cd-rom drive**

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## **ATTACHMENT B ACCEPTANCE PROCEDURES**

### **1. Acceptance Criteria and Acceptance Tests**

The Parties acknowledge that Version 1.A of the Netscape Client and Version 1.A of the Netscape Servers are currently being tested in accordance with the acceptance tests described on Schedule 1 to this Attachment B ("Version 1.A Acceptance Criteria and Acceptance Tests"). In connection with the development of Version 1.B of the Netscape Client and Netscape Servers, MCI will develop additional acceptance criteria, acceptance tests and a schedule for testing Version 1.B, which additional criteria, tests and schedule will be subject to Netscape's reasonable approval ("Version 1.B Acceptance Criteria and Acceptance Tests"). The parties agree that Version 1.B shall be: (1) retested according to the Version 1.A Acceptance Criteria and Acceptance Tests; and (2) tested according to the Version 1.B Acceptance Criteria and Acceptance Tests, all according to the schedule to be established under this Paragraph. Version 1.A and Version 1.B Acceptance Criteria and Acceptance Tests are collectively referred to as the "Acceptance-Criteria" and "Acceptance Tests."

### **2. Acceptance Testing Procedure**

#### **a. Version 1.A**

MCI will complete the testing of Version 1.A of the Software Products using the Version 1.A Acceptance Criteria and Acceptance Tests as soon as practicable after the February 20 and 22 deliveries of the Version 1.A software. Provided that the Version 1.A software is delivered to MCI by the above dates, MCI will either accept or reject Version 1.A of the Software Products by March 1, 1995 in accordance with the procedures set forth in subparagraph 2.c below.

#### **b. Version 1.B**

As soon as practicable after delivery of Version 1.B of the Software Products, and in accordance with the schedule developed under Paragraph 1 above, MCI shall conduct the Version 1.B Acceptance Tests to determine whether Version 1.B of the Software Products meets its Acceptance Criteria, in accordance with the procedures set forth in subparagraph 2.c below.

#### **c. General Procedures**

- (1) MCI shall conduct all acceptance testing either directly or indirectly

through one or more third party subcontractors under an obligation of confidentiality with respect to the Software Products, provided that MCI will be liable for any breach of such confidentiality by its subcontractors. Netscape may participate in all such acceptance testing. On March 1, 1995 with respect to the Version 1.A software, and within two (2) business days following completion of the testing in accordance with the schedule referenced above in subparagraph 2.b for the Version 1.B software, MCI shall either (a) accept the relevant software in writing, if the Version conforms to the relevant Acceptance Criteria ("Acceptance"); or (b), reject the software by giving Netscape written notice of rejection which provides a detailed description of the failure(s) of the Version to meet its Acceptance Criteria. MCI agrees that it will not reject any Version on the basis of a failure to meet its Acceptance Criteria if such failure is insubstantial in light of the MCI Mail service or would constitute a Priority 4 Error under Schedule F to the Agreement.

- (ii) If MCI properly rejects any Version as set forth above, Netscape will use reasonable commercial efforts to correct the failures specified in the rejection notice as soon as practicable, at no additional cost to MCI. When Netscape believes it has made the necessary corrections, Netscape will again deliver the Version to MCI and the Acceptance procedure set forth in this Paragraph 2 shall be reapplied until the Version meets its Acceptance Criteria and is accepted by MCI; provided, however, that upon the third or any subsequent rejection, either party may terminate this Agreement by giving thirty (30) days written notice unless the Version is accepted during the notice period, and provided that the parties agree to exercise their reasonable commercial efforts during such 30-day period to achieve Acceptance.
- (iii) MCI's first shipment for commercial use of any Software Product shall constitute Acceptance, even if no written Acceptance is given to Netscape under Subparagraph 2.c(i) above. MCI may inform Netscape that it can neither accept nor reject any Version of the software due to one or more unidentified problems; provided, that: (A) any such notice shall state that the software either failed to perform or could not be adequately tested due to one or more unidentified problems; (B) following such notice, both parties shall use all reasonable efforts to identify the problem and/or to provide workarounds to permit the software to be tested; and (C) if Netscape notifies MCI that it believes the software is acceptable and that the unidentified problems are not due to any failure of the Netscape software, then, unless MCI agrees to accept the software on that basis, within ten (10) working days following such notification, the Chief Executive Officer of Netscape and the Senior Vice President, Data Architecture, of MCI shall meet to discuss the issue and determine how to proceed.



# ATTACHMENT B-1 ACCEPTANCE TESTS

Set forth below are MCI's acceptance tests for the MCI Mall. Those tests which by their nature are not applicable to parts of the MCI Mall provided by Netscape will not apply to the acceptance procedures for Netscape products set forth in Attachment B.

## NDC Marketplace MIC Test Plan

Description of Test Item	POC	Due Dt	Status	%	Today?
Testing the Netscape Client	NDC	31-Dec	On track	0	
Installation	NDC	15-Dec	Need Software	0	
Standard Netscape install	NDC	15-Dec	Need Software	100	yes
Netscape Software Download	NDC	15-Dec	Need Software	100	yes
Bundled TCP/IP, Netscape install	NDC	15-Dec	Need Software	0	yes
Internet Functionality	NDC	7-Dec	Done	100	
Browsing the WWW	NDC	30-Nov	Done	100	
FTP	NDC	30-Nov	Done	100	
Internet E-mail	NDC	7-Dec	Done	100	
News Groups	NDC	7-Dec	Done	100	
Browsing and Shopping in the Mall	NDC	15-Dec	On track	100	yes
Develop Flowchart for Mall Access	Bruce	3-Nov	Done	100	
Browsing and Shopping w/Netscape	NDC	15-Dec	On track	0	
Window Shopping	NDC	15-Dec	On track	50	
Browse Merchants' Wears	NDC	15-Dec	On track	50	
Add Items to Cart	NDC	15-Dec	On track	50	
Review Cart Contents	NDC	15-Dec	On track	50	
Change Product Quantity	NDC	15-Dec	On track	50	
Check Out	NDC	15-Dec	On track	50	
Try to Buy Negative Item Count	NDC	15-Dec	Not started	0	
Leave the Mall w/out Check Out	NDC	15-Dec	Not started	0	
Yellow Pages	NDC	15-Dec	On track	0	
Browse Merchants	NDC	15-Dec	On track	25	
Search for Merchants	NDC	15-Dec	On track	25	
Jump to Mall Merchants	NDC	15-Dec	On track	25	
Try to Jump to non-mall Merchants	NDC	15-Dec	On track	25	
White Pages	NDC	15-Dec	On track	0	
Search for US Residents	NDC	15-Dec	On track	50	
Measure Speed of Searches	NDC	15-Dec	On track	50	
Environment Testing	NDC	31-Dec	On track	0	
Different TCP/IP Stacks	NDC	31-Dec	On track	0	
MCI FTP stack	NDC	31-Dec	On track	75	yes
Regular FTP stack	NDC	31-Dec	On track	0	
Chameleon	NDC	31-Dec	On track	50	yes
IBM TCP/IP	NDC	31-Dec	On track	75	yes

Novell LAN Workplace for DOS	NDC	31-Dec	On track	75	yes
Microsoft TCP/IP	NDC	31-Dec	On track	100	yes
Internet in a Box stack	NDC	31-Dec	On track	0	
Different Operating Systems	NDC	30-Jan	On track	0	
OS/2 2.1	NDC	15-Jan	On track	50	yes
OS/2 Warp 3.0	NDC	15-Jan	On track	50	yes
Windows NT 3.1	NDC	15-Jan	Not started	25	
Windows NT 3.5	NDC	15-Jan	On track	25	
Windows 95	NDC	30-Jan	Need Softwar	25	yes
Performance Testing	NDC	15-Jan	On track	0	yes
Performance from LANs	NDC	15-Jan	On track	25	yes
Performance via direct PPP	NDC	15-Jan	On track	0	
Performance via Dial-up PPP	NDC	15-Jan	On track	0	
9600(no guarantee at this speed)	NDC	15-Jan	On track	25	yes
14.4	NDC	15-Jan	On track	25	yes
19.2	NDC	15-Jan	On track	25	yes
28.8	NDC	15-Jan	On track	25	yes
Testing the Marketplace MCI Mall		15-Dec	On track	0	
Installation		30-Jan	Not started	0	
Solaris Installation	TBD	30-Jan	Not started	0	
Oracle Installation	TBD	30-Jan	Not started	0	
Netsite Installation	TBD	30-Jan	Not started	0	
Complete Integration Test		15-Jan	On track	0	
Setup Merchants	NDC	15-Jan	On track	50	
Browse, Shop, and Purchase	NDC	15-Jan	On track	50	
Perform/Verify Credit Check	TBD	15-Jan	Not started	0	0
Verify Purchase Transactions	TBD	15-Jan	Not started	0	
Verify Merchant Fulfillment Info	TBD	15-Jan	Not started	0	
Browsability by non-Netscape Client	NDC	15-Jan	On track	0	
Mosaic	NDC	15-Jan	On track	100	
Cello	NDC	15-Jan	On track	100	
Air Mosaic	NDC	15-Jan	On track	100	
Inability to Purchase	NDC	15-Jan	On track	100	yes
Download of Netscape Client	NDC	15-Jan	Not started	100	yes
Detailed Mercant Support		22-Jan	On track	0	
Setup Merchant		7-Jan	On track	0	
HTML Setup		7-Jan	On track	0	
Three Level Structure	NDC	7-Jan	On track	50	
Static Pages	NDC	7-Jan	On track	50	
Dynamic Pages	NDC	7-Jan	On track	50	
MLE Template	NDC	7-Jan	On track	50	
Oracle Setup		7-Jan	On track	0	
Products	NDC	7-Jan	On track	50	
SKUs	NDC	7-Jan	On track	50	
Supported Credit Cards	NDC	7-Jan	On track	50	
Maintain Merchant		15-Jan	On track	0	

Modify Storefront HTML		15-Jan	On track	0
Add/delete/modify Pages	NDC	15-Jan	On track	50
Modify Graphical Elements	NDC	15-Jan	On track	50
Verify Immediate Update by Daemon	NDC	15-Jan	On track	50
Modify Product List	NDC	15-Jan	On track	50
Modify SKUs	NDC	15-Jan	On track	50
Modify Credit Cards Supported	NDC	15-Jan	On track	0
Staging of Merchant Data	TBD	22-Jan	Not started	0
Save Data on Staging Server	TBD	22-Jan	Not started	0
Verify Appropriate Migration from Staging Server to Merchant Server	TBD	22-Jan	Not started	0
Detailed Transaction Verification		15-Dec	On track	0
Verify Purchase Transactions		15-Dec	On track	0
Generate Report from Database	NDC	22-Jan	Not started	0
Verify Report	NDC	22-Jan	Not started	0
Verify Merchant Fulfillment Info		15-Dec	On track	0
Generate Report from Database	NDC	22-Jan	Not started	0
Verify Report	NDC	22-Jan	Not started	0
Verify MCI Cust Service Fulfillment	TBD	22-Jan	Not started	0
Verify Billing Feeds	TBD	22-Jan	Not started	0
Page hit records	TBD	22-Jan	Not started	0
Purchase transaction records	TBD		Not started	0
Verify Standard Generated Reports	TBD	22-Jan	Not started	0
Consistency of Mail Data		22-Jan	Not started	0
Storefront Data: HTML and Oracle	TBD	15-Jan	Not started	0
Merchant Data: Staging and MS	TBD	22-Jan	Not started	0
Race Conditions (Parallel Proc Conflicts)		15-Jan	On track	0
Viewing Storefronts Being Updated	NDC	15-Jan	Not Yet Imp	0
Buying Products w/Changing Prices	NDC	15-Jan	On track	0
Buying Deleted Products	NDC	15-Jan	On track	0
Seeing Newly Added Products	NDC	15-Jan	On track	0
Viewing Added/deleted/modify Stor	NDC	15-Jan	On track	0
Performance and Volume Testing		22-Nov	MCOM TBD	0
Ability to Handle Large Volumes		22-Nov	MCOM TBD	0
Get New Data Entry Tool from MCOT	TBD	22-Nov	On track	0
Numerous Merchants	TBD	22-Jan	Not started	0
Numerous Products	TBD	22-Jan	Not started	0
Numerous SKUs	TBD	22-Jan	Not started	0
Numerous Transactions	TBD	22-Jan	Not started	0
Numerous Merchant Profile Update	TBD	22-Jan	Not started	0
Performance Testing		22-Jan	Not started	0
Develop Reasonable Performance Goals		15-Jan	Not started	0
Measure Ability to Achieve Goals with Large Volumes	TBD	22-Jan	Not started	0

Heavy Traffic	TBD	22-Jan	Not started	0
Rate Analysis and Testing		30-Jan	Not started	0
Merchant Setups per Unit Time	TBD	30-Jan	Not started	0
Merchant Updates per Unit Time	TBD	30-Jan	Not started	0
Transactions per Unit Time	TBD	30-Jan	Not started	0
Performance Monitoring	TBD		Need DB Acce	0
Measure I/O	TBD		Need DB Acce	0
Disk I/O	TBD		Need DB Acce	0
Access to Each Physical Drive	TBD		Need DB Acce	0
Distribution of I/O Across Driv	TBD		Need DB Acce	0
Memory I/O	TBD		Need DB Acce	0
CPU Utilitization	TBD		Not started	0
Measure Oracle Cache Hit Rates	TBD		Need DB Acce	0
Data Dictionary Cache	TBD		Need DB Acce	0
Data Cache	TBD		Need DB Acce	0
Identification of Bottlenecks	TBD		Need DB Acce	0
General Architecture Testing	TBD		TBD	0
Consistency of Merc Data Across	TBD		TBD	0
Functioning of Backup Mechanisms	TBD		TBD	0
Verifying Data Consistency	TBD		Need DB Acce	0
Identify Valid Data Conditions,	TBD		Need DB Acce	0
Propose Ways to Fix Invalid Data	TBD		Need DB Acce	0
Implement Test/Fix Strategy	TBD		Need DB Acce	0
Merchant Database	TBD		Need DB Acce	0
Transaction Database	TBD		Need DB Acce	0
Staging Database	TBD		Need DB Acce	0
Other Databases	TBD		Need DB Acce	0
Security Testing		7-Jan	Discuss w/MC	0
Guarding Access to the Mall Servers		7-Jan	On track	0
Access from Outside MCI	NDC	7-Jan	On track	0
Access from Inside MCI	NDC	7-Jan	On track	0
Guarding Merchant Data	TBD		Discuss w/MC	0
Is Data Erased from Staging Serve	TBD		Discuss w/MC	0
Guarding Client Data	TBD		Discuss w/MC	0
Is All Client Data Encrypted When	TBD		Discuss w/MC	0
Guarding Against Hacking	NDC	7-Jan	Not started	0
Can Price be Changed via HTML?	NDC	7-Jan	Not started	0
Behavior of Secure Netsite and Net	TBD		Not started	0
Operations Plan Testing	TBD		Need Plan	0
Routine Maintenance	TBD		Need Plan	0
Backup and Recovery	TBD		Need Plan	0
Disaster Recovery	TBD		Need Plan	0

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**ATTACHMENT D**  
**PREFERRED REGISTRATION**  
**TECHNOLOGY ESCROW AGREEMENT**

Account Number \_\_\_\_\_

This Preferred Registration Technology Escrow Agreement, including all Exhibits attached hereto (this "Escrow Agreement"), is made effective as of this \_\_\_\_ day of \_\_\_\_ 1995, by and among (i) Data Securities International, Inc. ("DSI"), a Delaware corporation; (ii) Netscape Communications Corporation ("Depositor"), a Delaware corporation; and (iii) MCI Telecommunications, ("Preferred Registrant") with reference to the following:

**RECITALS**

WHEREAS, Depositor has entered into that certain Software and License Agreement with Preferred Registrant regarding certain proprietary technology and other materials to which this Escrow Agreement is attached ("Software License Agreement");

WHEREAS, Depositor and Preferred Registrant desire this Escrow Agreement to be supplementary to the Software License Agreement pursuant to 11 United States Code Section 365(n); and

WHEREAS, Depositor will deposit with DSI proprietary data as described in Exhibit A hereto (the "Deposit Material") to provide for retention, administration and controlled access for Preferred Registrant under the conditions specified herein.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the promises, mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Deposit Account. Promptly following the delivery of this Escrow Agreement to DSI by Depositor and Preferred Registrant (the "Delivery Date"), DSI shall open a deposit account ("Deposit Account") for Depositor. The opening of the Deposit Account means that DSI shall establish an account ledger in the name of Depositor, assign a deposit account number ("Deposit Account Number"), calendar renewal notices to be sent to Depositor and Preferred Registrant and request the initial deposit ("Initial Deposit Material") from Depositor.
2. Preferred Registration Account. Promptly following the Delivery Date, DSI shall open a registration account ("Registration Account") for Preferred Registrant. The opening of the Registration Account means that DSI shall establish under the Deposit Account an account ledger with a unique registration number ("Registration Number") in the name of Preferred Registrant, calendar renewal notices to be sent to Preferred Registrant and request the Initial Deposit from Depositor. DSI shall promptly notify the Preferred Registrant in writing upon receipt of Initial Deposit Material.
3. Exhibit B, Notices and Communications. Notices and invoices to Depositor, Preferred Registrant or DSI should be sent to the parties at the addresses identified in Exhibit B attached hereto. Documents, payment of fees, deposits of material, and any written communication should be sent to the DSI offices as identified in the Exhibit B. All notices hereunder of any type of nature, including payment, shall be written and deemed given upon receipt if sent by (a) personal delivery; (b) U.S. Certified Mail, Return Receipt requested; or (c) a private nationally prominent express carrier. Depositor and Preferred Registrant each agree to name their respective designated contact promptly

after the Delivery Date ("Designated Contact") to receive notices from DSI and to act on their behalf in the performance of their obligations as set forth in this Escrow Agreement. Depositor and Preferred Registrant agree to notify DSI immediately in the event of a change of their Designated Contact in the manner stipulated in Exhibit B.

4. Exhibit C and Deposit Material. Depositor shall provide the Initial Deposit Material to DSI for retention and administration in the Deposit Account promptly after the Delivery Date. The Initial Deposit Material shall be submitted together with a completed document called a "Description of Deposit Material", hereinafter referred to as Exhibit C. Each Exhibit C must be signed by Depositor prior to submission to DSI and shall be signed by DSI upon completion of the Deposit Material inspection.

5. Deposit Material Inspection. Upon receipt of an Exhibit C and Deposit Material, DSI shall be responsible only for reasonably matching the labeling of the materials to the item descriptions listed on the Exhibit C and validating the count of the materials to the quantity listed on the Exhibit C. DSI shall not be responsible for any other claims made by the Depositor on the Exhibit C. Acceptance shall occur when DSI concludes that the Deposit Material inspection is complete. Upon acceptance, DSI shall sign the Exhibit C and assign it the next Exhibit C number. DSI shall issue a copy of the Exhibit C to Depositor and Preferred Registrant in writing within ten (10) days of receipt, provided that if DSI does not accept, it shall immediately inform Depositor and Preferred Registrant of that and the reason for nonacceptance. DSI shall then promptly redeposit and the procedures shall continue until accepted.

6. Deposit Changes. Depositor may update the Deposit Account with supplemental or replacement Deposit Material of technology releases. Supplemental Deposit Material ("Supplemental Material") is Deposit Material which is to be added to the Deposit Account. Replacement Deposit ("Replacement Deposit Material") is Deposit Material which shall replace existing Deposit Material as identified by any one or more Exhibits D in the Deposit Account. Replacement Deposit Material shall be destroyed or returned to Depositor. The existing deposit ("Deposit") means all Exhibits and their associated Deposit Material currently in DSI's possession. Destroyed or returned Deposit Material is not part of the Deposit; however, DSI shall keep records of the destruction or return of Deposit Material.

7. Use of Released Materials by Preferred Registrant. If any Deposit Material is released to Preferred Registrant hereunder, Preferred Registrant shall have the rights to use the released Deposit Material as set forth in Section 3.4 of the Software License Agreement and the second paragraph of Section 5.2 of Attachment F (Maintenance and Support) to the Software License Agreement.

8. Storage Unit. DSI shall store the Deposit in defined units of space, called storage units. The cost of the first storage unit shall be included in the annual Deposit Account fee.

9. DSI's Obligations of Confidentiality. DSI agrees to establish a locked receptacle in which it shall place the Deposit and shall put the receptacle under the administration of one or more of its officers, selected by DSI, whose identity shall be available to Depositor at all times. DSI shall exercise a professional level of care in carrying out the terms of this Escrow Agreement. DSI acknowledges Depositor's assertion that the Deposit shall contain proprietary data and that DSI has an obligation to preserve and protect the confidentiality of the Deposit. Except as provided for in this Escrow Agreement, DSI agrees that it shall not divulge, disclose, make available to third parties, or make any use whatsoever of the Deposit.

10. Audit Rights. DSI agrees to keep records of the activities undertaken and materials prepared pursuant to this Escrow Agreement. DSI shall issue to Depositor and Preferred Registrant a semi-annual report profiling the Deposit Account. Such report shall identify the Depositor, Preferred Registrant, the current Designated Contacts, selected special services, and the Exhibit C history, which includes Deposit Material acceptance and destruction or return dates. Upon reasonable notice, during normal business hours and during the term of this Escrow Agreement, Depositor and/or Preferred

Registrant shall be entitled to inspect the records of DSI pertaining to this Escrow Agreement, and accompanied by an employee of DSI, inspect the physical status and condition of the Deposit. The Deposit may not be changed during the audit.

11. **Term of Escrow Agreement.** The term of this Escrow Agreement is coterminous with that of the Software License Agreement, and may only be terminated earlier as follows:

a. by mutual written agreement of Depositor and Preferred Registrant and delivery of such agreement to DSI.

b. in the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to all parties. Any party to this Escrow Agreement shall have the right to make the payment to DSI to cure the default. If the past-due payment is not received in full by DSI within one (1) month of the date of such notice, then DSI shall have the right to terminate this Escrow Agreement any time thereafter by sending written notice of termination to all parties. DSI shall have no obligation to deliver the Deposit or to take any other action under this Escrow Agreement so long as any payment which is due to DSI remains unpaid; or

c. upon termination of the Software License Agreement subject to survival as appropriate under terms of the Software License Agreement.

12. **Expiration or Termination.** If this Escrow Agreement expires or terminates, all duties and obligations of DSI to Depositor and Preferred Registrant shall terminate, except that DSI's obligation to return the Deposit to Depositor shall survive the termination and expiration of this Escrow Agreement, after the payment of all costs, fees and expenses due DSI.

13. **Contents of Deposit.**

a. The Deposit Material delivered to DSI consists of the following as further described in Exhibit A: source code deposited on computer magnetic media, and related technical documentation.

b. The Deposit will be set forth more specifically in Exhibit C.

14. **Indemnification.** DSI shall be responsible to perform its obligations under this Escrow Agreement and to act in a reasonable and prudent manner in all respects with regard to this escrow arrangement. Except for the duties stated in the preceding sentence, Depositor and Preferred Registrant each agree to indemnify, defend and hold harmless DSI from any claims, actions, damages, costs, attorney's fees and other liabilities incurred by DSI relating in any way to this escrow arrangement, except insofar as such liabilities arise by reason of DSI's gross negligence or willful misconduct.

15. **Filing For Release of Deposit by Preferred Registrant.** Upon notice to DSI by Preferred Registrant of the occurrence of a release condition as described in Section 18 ("Notice of Release") and payment of the release request fee, DSI shall notify Depositor by certified mail or commercial express mail service with a copy of the notice from Preferred Registrant. If Depositor provides DSI with Contrary Instruction (as defined in Section 16) within ten (10) days of receipt of a Notice of Release, DSI shall not deliver the Deposit Material to Preferred Registrant.

16. **Contrary Instruction.** "Contrary Instruction" is the filing of an instruction with DSI by Depositor stating that a Contrary Instruction is in effect. Such Contrary Instruction means an officer of Depositor warrants that a release condition has not occurred or has been cured. DSI shall send a copy of the instruction by certified mail or commercial express mail service to Preferred Registrant. DSI shall notify both Depositor and Preferred Registrant that there is a dispute to be resolved pursuant to Section 19. Upon receipt of Contrary Instruction, DSI shall continue to store the Deposit pending Depositor and

Preferred Registrant joint instruction, resolution pursuant to Section 19, order by a court of competent jurisdiction, or termination by non-renewal of this Escrow Agreement.

17. **Release of Deposit to Preferred Registrant.** If DSI does not receive Contrary Instruction from Depositor in accordance with the procedure set forth in Section 16, DSI is authorized to release the Deposit to the Preferred Registrant filing for release following receipt of any fees due to DSI including delivery fees.

18. **Release Conditions of Deposit to Preferred Registrant.** The conditions for release of the Deposit are set forth in Section 3.3 of the Software License Agreement and the second paragraph of Section 5.2 of Attachment F (Support and Maintenance) of the Software License Agreement.

19. **Dispute.** Depositor and Preferred Registrant agree that if Contrary Instructions are timely given by Depositor pursuant to Section 16 hereof, then Depositor and Preferred Registrant shall submit their dispute regarding Preferred Registrant's Notice of Release to arbitration by a single arbitrator who is a member of the American Arbitration Association, according to its rules and regulations then in effect, at its offices in San Francisco, California. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction, and a copy of such decision shall be delivered immediately to Depositor, Preferred Registrant and DSI. The parties shall use their best efforts to commence the arbitration proceeding promptly after delivery of the Contrary Instructions. The sole question to be determined by the arbitrator shall be whether or not there existed a valid release condition at the time Preferred Registrant delivered the Notice of Release to DSI pursuant to Section 15. If the arbitrator finds that a release condition was properly met and the Notice of Release was properly given by Preferred Registrant, DSI shall promptly deliver the Deposit to Preferred Registrant. All fees and charges by the American Arbitration Association and the reasonable attorneys' fees and costs incurred by the prevailing party in the arbitration shall be paid by the non-prevailing party in the arbitration.

20. **Equitable Relief.** Each party agrees the other shall be entitled to seek equitable relief to enforce its rights thereunder, in addition to such party's other remedies.

21. **General.** DSI may act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may rely in good faith on the fact any employee giving any written notice, request, advice or instruction in connection with or relating to this Escrow Agreement has been duly authorized to do so. DSI may provide copies of this Escrow Agreement or account history information to any Designated Contact of Depositor or Preferred Registrant upon their request. For purposes of termination or replacement, the Deposit shall be returned only to Depositor's Designated Contact, unless otherwise instructed by Depositor's Designated Contact. DSI is not responsible for failure to fulfill its obligations under this Escrow Agreement due to causes beyond DSI's control. This Escrow Agreement is to be governed by and construed in accordance with the laws of the State of California without any reference to the conflicts of law rules. Subject to the provisions of the Software License Agreement this Escrow Agreement constitutes the entire agreement among the parties concerning the subject matter hereof, and supersedes all previous communications, representations, understandings, and agreements, either oral or written, among the parties. This Escrow Agreement may be amended only in a writing signed by the parties. If any provision of the Escrow Agreement is held by any court to be invalid or unenforceable, that provision will be severed from the Escrow Agreement and any remaining provisions will continue in full force.

21. **Fees.** Fees are due upon receipt of signed contract, receipt of Deposit Material, or when service is requested, whichever is earliest. Depositor shall pay DSI all fees due under this Escrow Agreement. All service fees and renewal fees will be those specified in DSI's Fee and Services Schedule in effect at the time of renewal or request for service, except as otherwise agreed. DSI's current Fee Schedule is attached as Exhibit D. For any increase in DSI's standard fees, DSI shall notify Depositor and Preferred Registrant at least ninety (90) days prior to the renewal of the Escrow Agreement. For any

service not listed on the Fee and Services Schedule, DSI shall provide a quote prior to rendering such service.

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be executed by their respective authorized representatives.

**NETSCAPE COMMUNICATIONS CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MCI TELECOMMUNICATIONS CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DATA SECURITIES INTERNATIONAL, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT A**

**General Description of Materials**

**To Be Deposited**

Source Code for the "Netscape Client" and "Netscape Servers" as those terms are defined in the Software License Agreement, and related Documentation.

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**EXHIBIT B**

**DESIGNATED CONTACT**

Account Number \_\_\_\_\_

Notices, Deposit Material returns and  
communication, including delinquencies to  
Depositor should be addressed to:

Invoices to Depositor should be addressed to:

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated  
Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Invoice Contact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Notices and communication, including  
delinquencies to Preferred Registrant should  
be addressed to:

Invoices to Preferred Registrant should be  
addressed to:

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated  
Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Invoice  
Contact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Requests from Depositor or Preferred Registrant to change the Designated Contact should be given in writing by the Designated Contact or an authorized employee of Depositor or Preferred Registrant.

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Contracts, Deposit Material and notices to DSI  
should be addressed to:

**DSI**

**Attn: Contract Administration**  
9555 Chesapeake Drive  
Suite 200  
San Diego, CA 92123

**Telephone: (619) 694-1900**  
**Facsimile: (619) 694-1919**

**Date: \_\_\_\_\_**

Invoice inquiries and fee remittances to DSI  
should be addressed to:

**DSI**

**Attn: Accounts Receivable**  
49 Stevenson Street  
Suite 550  
San Francisco, CA 94105

**Telephone: (415) 541-9013**  
**Facsimile: (415) 541-9424**



**EXHIBIT C**

**DESCRIPTION OF DEPOSIT MATERIAL**

Deposit Account Number \_\_\_\_\_

Depositor Company Name \_\_\_\_\_

DEPOSIT TYPE: \_\_\_\_\_ Initial \_\_\_\_\_ Supplemental \_\_\_\_\_ Replacement

If Replacement: \_\_\_\_\_ Destroy Deposit \_\_\_\_\_ Return Deposit

**ENVIRONMENT:**

Host System CPU/OS \_\_\_\_\_ Version \_\_\_\_\_ Backup \_\_\_\_\_

Source System CPU/OS \_\_\_\_\_ Version \_\_\_\_\_ Compiler \_\_\_\_\_

Special Instructions: \_\_\_\_\_

**DEPOSIT MATERIAL:**

Exhibit B Name \_\_\_\_\_ Version \_\_\_\_\_

Item label description: \_\_\_\_\_ Media: \_\_\_\_\_ Quantity: \_\_\_\_\_

For Depositor, I certify that the above described  
Deposit Material was sent to DSI:

By \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Copyright 1983, 1994 DSI

For DSI, I received the above described Deposit  
Material subject to the terms on the reverse side  
of this Exhibit:

By \_\_\_\_\_

Print Name \_\_\_\_\_

Date of Acceptance \_\_\_\_\_

ISE \_\_\_\_\_ EX. C# \_\_\_\_\_

**EXHIBIT D .**

**Fee Schedule**

## ATTACHMENT E

Notes: References to MCOM refer to branding present in the .9 version of the MCOM client.

1) Netscape Homepage will default to MCI. Users (customers) will not have the option to change the home page.

2) Name of the product will change from internetMCI Browser to internetMCI Navigator. This will be part of the title bar. Example: internetMCI Navigator - [page name]

3) Netscape will receive brand recognition on MCI's retail packaging. The recognition will appear on the back of MCI's box with logo and copy recognition

4) Netscape will provide diskette copy of all docs to MCI for editing an integration into MCI's manuals.

5) Netscape will provide MCI access to its logo and photo library for branding and public relations purposes. Netscape will not be featured on the Manual cover, but Netscape will receive copyright acknowledgment.

6) Netscape will be part of the Directory's (aka Services) menu and will be the last item. This menu will provide a URL to Netscape's homepage.

7) Directories menus will be renamed to "Services"

8) Netscape will receive About Box branding as required for Copyright purposes

9) Netscape will be part of MCI's splash screen as follows.

internetMCI

using Netscape Navigator

"internetMCI" will be the dominate font. "using Netscape Navigator" will be standard type, black and white.

MADELINE WONG TO PROVIDE BIT MAP

10) Windows title banner

internetMCI Navigator - [page name]

11) Functional Menu

- Changes to "Directory" menu set - see below
- Changes to "Help" menu - see below

12) Tool bar - No changes

**13) Branding Icons**

- The Netscape logo will be located on the toolbar. It will be a hit map and not a button. The MCI logo will read "MCI" and will be located to the right of the directory buttons.

**14) Power Buttons**

- What's New = mapped to MCI's What's New Home Page
- Directories = mapped to MCI's Directories Home Page
- marketplaceMCI = mapped to MCI's Marketplace Home Page
- Information Desk = mapped to MCI's Info Desk Home Page
- Newsgroups = mapped to a newsgroups

**\*\* ADDRESS TO BE PROVIDED BY KARL LEWIS**

**15) Status bar to change appropriately**

- Status Bar at bottom of screen to change appropriate to function

**\* JUST TO CLARIFY THE BRANDING ON THE STATUS BARS WILL REFLECT**

**internetMCI WHERE APPROPRIATE.**

**16) Services Menu (to replace Directory menu)**

- What's New
- Directories
- marketplaceMCI
- Info Desk
- Newsgroups
- Netscape Communications

A line should separate Information Desk from Newsgroups with another line to separate Newsgroups from Netscape Communications.

**ADDRESSES TO BE PROVIDED BY KARL LEWIS**

**17) Help Menu Changes**

- MCOM "About" -> MCI "About internetMCI"
- MCOM "Version Information" -> MCI "Version Information", render as local file
- MCOM "Guided Tour" -> delete
- MCOM "Manual" -> MCI "Manual"
- MCOM "FAQs" -> Frequently Asked Questions
- MCOM "How to Give Feedback" -> delete
- MCOM "How to Get Support" -> delete
- New item for MCI: Help!

**ADDRESSES TO BE PROVIDED BY KARL LEWIS**

**ATTACHMENT F**  
**NETSCAPE COMMUNICATIONS CORPORATION**  
**MAINTENANCE AND SUPPORT**

**1.0. Definitions.** The capitalized terms used herein shall have the meanings set forth below.

**1.1. "Agreement"** means the Agreement dated as of February\_\_, 1995 between MCI Telecommunications Corporation and Netscape Communications Corporation to which this Attachment F is attached and in which this Attachment F is incorporated by reference. All capitalized terms in this Attachment F not defined herein shall have the meanings assigned to them in the Agreement.

**1.2. "Diagnostics"** means software provided by Netscape Communications which provides trouble-shooting, Error isolation, detection capability and assistance.

**1.3. "Error"** means any instance where a Netscape Communications Product or Update or Upgrade Release does not substantially conform to its published features and specifications.

**1.4. "Maintenance Release"** means any version of Netscape Communications Products or portions thereof, and associated documentation (if any) provided and made generally available by Netscape Communications to its customers to correct Errors therein.

**1.5. "Minor Update Release"** means any version of Netscape Communications Product or portions thereof, and associated documentation (if any) that is provided and made generally available by Netscape Communications to its customers which do not involve additions of substantial functionality. Minor Updates are designated by a change to the right of the decimal point of the Release Number. Netscape Communications is the sole determiner of the availability and designation of an update as a Major or Minor Update.

**1.6. "Major Update Release"** means any version of the Netscape Communications Product, and associated documentation, if any, that is provided and made generally available by Netscape Communications to its customers which involve additions of substantial functionality. Major Updates are designated by a change in the number to the left of the decimal point of the Release Number. Major Updates exclude software releases which are reasonably designated by Netscape Communications in accordance with industry practice as new products or new Versions containing such substantial new features and capabilities as to require an update fee provided that such update fees are part of the standard fees of such Releases.

1.7. "Release" means a version of Netscape Communications Product that Netscape Communications has made generally available to its licensees, including Maintenance Releases, Minor Update Releases and Major Update Releases.

1.8. "Release Number" means the number that is used by Netscape Communications to identify the version of a Release. Typically, the Release Number is shown after the product name.

1.9. "MCI Contacts" means the individuals designated by MCI to communicate with Netscape Communications representatives at the Support Centers.

1.10. "Support Services" means the technical support services described herein, and provided by Netscape Communications to MCI hereunder.

1.11. "Support Center" means a Netscape Communications facility from which Support Services are provided to MCI hereunder. Support Centers in operation as of the Effective Date are identified in Schedule 1, which Netscape Communications may amend in writing from time to time.

1.12. "Workaround" means a method by which a user of a Software Product can, by making a limited number of procedural or programming changes in a Software Product, prevent the occurrence or re-occurrence of an Error. Programming changes include adjustments to set-up and configurations files or other settings that do not require recompilation.

2.0. Term of Fees. The fees for the Support Services hereunder shall be valid for the period commencing on the Effective Date and continuing for the term provided for in the Agreement.

### 3.0. Responsibilities of MCI.

3.1. MCI Contacts. MCI shall designate not more than eight (8) MCI Support Contacts for communication with Netscape Communications' representatives at the Support Centers. MCI Contacts shall have sufficient technical expertise, training and/or experience, for MCI to perform its obligations hereunder. MCI shall designate, in writing to Netscape Communications, its MCI Contacts within one (1) week after the Effective Date, and may substitute contacts at any time by providing one (1) week's prior written notice thereof to Netscape Communications.

3.2. Levels of Support. MCI shall provide first and second level support for the Software Products to its customers, including, but not limited to the: (i) installation, support and

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## CONFIDENTIAL TREATMENT REQUESTED

maintenance of MCI services incorporating the Software Products, and (ii) distribution and installation of Releases and Workarounds provided to MCI by Netscape Communications. MCI shall also employ adequate support tools, Diagnostics, software labs and processes as provided or recommended by Netscape Communications for first and second level fault isolation and resolution for the Products.

**3.3. Problem Determination.** MCI shall ascertain the nature of Errors, and the circumstances under which such Errors occur. MCI shall use its reasonable commercial efforts to provide Netscape Communications with information, software, traces, server access, or documentation sufficient for Netscape Communications to duplicate the circumstances under which such Errors became apparent. Netscape Communications may reclassify Errors if it reasonably believes that MCI's classification is incorrect.

**3.4. Management.** MCI shall designate at least one manager and an alternate to be Netscape Communications' primary point of contact for resolving escalated Error reports or any issues arising from the support of MCI under this Attachment. Netscape Communications shall have the right to approve such dedicated manager in advance, which approval shall not be unreasonably withheld.

**4.0. Description of Support Services.** For as long as MCI shall pay the maintenance fees set forth in the Agreement, Netscape Communications shall provide the Support Services described below.

**4.1. Remote Access to Technical Support.** Netscape Communications shall provide to MCI's Contacts remote access to at least [REDACTED] Netscape Communications technical support personnel at the primary Support Center identified in Schedule 1. Support Center personnel shall be available for telephone contact Monday - Friday (5:00 A.M. - 5:00 P.M.) Pacific time (i.e., 8:00 A.M. - 8:00 P.M. Eastern time) at the Support Center, exclusive of Netscape Communications' holidays (as specified in the Support Implementation Plan to be agreed by the parties). Netscape Communications shall also provide after hours contact phone or beeper numbers for at least [REDACTED] support person for the reporting and initial Response (as defined below) of Priority 1 and 2 Errors (as defined below). During the hours of support set forth above, Netscape technical support personnel will provide the following services:

(a) **Product Use.** Netscape Communications will answer questions and address problems regarding the use of Products, including, but not limited to: (i) Product installation, configuration and documentation; and (ii) use of Netscape Communications' provided application programs.

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(b) **Problem Determination.** Netscape Communications will assist in determining the cause of problems encountered by MCI in the use of Product, including, but not limited to: (a) technical advice and recommendations regarding Errors based on MCI's description of such Errors; and (b) instruction on the use of tools.

**4.2 Off-Hours Error Reporting.** Netscape Communications shall also make available, on a 24 hours per day, 365 day per year basis, a means of reporting Errors, by electronic mail, voice mail, fax, or telephonic recording capability at the Netscape Communications Support Center(s) identified on Schedule 1 to this Support Attachment.

**4.3 Releases.** Netscape Communications will provide MCI one (1) copy of each Maintenance Release and Minor Release issued during the term of this Support Attachment as soon as it becomes available. Any Release to which MCI is entitled shall be provided to MCI on a single master tape or CD-ROM set, with applicable documentation and instructions for installation, use and duplication. If Netscape Communications provides the documentation and instructions in electronic form, it will also provide one (1) printed copy thereof. MCI shall also be provided with support information, diagnostic tools, HTML pages, or other support information that Netscape Communications may develop from time to time.

**4.4. Support for MCI-Escalated Sites.** Upon an MCI Contact's request to a Support Center, Netscape Communications will use reasonable commercial efforts to provide telephonic technical support directly to MCI's personnel at MCI's operations site for the Product, when MCI reasonably determines it necessary to "escalate" a technical support problem. When making such request, the MCI Contact shall specify that such request is an "escalation". Netscape Communications' response after such request is received will be in accordance with Netscape Communications' escalation procedures as defined below.

**4.5. Management.** Netscape Communications shall designate at least one manager and an alternate to be MCI's primary point of contact for Server Error reporting at the technical support hotline. MCI shall have the right to approve such dedicated manager in advance, which approval shall not be unreasonably withheld.

**4.6. Release Support Policy.** Netscape Communications shall support each Release for twelve (12) months after the issuance of such Release, or for six months after the issuance of a subsequent Release. In addition, for the 12 month period following the release of any new Major Upgrade, Release or Version of either the Servers, and for the 6 month period following the release of any new Major Upgrade, Release or Version of the Client software, Netscape Communications shall continue to provide Support Services for the immediately preceding Release (excluding maintenance releases).



## CONFIDENTIAL TREATMENT REQUESTED

**4.7. Onsite Support.** At MCI's request from time to time, Netscape shall provide the equivalent of two full-time Netscape employees at one or more designated MCI sites during the 90 day period following the February 1995 delivery of Version 1.A of the Software Products to MCI under the Agreement. The parties acknowledge that "equivalent" may mean more or less than two employees at any given time. All Netscape employees provided hereunder shall have appropriate training, experience and expertise with respect to all Software Products delivered to MCI by Netscape, in order to assist MCI with the population and operation of the Servers and continuation of Server testing.

**4.8. Exclusions.** Netscape Communications shall respond to all Errors notified by MCI in accordance with this Support Schedule. However, Netscape shall not be under any obligation to repair any errors which have been determined to arise from: (i) any Software Product which has been modified without Netscape Communications' prior written approval; (ii) operator error, data inconsistency (including without limitation incorrect data entry; or (iii) third party software. In addition, the Target Repair Times (and remedies resulting from Netscape's failure to meet the Target Repair Times) shall not apply to the repair of Errors resulting from: (a) the use of the Software Products in conjunction with software not recommended, approved or permitted by Netscape Communications (provided that a list of such recommendations is sent to MCI on a timely basis), (b) modifications made by MCI pursuant to Section 2.1(d) of the Agreement, or (c) Errors of unknown origin.

**4.9 Experience and Expertise of Netscape Personnel.** All personnel provided by Netscape to MCI for the performance of the Support Services hereunder shall have sufficient technical expertise, training and/or experience, to perform Netscape's obligations hereunder.

**4.10** Netscape acknowledges that MCI may on occasion notify Netscape of a Priority 1 or 2 Error which is ultimately determined to fall within an exclusion set forth in the second sentence of Section 4.8 above. However, if such erroneous notification happens frequently, then Netscape may escalate the issue to senior management within MCI and the parties will work in good faith toward a resolution, including without limitation amendment of the Schedule as provided in Section 9 below.

### **5.0. Error Correction; Priority and Timing**

**5.1. Support Requests.** For Errors resulting from Software Products engineered at Netscape Communications, Netscape will, on a [REDACTED] Respond (as defined below) to and use its best efforts to correct or provide a Workaround to, Priority 1 and Priority 2 Errors that MCI identifies, classifies and reports to Netscape Communications and that Netscape Communications substantiates; and reasonable commercial efforts to Respond to other Errors within the time frames set below. MCI shall use its best efforts to

CONFIDENTIAL TREATMENT REQUESTED

provide sufficient information for Netscape Communications to duplicate the Error before Netscape Communications' Response obligations shall commence. Netscape Communications will not be required to correct any Error caused by MCI's failure to incorporate any Release previously provided by Netscape Communications which corrects such Error.

Priority Error	Description	Response* Time	Target Repair Time**
1	Fatal Error: no useful work can be done with respect to any merchant, or with respect to any critical function that runs across all merchants (e.g., a storefront is closed or users cannot make purchases in one or more storefronts)	[REDACTED]	[REDACTED]
2	Severe Impact: errors which result in a lack of functionality or cause intermittent system failure (e.g., some items fall out of shopping cart)	[REDACTED]	[REDACTED]
3	Degraded Operations: errors causing malfunction of non-critical functions (e.g., no page hit reports)	[REDACTED]	[REDACTED]
4	Minimal Impact: attributes and/or options to utility programs do not operate as stated	[REDACTED]	[REDACTED]
5	Enhancement Request	[REDACTED]	[REDACTED]

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- \* "Response" means and includes: taking and logging the Error call; and, in cases of Priority 1 and 2 Errors, making continuous efforts to cure the Error until the Error is cured.
- \*\* Target Repair Time is calculated from notification and substantiation of Error.
- \*\*\* All days are calendar days unless noted otherwise.

If access to the MCI Mail or other MCI systems required for a Response or Target Repair is not available to Netscape, then the Response and Target Repair times shall be extended by the length of time during which such access is unavailable to Netscape.

The parties recognize that the Errors set forth as examples in each category above are illustrative only and are not intended to be exhaustive. As soon as practicable following execution and delivery of the Agreement, MCI and Netscape shall develop and agree upon a Support Implementation Plan which, among other things, shall list in more detail and in accordance with the principles and examples listed above additional types of Errors which, if they were to occur, would fall within the Priority groupings listed above.

5.2. Failure to Respond or Repair. In the event Netscape Communications fails to Respond to a notification of, or to repair, any Error within the time frames stated above, MCI may escalate the Error to the designated Manager at Netscape Communications. If the Error is not repaired or there is no Response within twice the allotted time set forth above, then MCI may escalate the Error to a designated Netscape Communications Senior Manager. In the event the Error is not repaired within three times the allotted time for any Priority 1 or 2 Error and MCI has followed the escalation procedures described above, then MCI may request Netscape to assign [REDACTED] to repair such Error, and Netscape shall, immediately upon such request, cause [REDACTED] to direct [REDACTED] best efforts to repair the Error. In the event Netscape fails to fulfill the foregoing obligation, then MCI shall receive a credit against the Maintenance Fee payable to Netscape under the Agreement in the amount of [REDACTED] of the Maintenance Fee due each quarter in which the Error persists and the [REDACTED] does not [REDACTED] resolving the Error.

In addition to the foregoing, in the event MCI believes that Netscape has substantially failed to meet its obligations to use the efforts to repair Errors specified in Sections 5.1 and 5.2 above with respect to any Priority 1 or 2 Error, and the events and time periods described in the first paragraph of this Section 5.2 have occurred, then, upon MCI's request, Netscape shall provide MCI with access to the source code for the Software Product(s) involved in the Priority 1 or 2 Error at facilities selected by Netscape. Following such access, if MCI believes Netscape is not using its best efforts to resolve such Priority 1 or 2 Error as provided in Section 5.2 above, MCI may give notice to DSI under the Escrow Agreement

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entered into among MCI, Netscape and DSI that the source code for the Software Product(s) involved in the Priority 1 or 2 Error is to be released to MCI, and such source code shall be released to MCI in accordance with the terms and conditions of the Escrow Agreement unless Netscape gives DSI notice that it disagrees with MCI's notice. In the event Netscape gives such notice, then MCI shall continue to have access to the relevant source code at the Netscape facility pending resolution of the dispute. Source code shall be released only if the court, arbitrator or other decisionmaker determines that Netscape has failed to use its level of effort specified in this Section 5 to resolve Priority 1 or 2 Errors. After resolution of the Error which led to the release of the source code, MCI will return to Netscape all copies of the source code, will remove all copies from its computer systems, and will so certify to Netscape. MCI shall own all code, and all intellectual property and other proprietary rights therein, developed by MCI to correct any Error, and MCI shall license such corrections in source code form to Netscape on reasonable terms and conditions to enable Netscape to continue to support the Software Products licensed to MCI.

**6.0. Support Documentation.** Netscape Communications shall provide MCI, within thirty (30) days following execution and delivery of the Agreement, with a set of Operations Procedures detailing the steps for systems operators to utilize each application function and providing necessary support and maintenance tasks. Netscape Communications will also provide to MCI one (1) copy of all generally available and support documentation (e.g. service bulletins and technical tips) for Netscape Communications Products licensed by MCI as Netscape Communications makes them generally available to its customers. MCI may copy such materials for MCI's internal use, provided that (i) all such copies shall include all trademarks, proprietary rights and copyright notices supplied by Netscape Communications, and (ii) such copies shall be provided only to and used only by MCI employees for the purpose of providing customer support. MCI agrees that it will not distribute such materials or portions thereof, to third parties, or incorporate in any form any information included in such materials or portions thereof, into any other materials which are distributed or otherwise provided to third parties.

**7.0. Support Review Meetings.** In addition to the foregoing, Netscape Communications shall provide [REDACTED] appropriately experienced representatives to participate in [REDACTED] support review conferences during the first six months following the initial release of the Software products, and [REDACTED] support review meetings at sites to be designated alternatively by Netscape Communications and MCI. Each party shall use all reasonable commercial efforts to correct any deficiencies in the Support Services and processes identified by the other at any such support review meetings.

**8.0. Third Party Software.** Notwithstanding the Response and Target Repair times set forth above, MCI acknowledges that Netscape cannot guarantee the timeframe within which

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third parties will respond or repair Errors in components of the Software Products provided by such third parties. Netscape will be deemed to have met its obligations under Section 5 if Netscape has used its reasonable commercial efforts to obtain timely support, at no charge to MCI unless MCI requires direct support at MCI's request, from all third parties supporting third party software that is contained in or incorporated into Software Products or third party interfaces accessed by the Software Products. MCI is free to enter into agreements with such third parties to obtain support directly to MCI.

9.0. Amendments. This Support Attachment shall be reviewed by the Parties 90 days following the initial release of the Software Products, and from time to time thereafter as the Parties may deem desirable. At each review, the parties shall evaluate the support procedures set forth herein and may amend this Support Attachment as necessary or desirable for the success of the Software Products.

10.0. Conflicts. In the event of a conflict between this Attachment and the Agreement, this Attachment shall govern.

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**SCHEDULE 1  
SUPPORT CENTERS**

- \*1. Netscape Communications  
Customer Solutions Center  
501 West Middlefield Road  
Mountain View, California 94043  
1-800-NETSITE  
email: support@mcom.com**

**\* [REDACTED] Error reporting is available at this Support Center.**

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**ATTACHMENT G  
COMPETITORS**

AT&T, Sprint, RBOCs, GTE, LDDS, Wiltel, IDB, BBN, AOL, Prodigy, CompuServe, Delphi, Netcom, IBM, Microsoft, and top 20 independent telephone companies (Sprint Corp., Southern New England Tel., ALLTEL Corp., Puerto Rico Telephone Co., Cincinnati Bell Telephone Co., Century Telephone Enterprises, PTT Communications, Inc., Telephone & Data Systems, Inc., Citizens Utilities Co., Lincoln Telephone & Telegraph Co., C-TBC Corp., Anchorage Telephone Utility, Puerto Rico Communications Co., Telephone Utilities of Washington, North State Telephone Co., Roseville Telephone Co., Concord Telephone Co., Illinois Consolidated Telephone Co., Lufkin-Conroe Telephone Exchange).

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## ATTACHMENT H

These are the general qualifications for the consultants who will represent Netscape in connection with the Consulting Services described in Section 12.

hour

The following Personnel will bill at per hour.

Associate Consultant -- B.S. or MS in computer science or related field.  
In most cases at least 1+ year out of school experience with expertise in  
in some or all of the following --

HTTP/ Web Server/ Httpd Setup and Admin

CGI script coding and generation.

httpd Access control

Mosaic Netsite admin and setup

Relational Databases, SQL, Precompilers.

Most consultants chosen will have had experience in setting up some of all --  
of the above components during their college years (for at least 2 to 4  
years).

Graphics Artist

2-5 years of experience with graphics design, layout.

Experience with computer multi-media applications and or prior internet  
web pages experience

Educational background in Graphics design and visualization. etc.

Copywriter

2-5 years experience as a writer.

At least 6 months HTML experience

English or Arts Major.

hour.

The following Personnel will bill at per hour.

Staff Consultant

Above qualifications for Associate Consultant plus some or all of the  
following --

3 to 5 years industry experience in a related field in the Computer Industry

Database Administrator, Expertise in DB setup, Backups, Performance Tuning etc.

C, PERL, CGI experience

DB Schema Designer.

System Administrator -- Background in basic UNIX System Administration.

Applications Developer, Knowledge of Front-end tools such as Oracle

Forms, Triggers, Stored Procedures.

Networking Expert, DNS, TCP/IP, Firewalls, Proxy Servers, Encryption, etc.

Graphics Consultant /Copy Editor



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**7+ years experience in Graphics Design, layout.**

**Prior experience in handling large scale design projects associated with the Internet.**

**Expertise in developing Web Server Pages.**

**Copy Editor with a English/Arts background with prior experience in handling HTML projects for the internet.**

**Instructor**

**2-5 years Prior experience in delivering classes, presentations etc.**

**Product Manager from MCOM with knowledge about MCOM Products**

**Course Curriculum Developer**

**Documentation Writer**

**5+ years as a technical writer in the computer industry.**

**hour**

**The following Personnel will bill at hour.**

**Sr. Consultants , MCOM Managers, Sr. Managers, MCOM Application Architects**

**Sr. Consultants will have the following skills.**

**Skills for a Staff. consultant plus**

**Experience in managing and working on large consulting projects.**

**7-10 years in the industry.**

**Prior experience in BPR.**

**EXHIBIT 10.9**

## **LICENSE AND SERIES A PREFERRED STOCK PURCHASE AGREEMENT**

This Agreement is made as of August 19, 1994, by and between Mosaic Communications Corporation, having its principal place of business at 650 Castro Street, Suite 500, Mountain View, California 94041 ("MCOM") and RSA Data Security, Inc., having its principal place of business at 100 Marine Parkway, Suite 500, Redwood City, California 94065 ("RSA").

### **THE PARTIES HEREBY AGREE AS FOLLOWS:**

#### **I. DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

1.1 **BUNDLED PRODUCT** means one or more software products or services developed by MCOM that incorporate the RSA OBJECT CODE. A **BUNDLED PRODUCT** must represent a significant functional and value enhancement to the **LICENSED SOFTWARE** such that the primary reason for a customer to license such **BUNDLED PRODUCT** is other than the right to receive a license to the **LICENSED SOFTWARE** included in the **BUNDLED PRODUCT**. The RSA security facilities provided by the **LICENSED SOFTWARE** shall only be accessible within the **BUNDLED PRODUCT**; therefore, MCOM will not provide in the **BUNDLED PRODUCT** any application programming interface (API) which would, if exposed, permit a third party application to pull out RSA security primitives from the **BUNDLED PRODUCT** to be used in the application.

1.2 **LICENSED SOFTWARE** means any current or future RSA proprietary security software, including but not limited to software known as BSAFE and TPEM as described in the user manuals associated therewith, including both source and object code, requested by MCOM. **LICENSED SOFTWARE** shall also include all modifications and enhancements to such programs (including all **NEW RELEASES** and **NEW VERSIONS** as hereafter defined).

1.3 **NEW RELEASE** means a version of the **LICENSED SOFTWARE** that shall generally be designated by a new version number that has changed from the prior number only to the right of the decimal point (e.g., Version 2.2 to 2.3).

1.4 **NEW VERSION** means a version of the **LICENSED SOFTWARE** that shall generally be designated by a new version number that has changed from the prior number to the left of the decimal point (e.g., Version 2.3 to 3.0).

1.5 **RSA OBJECT CODE** means the **LICENSED SOFTWARE** in machine-readable, compiled object code form.

1.6 **RSA SOURCE CODE** means the mnemonic, high level statement versions of the **LICENSED SOFTWARE** written in source language used by programmers.

1.7 **TRADEMARKS** means RSA's trademarks as identified in writing by RSA to MCOM from time to time.

## **II. LICENSE; TRANSFER OF LICENSED SOFTWARE**

2.1 Subject to the terms and conditions of this Agreement, RSA hereby grants to MCOM a non-exclusive, royalty-free, fully paid, worldwide, perpetual license to:

(a) prepare derivative works of and otherwise modify, adapt, or improve the **LICENSED SOFTWARE** to create ports, interfaces and related code necessary to implement any existing functionality of or add additional functionality to the **LICENSED SOFTWARE** in **BUNDLED PRODUCTS** in any environment (collectively "**INTERFACE MODIFICATIONS**"); and

(b) prepare, manufacture, reproduce, perform, display, publish, use, license, or distribute, provide and/or otherwise exploit **BUNDLED PRODUCTS**. Such right includes the right to sublicense to customers all of the rights set forth in 2.1(b) above and the right for such customers to further sublicense such rights to their customers. In no event, however, shall MCOM license or distribute in any way **RSA SOURCE CODE**.

2.2 Subject to the terms and conditions of this Agreement, RSA hereby agrees to provide MCOM any new **LICENSED SOFTWARE** and any and all **NEW RELEASES** and **NEW VERSIONS**, upon the first availability of same through and as a participant in RSA's alpha and/or beta program for such new **LICENSED SOFTWARE** and **NEW RELEASES** and **NEW VERSIONS**, and upon final release of such new **LICENSED SOFTWARE** and **NEW RELEASES** and **NEW VERSIONS**, during the term of this Agreement.

2.3 Nothing contained herein shall be construed as granting MCOM or its licensees the right to use, sell, rent, license, sublicense or otherwise distribute the **LICENSED SOFTWARE** as a stand-alone product.

2.4 Subject to compliance with the terms of this Agreement, nothing contained herein shall be construed as precluding MCOM from independently developing, acquiring, licensing or marketing computer software packages that perform the same or similar functions as those packages provided hereunder by RSA.

2.5 If a license to the LICENSED SOFTWARE is required by a licensee of MCOM (e.g. as a stand-alone product rather than as incorporated in BUNDLED PRODUCTS), RSA hereby covenants to use its best efforts to provide such licensee of MCOM with a license to the LICENSED SOFTWARE pursuant to terms and conditions that are at least as favorable as the most favorable terms and conditions that RSA has or may grant from time to time to any third party. In determining whether the terms and conditions offered to such MCOM licensee are at least as favorable as those granted to a third party, (i) all terms and conditions will be considered as a whole and (ii) only the value and consideration attributable to the LICENSED SOFTWARE will be taken into account.

2.6 Subject to MCOM's confidentiality obligations in Article IV below, RSA will disclose and provide to MCOM upon execution of this Agreement, two copies of the LICENSED SOFTWARE and the current versions of the user documentation therefor.

2.7 MCOM acknowledges and agrees that RSA and its licensors retain all title to and, except as expressly and unambiguously licensed herein, all rights to (a) the LICENSED SOFTWARE, all copies and derivative works thereof created by RSA and all related documentation and materials, (b) the TRADEMARKS and all of their service marks, trade names or any other designations, and (c) all copyrights, patent rights, trade secret rights and other proprietary rights in all of the foregoing. Except as to the LICENSED SOFTWARE, RSA acknowledges and agrees that MCOM shall retain all title and rights to (a) derivative works of the LICENSED SOFTWARE and INTERFACE MODIFICATIONS created by MCOM, which will be exercised coextensively with MCOM's rights in the LICENSED SOFTWARE pursuant to Sections 2.1.a. and 2.1.b. of this Agreement, (b) the BUNDLED PRODUCTS, all copies and derivative works thereof and all related documentation and materials, (c) any and all trademarks and all service marks, trade names or any other designations used by MCOM, and (d) all copyrights, patent rights, trade secret rights and other proprietary rights in all of the foregoing.

2.8 MCOM shall be responsible for providing customer support for all BUNDLED PRODUCTS to its customers, including, without limitation, training them in the use of the LICENSED SOFTWARE contained in BUNDLED PRODUCTS. During the term of this Agreement, RSA shall be responsible only for providing support for the LICENSED SOFTWARE solely to MCOM, if MCOM has elected to purchase annual maintenance for the applicable period, such support to be provided in accordance with the provisions of Article IX.

2.9 Any sublicense of a BUNDLED PRODUCT acquired from MCOM under a United States government contract shall be subject to restrictions as set forth in subparagraph (c)(1)(ii) of Defense Federal Acquisition Regulations Supplement (DFARS) Section 252.227-7013 for the Department of Defense contracts as set forth in Federal Acquisition Regulations (FARs) Section 52.227-19(c) for civilian agency contracts or any successor regulations. MCOM agrees that any such sublicense agreement shall set forth all of such restrictions for the BUNDLED PRODUCT and any documentation delivered with the

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**BUNDLED PRODUCT** shall contain a restricted rights legend conforming to the requirements of the current, applicable DFARs and FARs.

### III. TRANSFER OF STOCK AS CONSIDERATION

3.1 As consideration for the above described license grant, MCOM hereby agrees to issue to RSA [REDACTED] (together with the common stock issuable upon conversion thereof, the "Shares"). On the date of execution of this Agreement, MCOM shall deliver to RSA a certificate representing the Shares that RSA is purchasing hereby, against delivery by RSA of the items referenced in Section 2.6.

### IV. CONFIDENTIALITY

4.1 Each party agrees not to use (other than for purposes expressed by this Agreement), and will not disclose to third parties, any of the other party's confidential information that is identified as confidential at the time of disclosure and is provided in tangible form marked "confidential" or "proprietary" (or is reduced to such form within thirty (30) days after disclosure). The RSA OBJECT CODE distributed as a stand-alone product and the RSA SOURCE CODE are hereby identified and marked as RSA's confidential information, and MCOM so acknowledges. The recipient party's confidentiality obligation hereunder shall not apply to information that:

(a) is already in the recipient party's possession at the time of disclosure thereof (except that this exception does not apply to the RSA OBJECT CODE distributed as a stand-alone product and the RSA SOURCE CODE or any portion thereof);

(b) is or later becomes part of the public domain through no fault of the recipient party;

(c) is received from a third party having no obligations of confidentiality to the disclosing party, provided that the recipient party complies with any restrictions imposed by the third party;

(d) is required by law or regulation to be disclosed (including, without limitation, in connection with SEC filings), provided that the recipient party uses reasonable efforts to restrict disclosure and to obtain confidential treatment therefor; or

(e) is made available by the disclosing party to a third party without similar restrictions.

4.2 RSA acknowledges that MCOM may, at its option, incorporate excerpts of RSA's end user documentation in the documentation provided to MCOM's customers with the BUNDLED PRODUCTS. MCOM agrees not to remove or destroy any proprietary, trademark or copyright markings or confidentiality legends placed upon or contained within

the RSA SOURCE CODE, RSA OBJECT CODE, any manuals provided by RSA, or any related materials or documentation. MCOM further agrees to insert and maintain: (i) within every BUNDLED PRODUCT and any related materials or documentation, a copyright notice in the name of RSA; and (ii) within the splash screens, user documentation, printed product collateral, product packaging and advertisements for the BUNDLED PRODUCT, the appropriate RSA "Licensee Seal" substantially in the form set forth in Exhibit B hereto and a statement that the BUNDLED PRODUCT contains the LICENSED SOFTWARE. MCOM shall not take any action which might adversely affect the validity of RSA's proprietary, trademark or copyright markings or ownership by RSA thereof, and shall cease to use the markings, or any similar markings, in any manner upon the termination of the license rights granted pursuant to Article II hereof pursuant to Section 8.3(a) below..

4.3 MCOM agrees, in addition to complying with the requirements of Sections 4.1 and 4.2 as they relate to the RSA SOURCE CODE, to (i) inform any employee that is granted access to all or any portion of the RSA SOURCE CODE of the importance of preserving the confidentiality and trade secret status of the RSA SOURCE CODE; and (ii) maintain a controlled, secure environment for the storage and use of the RSA SOURCE CODE or any part thereof, except for a reasonable number of copies to be used solely at MCOM'S facility for the purposes expressly set forth herein.

4.4 MCOM shall cause to be delivered to each of its customers a license agreement that shall contain, at a minimum, substantially all of the provisions set forth in Exhibit A to this Agreement and shall prohibit such customers from modifying, reverse engineering, decompiling or disassembling the RSA OBJECT CODE or any part thereof. MCOM shall use commercially reasonable efforts to enforce such provisions.

4.5 Except as specifically provided herein, MCOM shall not modify, reverse engineer, decompile or disassemble the RSA OBJECT CODE or any part thereof.

4.6 Each party acknowledges that the confidential information of the disclosing party constitutes valuable trade secrets of the disclosing party and that the unauthorized disclosure or use of such confidential information by the recipient party will cause the disclosing party irreparable harm for which the disclosing party's remedies at law will be inadequate. Accordingly, each party agrees that the other party shall have the right, in addition to any other remedies, to obtain appropriate injunctive relief against the recipient party in the event the recipient party breaches the confidentiality obligations set forth in this Agreement.

## **V. MCOM REPRESENTATIONS AND WARRANTIES**

5.1 MCOM is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite corporate power and authority to carry on its business as now conducted, and is duly qualified to transact business and is in good standing in the State of California. MCOM has furnished RSA copies of its

Certificate of Incorporation and Bylaws, which copies are true, correct and complete and contain all amendments through the date of this Agreement.

5.2 All corporate action on the part of MCOM, its officers, directors and stockholders necessary for the authorization, execution, and delivery of this Agreement, the performance of all obligations of MCOM hereunder and the authorization, issuance (or reservation for issuance), sale and delivery of the Shares sold hereunder and the Common Stock issuable upon conversion of the Shares has been taken or will be taken prior to the Closing. This Agreement constitutes a valid and legally binding obligation of MCOM, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in this Agreement may be limited by applicable federal or state securities laws.

5.3 The authorized capital stock of MCOM consists of ten million (10,000,000) shares of Common Stock of which one million six hundred seventy-five thousand (1,675,000) shares are issued and outstanding and five million (5,000,000) shares of Preferred Stock, all of which have been designated Series A Preferred Stock, and of which up to four million ninety-one thousand (4,091,000) shares will be issued and outstanding pursuant to existing agreements. There are no preemptive rights, rights of first refusal, options, warrants, conversion privileges or rights presently outstanding to purchase any of the authorized but unissued stock of MCOM, other than (i) the rights created by this Agreement, (ii) rights created by MCOM's Certificate of Incorporation and (iii) nine hundred ninety-seven thousand (997,000) options to purchase Common Stock issuable to certain employees of MCOM pursuant to MCOM's 1994 Stock Option/Stock Issuance Plan. The Shares to be transferred to RSA (and the Common Stock issuable upon conversion thereof), when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable and, based in part upon the representations of RSA contained in this Agreement, will be issued in compliance with all applicable federal and state securities laws, as presently in effect.

5.4 No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of MCOM is required in connection with the consummation of the transactions contemplated by this Agreement, except for the filing pursuant to Section 25102(f) of the California Corporate Securities Law of 1968, as amended, and the rules thereunder, which filing will be effected within 15 days of the execution of this Agreement.

5.5 MCOM has fully provided RSA with all information that RSA has requested for deciding whether to purchase the Shares and all information that MCOM believes is reasonably necessary to enable RSA to make such decision. Neither this



Agreement, nor any other statements made or delivered in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

## **VI. RSA REPRESENTATIONS AND WARRANTIES**

6.1 RSA is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite corporate power and authority to carry on its business as now conducted, and is duly qualified to transact business and is in good standing in the State of California.

6.2 All corporate action on the part of RSA, its officers, directors and stockholders necessary for the authorization, execution, and delivery of this Agreement, the performance of all obligations of RSA hereunder has been taken or will be taken prior to the execution of this Agreement. This Agreement constitutes a valid and legally binding obligation of RSA, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in this Agreement may be limited by applicable federal or state securities laws.

6.3 RSA hereby confirms that the Shares acquired hereby will be acquired for investment for RSA's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and RSA has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, RSA further represents that it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Shares.

6.4 RSA believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the Shares. RSA further represents that it has had an opportunity to ask questions and receive answers from MCOM regarding the Shares and the business, properties, prospects and financial condition of MCOM.

6.5 RSA acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in this Shares. RSA is an "accredited investor" within the meaning of Securities and Exchange Commission ("SEC") Rule 501 of Regulation D, as presently in effect.

6.6 RSA understands that the Shares are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from MCOM in a transaction not involving a public offering and that under such laws and

applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In addition, RSA represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

## **VII. TECHNOLOGY WARRANTY AND INDEMNIFICATION**

7.1 For a period of ninety (90) days following the delivery of any LICENSED SOFTWARE to MCOM pursuant to the terms of this Agreement, RSA warrants that such LICENSED SOFTWARE will operate in material conformance to RSA's published specifications therefor. RSA does not warrant that the LICENSED SOFTWARE or any portion thereof is error-free. RSA warrants that it has sufficient rights to the LICENSED SOFTWARE to provide the license grants set forth herein.

7.2 RSA will defend at its expense, and will indemnify and hold harmless, MCOM and its officers, directors, agents or employees against any damages, settlements, attorneys' fees and expenses arising out of any claim by a third party against MCOM asserting that the LICENSED SOFTWARE infringes any patent, or copyright, trade secret, trademark, or service mark and any other proprietary right, whether or not the LICENSED SOFTWARE has been sublicensed to third parties, and whether or not the claim is successful, provided that (a) RSA is notified in writing by MCOM within a reasonable time after MCOM's receipt of written notice of a claim, action or allegations of infringement; (b) RSA is provided all reasonable information available to MCOM and MCOM's assistance in settling or defending the action; and (c) RSA is granted control of defense or settlement of the action subject to MCOM's reasonable approval with respect to any settlement. RSA will not be responsible for any settlement it does not approve in writing. The foregoing obligation of RSA does not apply with respect to LICENSED SOFTWARE or portions or components thereof (i) not supplied by RSA, (ii) which are modified by MCOM after shipment by RSA to the extent that the alleged infringement relates to such modification, (iii) combined with other products, processes or materials by MCOM to the extent that the alleged infringement is caused by such combination, and (iv) where MCOM continues allegedly infringing activity after being notified thereof in writing or after being informed of and provided with modifications that would have avoided the alleged infringement; MCOM will defend at its expense and indemnify RSA and its officers, directors, agents and employees from all damages, settlements, attorneys' fees and expenses related to a claim of infringement or misappropriation excluded from RSA's indemnity obligation by this sentence.

7.3 If an injunction or order is obtained against RSA regarding the use or resale of the LICENSED SOFTWARE or a product incorporating the LICENSED SOFTWARE or if RSA determines that its products are likely to become the subject of a claim of infringement or violation of a patent, copyright, trade secret or other proprietary right of a third party and requests that MCOM's rights of use or distribution be modified, RSA agrees to use diligent efforts to: (a) procure for MCOM the right to continue using the LICENSED SOFTWARE and reselling the BUNDLED PRODUCTS and for MCOM's

customers the right to continue using and distributing the BUNDLED PRODUCTS; or (b) replace or modify the same so that it becomes noninfringing provided such modification or replacement does not adversely affect the specifications for or the use or operation of the LICENSED SOFTWARE by MCOM or the BUNDLED PRODUCTS by MCOM's customers.

7.4 EXCEPT AS SET FORTH ABOVE, RSA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, TO MCOM OR TO ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE LICENSED SOFTWARE, THE TRADEMARKS, OR ANY SERVICES OR LICENSES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE REMEDIES SET FORTH IN THIS ARTICLE VII CONSTITUTE THE ENTIRE OBLIGATIONS AND REMEDIES OF THE RESPECTIVE PARTIES CONCERNING PROPRIETARY RIGHTS INFRINGEMENT.

7.5 EXCEPT FOR (i) EITHER PARTY'S LIABILITY FOR INFRINGEMENT AS SET FORTH IN THIS ARTICLE VII, (ii) MCOM'S BREACH OF SECTIONS 2.9 AND 4.5 OR (iii) A BREACH BY EITHER PARTY OF ARTICLE IV, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM SUCH PARTY) FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION, EVEN IF A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

#### VIII. TERM AND TERMINATION

8.1 This Agreement and all licenses granted hereunder shall be and remain effective from the date hereof until terminated in accordance with this Article VIII.

8.2 This Agreement will terminate:

(a) upon sixty (60) days prior written notice if either party shall be materially in breach or default of any material obligation under this Agreement; provided, however, the breaching party may avoid such termination if, before the end of such sixty (60) day period, the breaching party cures such breach; and

(b) In the event either party (i) ceases to do business (other than a cessation of business due to an acquisition of substantially all of such party's assets or business wherein the rights and obligations of this Agreement are assigned to a successor entity pursuant to paragraph 10.1 hereof), or (ii) seeks protection under any bankruptcy,

## CONFIDENTIAL TREATMENT REQUESTED

receivership, creditors arrangement or comparable proceeding (without dismissal within sixty (60) days), then the other party can terminate upon thirty (30) days notice.

### 8.3 Upon termination of this Agreement:

(a) all licenses granted in Article II hereunder shall survive unless such termination is due to the MCOM's uncured breach or default of a material obligation hereunder, as provided in Section 8.2(a) above; provided however, that in any event of termination, all sublicenses to MCOM customers shall remain in full force and effect. If this Agreement is terminated pursuant to Section 8.2(a) because of MCOM'S uncured breach, MCOM shall cease modifying, making copies of, using or licensing the LICENSED SOFTWARE and all information and documentation provided by RSA to MCOM, other than copies of the RSA OBJECT CODE needed to fulfill commitments to MCOM customers as of the effective date of termination and such copies of the RSA OBJECT CODE, the associated user manuals and the BUNDLED PRODUCTS as are necessary to enable MCOM to perform its continuing support obligations to its customers.

(b) Sections 2.7, 8.3 and Articles IV and VII shall survive the termination of this Agreement; and

(c) nothing herein shall be construed to release any party from any liability for any obligation incurred through the effective date of termination (for example, without limitation, confidentiality) or for any breach of this Agreement prior to the effective date of such termination.

8.4 Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other party (or for any compensation to the other party) arising from or incident to any termination of this Agreement by such party that complies with the terms of this Agreement, whether or not such party is aware of any such damage, loss or expenses.

8.5 Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available.

## IX. MAINTENANCE

9.1 For each year commencing after the date of this Agreement, MCOM may elect to purchase an annual maintenance contract covering support to MCOM for the LICENSED SOFTWARE as part of the BUNDLED PRODUCTS distributed by MCOM at the one-time per year charge equal to [REDACTED] of the comparable annual maintenance fee charged to its customers (excluding such amounts attributable to the provision of NEW VERSIONS, which are included in the LICENSED SOFTWARE pursuant to this Agreement). RSA may cease to offer maintenance for all or portions of the LICENSED

SOFTWARE for future maintenance terms by notice delivered to MCOM ninety (90) days or more before the end of the then-current maintenance term; provided that such maintenance shall no longer be offered by RSA to any of its customers. RSA shall cease providing maintenance to MCOM at the end of the maintenance term during which this Agreement terminates.

9.2 During the first year following the execution of this Agreement and for periods for which MCOM has paid an annual maintenance fee RSA will provide MCOM with the following services:

(a) RSA will provide telephone support to MCOM during RSA's normal business hours. RSA may provide on-site support reasonably determined to be necessary by the parties at MCOM's designated location. RSA shall provide the support specified in this Section 9.2(a) to three (3) MCOM employees, as designated from time to time by MCOM, responsible for developing BUNDLED PRODUCTS, maintaining BUNDLED PRODUCTS, and providing support to all of MCOM's customers. For the purpose of clarification, RSA shall provide maintenance services directly to MCOM, as a single customer of RSA.

(b) In the event MCOM discovers an error in the LICENSED SOFTWARE that causes the LICENSED SOFTWARE not to operate in material conformance to RSA's published specifications therefor or any applicable user or programming documentation, MCOM shall submit to RSA a written report describing such error in sufficient detail to permit RSA to reproduce such error. Upon receipt of any such written report, the parties will use their reasonable business judgment to classify a reported error as either: (i) a "Level 1 Severity" error, meaning an error that causes the LICENSED SOFTWARE to fail to operate in a material manner or to produce materially incorrect results and for which there is no workaround or only a difficult workaround; or (ii) a "Level 2 Severity" error meaning an error that produces a situation in which the LICENSED SOFTWARE is usable but does not function in the most convenient or expeditious manner, and the use or value of the LICENSED SOFTWARE suffers no material impact. RSA will acknowledge receipt of an error report within two (2) business day and (A) will use its continuing best efforts to provide a correction for any Level 1 Severity error to MCOM as early as practicable; and (B) will use its reasonable best efforts to include a correction for any Level 2 Severity error in the next release of the LICENSED SOFTWARE.

## **X. GENERAL**

**10.1 Neither party may assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided however, that either party may assign this Agreement to any entity that acquires substantially all of its assets or business, or to a parent, subsidiary or successor entity in the event of a corporate reorganization whereby the assigning party or the existing holders of stock of such party hold a majority of the stock of such parent, subsidiary or successor assignee.**

**10.2 This Agreement (and all Exhibits hereto) constitutes the entire and only agreement between the parties relating to the subject matter hereof, and all other prior negotiations, representations, understandings and agreements are superseded hereby. No agreements altering or supplementing the terms hereof shall be effective except by means of a written document signed by the duly authorized representatives of both parties.**

**10.3 MCOM agrees to comply with all export laws, restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority, and not to export, or allow the export or reexport of, any LICENSED SOFTWARE or confidential information of RSA in violation of any such laws, restriction or regulations.**

**10.4 All notices, consents or approvals required by this Agreement shall be in writing and shall be deemed given five (5) days after being sent by certified or registered air mail, postage prepaid, or when received after being sent by facsimile (confirmed by such certified or registered mail) or by commercial overnight courier service with tracking capabilities, to the parties at the following addresses or such other addresses as may be designated in writing by the respective parties pursuant to the terms of this notice provision:**

**To MCOM:**

**Mosaic Communications Corporation  
650 Castro Street, Suite 500  
Mountain View, California 94041  
Attention: James H. Clark, President**

**To RSA:**

**RSA Data Security, Inc.  
100 Marine Parkway, Suite 500  
Redwood City, California 94065  
Attention: James Bidzos, President**

10.5 This Agreement shall be governed by and construed in accordance with, and any controversy or claim arising out of or relating to this Agreement shall be resolved in accordance with, the laws of the State of California and the United States, without regard to the conflicts of laws provisions thereof.

10.6 The failure of a party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to assert that right relative to the particular situation involved. The waiver by either party of a breach of any provisions contained in this Agreement shall be effective only if set forth in a writing signed by both parties and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

10.7 Headings included herein are for convenience only and shall not be used to interpret or construe this Agreement.

10.8 If any provision of this Agreement shall be held void, invalid, illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

10.9 The rights and remedies of a party set forth herein with respect to failure of the other party to comply with the terms of this Agreement (including, without limitation, rights of termination of this Agreement) are not exclusive, the exercise thereof shall not constitute an election of remedies and the aggrieved party shall in all events be entitled to seek whatever additional remedies may be available in law or in equity (including, without limitation, appropriate injunctive relief).

10.10 Each party hereto agrees to execute, acknowledge and deliver such further instruments and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

10.11 Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.

10.12 Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal).

10.13 The parties agree that terms and conditions of this Agreement, specifically including the consideration provided hereunder, is confidential and any disclosure related thereto is prohibited. The parties further agree that any press releases, announcements or other disclosure relating to the existence of this agreement, the relationship of the parties or any other matter related to this Agreement must be mutually agreed upon by the parties in writing prior to such disclosure, which agreement shall not be unreasonably withheld.

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~~10.14 The parties agree that additional licensees may be added under this Agreement, provided that such licensees agree in writing to be bound by the terms and conditions of this Agreement.~~

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this License and Stock Purchase Agreement as of the date first set forth above.

**Mosaic Communications Corporation**

By: James H. Clark  
James H. Clark, President

**RSA Data Security, Inc.**

By: D. James Bidzos  
D. James Bidzos, President



## **EXHIBIT A**

All license agreements for the license of object code for Bundled Products shall include substantially the following restrictions:

1. The licensee shall receive no greater rights with respect to the Bundled Products than those permitted in Section 2.1(b) of the Agreement.

2. The licensee shall agree not to remove or destroy any proprietary, trademark or copyright markings or confidentiality legends placed upon or contained within the Bundled Products or any related materials or documentation.

3. If applicable, the licensee shall agree that any sublicense of the Bundled Products to the United States Government or an agency thereof will state that such software is subject to limited rights in technical data and restricted rights applicable to commercial computer software developed entirely at private expense and that any documentation for the Bundled Products will include a restricted rights legend conforming to the Federal Acquisition Regulations (FARs) or the Department of Defense Federal Acquisition Supplement (DFARS), as applicable, then in effect that apply to software developed entirely at private expense.

4. The licensee shall agree not to export or reexport any Bundled Products or information pertaining thereto to any country for which a U.S. government agency requires an export license or other governmental approval without first obtaining such license or approval.

5. The licensee shall agree that, except for the limited licenses granted under the license agreement, MCOM and its licensors shall retain full and exclusive right, title and ownership interest in and to the Bundled Products and in any and all related patents, trademarks, copyrights or proprietary or trade secret rights.

6. MCOM shall have the right to terminate the license for licensee's breach of a material term. The licensee shall agree that, upon termination of the license, the licensee shall return to MCOM all copies of the object code and documentation for the Bundled Products or certify to MCOM that the licensee has destroyed all such copies.

7. The licensee shall agree not to reverse engineer, reverse compile, disassemble or modify the Bundled Product.

# Trademark Sheet

Revised 28 April 1994

RSA encourages its licensees to use RSA seals, logos and trademarks on licensee product data sheets, packaging and advertising... but it is important to use them properly.

When using RSA trademarks in product packaging, documentation or collateral materials, be sure to use the correct trademark designator: ® for registered trademarks, and ™ for claimed or pending trademarks. RSA trademarks and their correct designators are depicted below. To ensure proper usage, please allow RSA Marketing to review any materials using or mentioning RSA trademarks prior to general release.



Remember to obtain written permission before using the following RSA and RSA Labs corporate logos:



**RSA Digital Signature™, RSA Digital Envelope™**  
**RC2™ Symmetric Block Cipher, RC4™ Symmetric Stream Cipher**  
**BSAFE™, TPEM™**  
**Certificate Issuing System™, Co-Issuer Tool™**  
**MailSafe™**

**RSA Sign™, RSA Check™**  
**Because some things are better left unread.\***  
**The keys to privacy and authentication.\***  
**RSA Public Key Cryptosystem™**  
**MD™, MD2™, MD4™, MD5™**

**EXHIBIT 10.10**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, is entered into as of the twenty-first day of December, 1994, by and between the Board of Trustees of the University of Illinois, a body politic and corporate of the State of Illinois with principal offices at 354 Henry Administration Building, 506 Wright Street, Urbana, Illinois 61801 ("University"); Spyglass, Inc., an Illinois corporation with a principal place of business at 1800 Woodfield Drive, Savoy, Illinois, 61874 (Spyglass"); and Netscape Communications Corporation, f/k/a Mosaic Communications Corporation, a Delaware corporation, with a principal place of business at 650 Castro Street, Suite 500, Mountain View, California 94041 ("Netscape").

WHEREAS, University, through its National Center for Supercomputing Applications ("NCSA"), has developed and claims ownership of all copyrights and other proprietary rights in certain software and related documentation, which software enables a user of a client computer to browse and retrieve information from servers on the Internet adhering to "World Wide Web" standards and protocols;

WHEREAS, University has adopted and is using the trademarks MOSAIC™ and NCSA MOSAIC™ to identify itself as the source of web browsing software developed by NCSA or by others under the authority of the University;

WHEREAS, Spyglass and University have entered into the NCSA MOSAIC™ Software License Agreement, whereby Spyglass obtained certain exclusive rights to use the NCSA MOSAIC™ software, to make derivative works based on this software, and to commercially distribute such software and products based on those derivative works;

WHEREAS, Netscape was organized in April, 1994 by Mr. James Clark, the founder and former Chairman of the Board of Silicon Graphics, and Mr. Marc Andreessen, a graduate of the University who, among other things, was employed by NCSA and was one of the persons responsible for the basic design of the MOSAIC™ web browsing software and the development of the X Windows version of the NCSA MOSAIC™ product;

WHEREAS, Netscape recruited and hired several software developers who worked on the NCSA MOSAIC™ development project;

WHEREAS, Netscape developed and recently began to distribute web browsing software under the trademarks NETSCAPE™, NETSCAPE NAVIGATOR and "Mosaic NETSCAPE";

WHEREAS, Netscape has claimed that its software is superior in features and performance when compared to the NCSA MOSAIC™ software, and Netscape's NETSCAPE™ software competes with

commercial products marketed by Spyglass and licensees of University and Spyglass;

WHEREAS, Spyglass offered Netscape a license under the Spyglass licensing program, and Netscape rejected such offers and refused to enter into the licensing arrangement offered by Spyglass;

WHEREAS, University has claimed that Netscape has misused the trademarks and infringed and misappropriated the intellectual property of University, and therefore University has demanded, absent a license from Spyglass, that Netscape cease: (i) distributing the NETSCAPE™ software; (ii) using the MOSAIC™ trademark in its corporate and product names and in other communications; (iii) using other logos, words and names to falsely associate Netscape with University;

WHEREAS, Netscape and its employees have denied that the NETSCAPE™ software infringes or misappropriates any intellectual property rights of University, and University has not completed its investigations or pursued formal discovery into the facts relevant to the alleged infringement or misappropriation;

WHEREAS, Netscape has offered to have its software reviewed and compared to the University software and the University has declined this offer;

WHEREAS, on November 2, 1994, Netscape filed a lawsuit in the Northern District of California, under Netscape's former name Mosaic Communications Corporation, against University and Spyglass (the "Netscape Lawsuit"), seeking a declaratory judgment that Netscape has not infringed copyrights or misappropriated trade secrets of University or Spyglass, alleging intentional interference with prospective business relationships and unfair competition by University and Spyglass, and alleging that University has engaged in trade libel; and

WHEREAS, University, Spyglass and Netscape have resolved all matters in dispute under the terms contained herein.

NOW, THEREFORE, in consideration of the foregoing and of terms and conditions contained herein, the parties hereby agree as follows:

Section 1. Trade Name and Trademarks.

(a) Netscape will cease using the word "Mosaic" in its corporate name. Netscape represents and warrants that it changed its legal corporate name from Mosaic Communications Corporation to Netscape Communications Corporation and that this change became effective and was announced publicly on November 14, 1994.

This new name is acceptable to University. Hereafter, Netscape will not change its name to include any word that is confusingly similar to the word "Mosaic" or otherwise likely to create the false impression that Netscape is sponsored by, affiliated with or otherwise endorsed by University or NCSA.

(b) Netscape will cease using the mark "Mosaic NETSCAPE"™ or the word "Mosaic" to identify or otherwise refer to its products or services. Nothing herein shall be interpreted to preclude Netscape from using the mark NETSCAPE™ either alone or in conjunction with other words or symbols that are not confusingly similar to the word "mosaic" or otherwise likely to create the false impression that Netscape is sponsored by, affiliated with or otherwise endorsed by University, NCSA or Spyglass.

(c) Netscape will cease using the logo which contains the letter M in a circle superimposed over a depiction of six square or rectangular tiles of differing colors. When animated during use of the NETSCAPE™ software, each tile in the logo rotates on its vertical axis. Any new logo adopted by Netscape shall not be confusingly similar to the NCSA spinning globe logo, or otherwise contain any words, symbols or elements that create the false impression that Netscape is sponsored by, affiliated with or otherwise endorsed by University, NCSA or Spyglass.

(d) Netscape will implement the changes required under Sections 1(a), 1(b) and 1(c) in accordance with the following schedule:

(1) No later than fifteen (15) days following the effective date of this Settlement Agreement, appropriate changes shall be made to references contained in information (other than computer software) maintained in electronic files under Netscape's control made available to the public through network servers or other means.

(2) No later than thirty (30) days following the effective date of this Settlement Agreement, appropriate changes shall be made to all computer software under Netscape's control that contains or causes a computer to display any material required to be changed.

(3) No later than sixty (60) days following the effective date of this Settlement Agreement, appropriate changes shall be made to all printed materials hereafter used or distributed by Netscape.

(e) If within ninety (90) days following the effective date of this Settlement Agreement, University becomes aware of

any use by Netscape of any name, mark, logo or word that should have been changed under the terms of Sections 1(a), 1(b) or 1(c) within the time limits set forth in Section 1(d), University shall notify Netscape in writing, describing the alleged unauthorized use in detail. Except as provided below, all such unauthorized uses shall be corrected within thirty (30) days of such notice. If the unauthorized use involves information on Netscape's web server or information revealed by the use of Netscape computer software, the notice shall contain information concerning any browsing or software operating conditions that revealed the use to University. If the browsing or operating conditions can be replicated by Netscape, Netscape shall correct the use within thirty (30) days of the notice. University will consult with Netscape, as needed, in order to assist Netscape in replicating the condition. If University does not provide written notice pursuant to this Section 1(e) within ninety (90) days, or if Netscape timely corrects any replicated or, in the case of printed materials, other unauthorized use described in such notice, Netscape shall be deemed to have complied with Section 1(d). Nothing in this Section 1(e) shall be interpreted as relieving Netscape from any of its obligations to use its best efforts to comply with the provisions of Sections 1(a), 1(b), 1(c) or 1(d).

(f) For a period of three (3) months following the effective date of this Settlement Agreement, and notwithstanding the provisions of Sections 1(a), 1(d) and 1(e), Netscape shall be entitled to use the phrase: "Formerly Mosaic Communications Corporation" in conjunction with its new corporate name on the home page of its web server provided such phrase is accompanied by the following disclaimer:

Netscape Communications Corporation is not sponsored by, affiliated with or endorsed by the University of Illinois, the National Center for Supercomputing Applications, or Spyglass.

This disclaimer shall be conspicuous and appear in close proximity to the corporate name and "Formerly Mosaic Communications Corporation" phrase.

(g) Netscape shall not use the trademarks MOSAIC™, NCSA MOSAIC™ or the NCSA spinning globe logo in any advertising or promotional material or other information disseminated to the public except: (i) for the purpose of referring to the software of University, Spyglass or a licensee of either, or for the purpose of making comparisons between such products and the products of Netscape; (ii) to document links used by others that contain the word "mosaic"; or (iii) to refer or use the term "mosaic" as a third party's trademark or in a manner beyond the scope of the University's trademark rights in the term. Any references or comparisons shall not be false or misleading, and shall be in full compliance with all applicable laws and

regulations. Any use of University trademarks for the purposes stated in Section 1(g)(i) shall include the symbol " in superscript immediately following the mark, and be accompanied by an appropriate credit line such as:

MOSAIC™, NCSA MOSAIC™ and the NCSA spinning globe logo are trademarks of the University of Illinois

This statement need not include a reference to any trademark of University that is not used in the communication. When a federal registration is issued for a University trademark, the symbol used with that trademark shall, within a reasonable time, be changed to ® and the credit line shall be modified to reflect the registration status of that mark. University shall notify Netscape upon receipt of any such registration.

(h) University and Spyglass shall not use the trademarks NETSCAPE™, NETSCAPE NAVIGATOR, NETSITE, or the name "Netscape Communications" in any advertising or promotional material except for the purpose of referring to the software of Netscape or its licensees, or for the purpose of making comparisons between such products and the products of University, Spyglass, or the licensees of either. Any such references or comparisons shall be not false or misleading, and shall be in full compliance with all applicable laws and regulations. Any such use of Netscape trademarks shall include the symbol " in superscript immediately following the mark, and be accompanied by an appropriate credit line such as:

NETSCAPE™, NETSCAPE NAVIGATOR, AND NETSITE are trademarks of Netscape Communications Corporation

This statement need not include a reference to any trademark of Netscape that is not used in the communication. When a federal registration is issued for a Netscape trademark, the symbol used with that trademark shall, within a reasonable time, be changed to ® and the credit line shall be modified to reflect the registration status of that mark. Netscape shall notify University and Spyglass upon receipt of any such registration.

(i) University will give Netscape specific notice of any use by Netscape of the MOSAIC™ or NCSA MOSAIC™ trademarks that are not authorized under this Settlement Agreement when and as any such use becomes known to University following the period set forth in Section 1(d). Except as provided below, all such unauthorized uses shall be corrected within thirty (30) days of such notice. If the unauthorized use is in information on Netscape's web server or in software of Netscape, the notice shall include information concerning the browsing or software operating conditions that revealed the use to the University. If the browsing or operating conditions can be replicated by Netscape, Netscape shall correct the use within thirty (30) days



of the notice. University will consult with Netscape, as needed, in order to assist Netscape in replicating the condition. Nothing in this Section 1(i) shall be interpreted as relieving Netscape from any of its obligations to use its best efforts to comply with the provisions of Sections 1(a), 1(b), 1(c), 1(d) or 1(e).

(j) University will give Netscape notice of any browsing or software operating condition under which the simultaneous use of or reference to MOSAIC™ and NETSCAPE™ products disables the use of the MOSAIC™ product. Such notice shall be given when and as any such situation becomes known to University. The notice shall include information concerning the browsing or software operating conditions that revealed the situation to the University. If the browsing or operating conditions can be replicated by Netscape, Netscape shall correct its electronic files or software to eliminate the situation within thirty (30) days following receipt of the notice. University will consult with Netscape, as needed, in order to assist Netscape in replicating the condition.

(k) Notwithstanding Netscape's satisfaction of its obligations under Sections 1(d) or 1(e), the covenants under Sections 1(a), 1(b), 1(c), 1(g), 1(h), 1(i) and 1(j) shall continue and survive any expiration or termination of this Settlement Agreement.

## Section 2. Covenant Not To Assert.

(a) So long as Netscape (or any successor of Netscape) satisfies those obligations referred to in Sections 1(d) or 1(e) and Sections 1(f) and 8 when and as performance thereunder becomes due, and all payment obligations under Section 3 within the time limits set forth in Section 6(b), University will not assert against Netscape, its divisions, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, distributors, direct or indirect customers, successors, assigns, or any other persons, firms or corporations who are or might be liable, any claim for trademark infringement, false association, false advertising, unfair competition, tortious interference with contract or other legal claim arising out of the solicitation or hiring by Netscape of NCSA employees, the promotion, marketing and distribution of any Netscape products, or the use by Netscape of the word MOSAIC™ or other symbols or words heretofore used by Netscape to market itself and its products to the public. The foregoing covenant applies only to claims arising out of acts, events, occurrences or the conduct of Netscape and its officers, directors, employees, distributors, customers or agents, which took place prior to the effective date of this Settlement Agreement, or which may take place following the effective date within the time limits set forth in Sections 1(d) or 1(e), and Section 1(f). Subject to the performance by Netscape (or any

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written notice to Netscape, to conduct an audit on Netscape's premises of Netscape's files, records, data and other information (whether in print or electronic form) for evidence of Netscape's compliance with or breach of its covenant under the second sentence of this Section 2(c). Any such audit shall be conducted at University's expense by an independent expert with a professional background and training in the design and development of computer software, who shall be employed by one of the "Big Six" accounting firms or their consulting practices. No more than two (2) such audits shall be conducted during the Term of this Settlement Agreement. If at any time following such an audit, the auditor concludes in writing that Netscape has breached its covenant, University shall first notify Netscape of its concerns and thereafter the parties shall attempt to resolve the matter through good faith negotiations. If the matter can not be resolved to University's satisfaction, University may, notwithstanding the provisions of Section 2(h), pursue the matter through binding arbitration before the American Arbitration Association. Such arbitration shall be heard before a single arbitrator selected by mutual agreement of the parties, or if such an agreement can not be reached, by an individual selected by the American Arbitration Association. The arbitrator shall be a person with a professional background and training in the design and development of computer software. The issue to be tried before the arbitrator shall be limited to whether Netscape breached its covenant in the second sentence of this Section 2(c). If the arbitrator determines that there is clear and convincing evidence that the covenant has been breached, the remedy will be limited to an order to delete any code that is found to have been copied into the Netscape product at issue. If it is determined that Netscape did not breach the covenant, University shall pay for the cost of the arbitration and the costs and expenses, including reasonable attorneys fees, incurred by Netscape in defending the matter. If it is determined that Netscape breached the covenant, Netscape shall pay for the cost of the arbitration and the costs and expenses, including reasonable attorneys fees, incurred by University in pursuing the matter. The arbitrator shall have no authority or jurisdiction to grant any remedy or relief except as specifically provided for in this paragraph. All proceedings under this Section 2(c) shall be maintained in confidence by the parties, the auditor and the arbitrator. If University or Spyglass discloses publicly that University is proceeding under this Section 2(c), then University shall thereafter lose its right to proceed hereunder.

### Section 3. Consideration.

(a) In consideration for the covenants and releases contained herein, Netscape shall pay University [REDACTED], in the following three installments:

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Within five (5) days following the effective date of this Settlement Agreement: [REDACTED]

Within one (1) year following the effective date of this Settlement Agreement: [REDACTED]

Within two (2) years following the effective date of this Settlement Agreement: [REDACTED]

(b) If during the term of this Settlement Agreement, Netscape enters into: (i) a license agreement with one or more of the companies indicated below for the distribution of NETSCAPE NAVIGATOR Software by such company or companies; or (ii) any other form of agreement (other than an agreement covered by Section 3(c)) with one or more of those companies which would permit the distribution, remarketing or sublicensing to third parties of NETSCAPE NAVIGATOR Software by any of them, Netscape shall pay the amount indicated upon the execution of the agreement with the applicable company:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The foregoing obligation shall apply to any agreement with an entity other than a company indicated above if a specific purpose and effect of such agreement is to circumvent the provisions of this Section 3(b) through a remarketing, sublicensing or other agreement that would otherwise provide the same benefits to one of those companies, or if the agreement is made with an entity which is the successor in interest to one of those companies, whether by change of control, purchase of assets or by operation of law.

(c) If during the term of this Settlement Agreement: (i) a controlling interest in Netscape is acquired by one of the companies identified in Section 3(b) and such interest is sufficient to elect a majority of its Board of Directors; or (ii) if Netscape sells, assigns, conveys or otherwise transfers the underlying full and exclusive ownership rights in the NETSCAPE NAVIGATOR Software to one of those companies, Netscape shall pay or cause the acquiring company to pay [REDACTED] per

copy of NETSCAPE NAVIGATOR Software licensed, sold, or otherwise distributed by Netscape (in the case of a transfer of control in Netscape) or by the acquiring company (in the case of a transfer of the underlying ownership rights) for the balance of the term of this Settlement Agreement after the closing of the transaction. In the case of a transfer of such underlying ownership rights in the NETSCAPE NAVIGATOR Software, Netscape shall guarantee any payments to be made by an acquiring company under the preceding sentence, up to the amount received by Netscape for the ownership rights. The obligations of this Section 3(c) shall apply to any transaction with a company that is owned or controlled by one of the companies identified in Section 3(b).

(d) For the purposes of this Section 3, "NETSCAPE NAVIGATOR Software" shall be deemed to be any web browsing software that is marketed by Netscape under the trademarks NETSCAPE or NETSCAPE NAVIGATOR, or other web browsing software developed by or for Netscape and marketed under another trademark, where "web browsing software" is computer software which enables a user of a client computer to browse and retrieve information from servers on the Internet adhering to World Wide Web standards and protocols. NETSCAPE NAVIGATOR Software shall not include any web browsing software: (i) acquired from a third party which did not have access to the MOSAIC™ or NCSA MOSAIC™ software (other than the source code of an X Windows version of the NCSA MOSAIC™ software that University permitted individuals to develop on the Internet and licensed to individuals on a personal, non-commercial use basis); or (ii) to web browsing software developed for Netscape by a third party, where such developed software was designed and developed in a "clean room" environment by persons who have had no access to MOSAIC™ or NCSA MOSAIC™ software and who have never been employed by University or otherwise participated in the design, development, maintenance or support of MOSAIC™ or NCSA MOSAIC™ software.

#### Section 4. Consent of Spyglass.

(a) Spyglass hereby consents to the terms of this Settlement Agreement pursuant to Section 6(D)(1) of the NCSA MOSAIC™ Software License Agreement. As between itself and University, and as a further inducement to Netscape to enter into this Settlement Agreement, and for Netscape's benefit and reliance, Spyglass hereby waives any right to pursue against Netscape on behalf of University any intellectual property infringement claim covered by Section 2 that Spyglass could otherwise pursue under Sections 6(D)(2) or 6(D)(3) of that agreement or otherwise.

(b) University warrants that, except for the Spyglass agreement referred to hereinabove, it has not entered into any agreement granting any other party the right to enforce

University's intellectual property rights that are the subject of this Agreement.

(c) Spyglass warrants that it has not entered into any agreement granting any other party the right to enforce University's intellectual property rights that are the subject of this Agreement.

(d) The provisions of this Section 4 shall survive expiration or termination of this Settlement Agreement.

#### Section 5. Publicity.

(a) Except as may be expressly permitted in this Section 5, the parties shall maintain this Settlement Agreement in confidence and shall not, without the prior written consent of the other parties, provide a copy or otherwise disclose the terms and conditions of this Settlement Agreement to a third party; provided such consent shall not be required for any such disclosure to the parties' respective employees, officers, insurers, investors, potential investors, directors, trustees, employees, professional advisors, or the potential acquirors of Netscape or Spyglass or the ownership rights in their respective products, provided that any such person to whom this Settlement Agreement is disclosed agrees to maintain it in confidence. Such consent shall not be required with respect to disclosure of the terms of Sections 2(a), 2(b), 4, 6(d), 7 and 8 of this Settlement Agreement by Netscape, Spyglass or University to licensees, prospective licensees, joint venturers, partners, or other companies with which one of them is engaged in good faith negotiations for a business relationship, provided any such entity shall agree to maintain those terms in confidence. Such consent shall not be required with respect to any disclosure that may be compelled by an order of a court, government agency or otherwise pursuant to other legal process or regulation (including without limitation any orders, rules or regulations of the Securities and Exchange Commission); provided (except for disclosures made pursuant to any orders, rules, or regulations of the Securities and Exchange Commission) the party being required to make any such disclosure shall notify the other parties prior to making the disclosure so that a party affected by a compelled disclosure can seek to challenge the disclosure or to have certain information treated as confidential notwithstanding such disclosure; and provided further that, in the case of disclosure made pursuant to any orders, rules, or regulations of the Securities and Exchange Commission the disclosing party shall request confidential treatment of all dollar amounts specified in the Settlement Agreement. Netscape may include in any document filed with the Securities and Exchange Commission a statement substantially in the form of the statement attached hereto as Exhibit A.

(b) Immediately following the final execution of this Settlement Agreement, the parties will issue the joint press release attached hereto as Exhibit B. Thereafter, except as provided in Section 5(c) or Section 5(d), the parties shall limit their comments to the press concerning the terms of the Settlement Agreement, whether in response to specific inquiries from the press or otherwise, to the statements set forth in the press release.

(c) Nothing in this Settlement Agreement shall prevent Netscape from disclosing publicly: (i) that Netscape is of the opinion and belief that it has not infringed University's copyrights; (ii) that Netscape is of the opinion and belief that it has not misappropriated University's trade secrets; (iii) that Netscape has settled this dispute and has the right to market and distribute Netscape's products without interference from University or Spyglass; or (iv) accurate historical and biographical facts related to the dispute leading to this Settlement Agreement. Notwithstanding the foregoing, Netscape shall not state or imply to any person or entity not a party to this Agreement that University or Spyglass has acknowledged that Netscape has not infringed University's copyrights or misappropriated University's trademarks.

(d) Nothing in this Settlement Agreement shall prevent University or Spyglass from disclosing publicly: (i) University has protected its intellectual property rights in the MOSAIC™ software by entering into this Settlement Agreement; (ii) that University and Spyglass have protected the MOSAIC™ licensing program; (iii) that MOSAIC™, NCSA MOSAIC™ and "Enhanced" NCSA MOSAIC™ are trademarks of University that are used by Spyglass and other licensees; or (iv) accurate historical and biographical facts related to the dispute leading to this Settlement Agreement. Notwithstanding the foregoing, University and Spyglass shall not state or imply to any person or entity not a party to this Agreement: (i) that Netscape has infringed University's copyrights or misappropriated University's trade secrets by virtue of the conduct of Netscape (or its directors, officers, employees or agents) which is the subject of this Settlement Agreement; or (ii) that Netscape does not have the right to market and distribute Netscape's products.

(e) Nothing contained in the press release or other statements permitted to be made under the terms of this Settlement Agreement shall be: (i) deemed to be an admission on the part of any party as to the truth or accuracy of any factual statement or legal position contained therein; or (ii) otherwise used by a party in subsequent proceedings involving the parties in any manner adverse to the interest of the other parties, it being expressly understood that the language of the press release and other statements has been the subject of good faith negotiations between the parties in the spirit of compromise and resolution of the disputes between the parties.

(f) The obligations under this Section 5 shall survive any expiration or termination of this Settlement Agreement.

Section 6. Term, Termination and Breach

(a) The term of this Settlement Agreement shall be for two years from the effective date. This Settlement Agreement may be terminated prior to expiration only pursuant to Section 6(b) or Section 6(e).

(b) If Netscape fails to make any payment when due hereunder, and such payment remains outstanding for more than thirty (30) days after its due date, University may terminate this Settlement Agreement by giving written notice to Netscape, unless Netscape makes such payment within then (10) days of such written notice.

(c) Any breach by a party shall not affect the rights hereunder of the non-breaching parties. Any breach or alleged breach by University or Spyglass other than a breach of Section 2 or Section 4 shall not affect Netscape's obligations to pay the amounts under Section 3 when and as they become due and shall not affect Netscape's obligations under Section 8. Subject to any limitations on remedies contained elsewhere in this Agreement, a non-breaching party may pursue all other available legal or equitable remedies (excluding termination, rescission or the like) against the breaching party, including an injunction against further breach of the parties' obligations under Section 5.

(d) The expiration or termination of this Settlement Agreement shall not affect the rights of any licensees or other direct or indirect customers of Netscape (or of any successor or assignee of Netscape) under licenses or other agreements entered into prior to the expiration or termination, except that: (i) a license or other agreement which is the subject of Section 3(b) may be terminated if this Settlement Agreement is terminated pursuant to Section 6(b) for failure to make the applicable payment due under Section 3(b); and (ii) a license or other agreement which is entered into after the closing of a transaction which is the subject of Section 3(c) may be terminated if this Settlement Agreement is terminated pursuant to Section 6(b) for failure to make the applicable payment due under Section 3(c). Nothing in this Section 6(d) or elsewhere in this Settlement Agreement shall be construed to limit the rights of any licensees or other direct or indirect customers of Netscape (or any successors or assigns of Netscape) under licenses or other agreements entered into after any expiration or termination of this Settlement Agreement unless the Settlement Agreement is terminated for non-payment under Section 6(b).

(e) Netscape shall have the right to terminate this

Settlement Agreement by giving written notice to University after complying with all of Netscape's obligations under Sections 1(d) or 1(e) and Sections 1(f), 3 and 8; provided however, that Netscape's obligations under Sections 3(b) and Sections 3(c) shall survive any such termination and remain in effect for two (2) years from the effective date of this Settlement Agreement.

Section 7. Releases.

(a) Upon the full and complete performance by Netscape (or any successor of Netscape) of the obligations under Sections 1(d) or 1(e), and Sections 1(f) and 8 when and as performance thereunder becomes due, and receipt by University of all sums due under Section 3 within the time limits of Section 6(b), University shall release and discharge Netscape, its divisions, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, distributors, direct or indirect customers, successors and assigns, and all other persons, firms or corporations who are or might be liable ("Released Parties"), from any and all claims, demands, damages, actions, causes of action, or suits, whether known or unknown, which University might now have, or ever had, or might but for this release in full have in the future, against the Released Parties based on any matter which is the subject of University's covenant under Section 2(a). Upon the granting of such release, University will acknowledge full settlement and satisfaction of all such claims which University might have against the Released Parties.

(b) Upon the receipt by University of all sums due under Section 3 within the time limits of Section 6(b), and full and complete performance by Netscape of the obligations under Section 8, University shall release and discharge Netscape, its divisions, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, distributors, direct or indirect customers, successors and assigns, and all other persons, firms or corporations who are or might be liable ("Released Parties"), from any and all claims, demands, damages, actions, causes of action, or suits, whether known or unknown, which University might now have, or ever had, or might but for this release in full have in the future, against the Released Parties based on any matter which is the subject of University's covenant under Section 2(b). Upon the granting of such release, University will acknowledge full settlement and satisfaction of all such claims which University might have against the Released Parties.

(c) Spyglass hereby releases and discharges Netscape, its divisions, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, distributors, direct or indirect customers, successors and assigns, and all other persons, firms or corporations who are or might be liable ("Released Parties"), from any and all claims, demands, damages, actions, causes of action, or suits, whether known or unknown, which Spyglass might



now have, or ever had, or might but for this release in full have in the future, against the Released Parties based on any matter referred to in Section 2(a) or 2(b), including any such matter arising after the effective date of this Settlement Agreement. Spyglass hereby acknowledges full settlement and satisfaction of all such claims which Spyglass may have against the Released Parties.

(d) Netscape hereby releases and discharges: (i) University, its trustees, officers, employees, agents, successors and assigns; (ii) Spyglass, its divisions, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, distributors, direct or indirect customers, successors and assigns; and (iii) all other persons, firms or corporations who are or might be liable ("Released Parties"), from any and all claims, demands, damages, actions, causes of action, or suits, whether known or unknown, which Netscape might now have, or ever had, or might but for this release in full have in the future, against the Released Parties based on the assertion by University and/or Spyglass of the claims referred to in Section 2(a) or Section 2(b) prior to the effective date of this Settlement Agreement and any claims asserted by Netscape in the Netscape Lawsuit, Netscape hereby acknowledges full settlement and satisfaction of all such claims which Netscape may have against the Released Parties.

(e) The parties specifically waive the provisions of Section 1542 of the Civil Code of California, and any similar provisions of applicable law of any other jurisdiction. The provisions of Section 1542 of the Civil Code of California read as follows:

A general release does not extend to claims which the creditor does not know of or suspect to exist in his favor at the time of executing the release which, if known by him must have materially affected his settlement with the debtor.

(f) It is further understood and agreed that nothing in this Settlement Agreement shall be construed as an admission of liability on the part of the other parties, or any other persons, and any such liability by them is hereby expressly denied.

#### Section 8. Dismissal of Netscape Lawsuit With Prejudice.

Within two (2) days following the execution of this Settlement Agreement, Netscape shall cause to be filed with the court a motion to dismiss the Netscape Lawsuit in its entirety with prejudice.

Section 9. Notices and Payments.

(a) Any notice given under this Settlement Agreement will be in writing, will reference this Settlement Agreement, and will be deemed given: (i) when delivered personally; (ii) when sent by confirmed telex or facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth below or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 9(a):

If to University:

Office of the  
Vice Chancellor for  
Research  
Attn: Licensing  
University of Illinois  
601 East John Street  
Champaign, IL 61820

Fax: (217) 244-3716

With a copy to:

Office of the  
University Counsel  
Attn: Ms. Marcia Rotunda  
University of Illinois  
258 Henry Administration  
Bldg.  
506 South Wright Street  
Urbana, IL 61821

Fax: (217) 244-2370

If to Spyglass

Spyglass, Inc.  
1800 Woodfield Drive  
Savoy, IL 61874

Attn: Douglas P. Colbeth  
President & CEO

Fax: (217) 355-8925

With a copy to:

Michael J. Bevilacqua  
Hale and Dorr  
60 State Street  
Boston, MA 02109

Fax: (617) 526-5000

If to Netscape:

Netscape Communications  
650 Castro Street  
Suite 500  
Mountain View, CA 94041  
Attn: James H. Clark  
Chairman & CEO

Fax: (415) 254-2601

With a copy to:

Mr. Robert Barr  
Brobeck, Phleger &  
Harrison  
Two Embarcadero Place  
2200 Geng Road  
Palo Alto, CA 94303

Fax: (415) 496-2736

(b) All payments due hereunder shall be made payable to University and mailed to the Office of the Vice Chancellor for Research at the address indicated above.

Section 10. Governing Law.

This Settlement Agreement is to be governed by and construed in accordance with the laws of the State of Illinois.

Section 11. Amendment.

This Settlement Agreement shall be amended only by the mutual written agreement of the parties.

Section 12. Assignment.

Any party shall have the right to assign this Settlement Agreement without the consent of the other parties. This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of a party.

Section 13. Entire Agreement.

This Settlement Agreement embodies the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all previous communications and understandings, either verbal or written, between the parties relating to this Settlement Agreement. The appendices attached hereto are hereby incorporated by reference as if set out in full.

Section 14. Counterparts.

This Settlement Agreement may be executed in two or more counterparts, all of which taken together shall constitute a single, legally binding contract.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be duly executed on the date set forth under their signatures below, and effective as of the date of the last party to sign.

THE BOARD OF TRUSTERS OF  
THE UNIVERSITY OF ILLINOIS

By: Craig S. Bazzani  
Name: CRAG S. BAZZANI  
Title: COMPTROLLER  
Date: 12/21/94

ATTEST: Michèle M. Thompson  
Name: Michèle M. Thompson  
Title: Secretary

APPROVAL RECOMMENDED:

Richard C. Alkire  
Richard C. Alkire  
Vice Chancellor for Research  
Date: 12/21/94

James R. Bottum  
James R. Bottum,  
Deputy Director, NCSA  
Date: 12/21/94

FORM APPROVED:

Marcia A. Rotunda  
Marcia A. Rotunda,  
University Legal Counsel  
Date: 12/21/94

SPYGLASS, INC.

By: Douglas P. Courth  
Name: Douglas P. Courth  
Title: President  
Date: DEC 21, 1994

NETSCAPE COMMUNICATIONS  
CORPORATION

By: Marc Andreessen  
Name: MARC ANDREESSEN  
Title: VP TECHNOLOGY  
Date: DECEMBER 21, 1994

## EXHIBIT A

On December 20, 1994, the Company entered into a Settlement Agreement with the University of Illinois and Spyglass. Under the terms of the Agreement, the University and Spyglass agreed not to assert any claim of trademark infringement arising out of the Company's prior use of the word "Mosaic" or other symbols or words used by the Company to market itself or its products. The University and Spyglass further agreed not to assert against the Company any claim of copyright infringement, trade secret misappropriation or related claims based on the Company's use of former University of Illinois employees in the development of the Company's present and future products. As consideration for these covenants not to assert, the Company agreed to make certain payments to the University of Illinois over a two year period. If the Company does not make these payments within the specified time periods, the University or Spyglass could assert claims of intellectual property infringement against the Company. Although the Company believes that it has not infringed the intellectual property rights of the University of Spyglass, such litigation could have a material adverse effect on the Company, and there can be no assurances that such litigation will be resolved in the Company's favor.

## EXHIBIT B

CHAMPAIGN, Ill, December 21, 1994 - the University of Illinois at Urbana-Champaign and Netscape Communications (formerly known as Mosaic Communications) have reached an agreement that leaves Netscape free to market its products without interference. Also confirmed in the agreement was Netscape's decision to change its corporate name and not use the names MOSAIC or NCSA MOSAIC, which are trademarks of the university.

The MOSAIC web browser software was developed at the university's National Center for Supercomputing Applications. Marc Andreessen and several other founders of Netscape Communications were members of the NCSA development team that developed this software, which quickly became the standard among graphical web browsers. On May 19, 1994, the university entered into a master commercial licensing agreement for NCSA MOSAIC with Spyglass, Inc., of Naperville, Illinois, a company also founded by university alumni.

Under the terms of the December 21 agreement, Netscape is free to market its software without a license from the university or Spyglass and Netscape will not use the MOSAIC trademark or logo to identify its products. The university is not asserting any wrongdoing on the part of Netscape. Other details of the agreement were not disclosed.

"Everyone is a winner in our agreement with Netscape," said Michael Aiken, chancellor of the university. "We have protected our intellectual property and our licensees. Netscape is free to compete actively in a dynamic marketplace, and we are able to point with pride to the fact that several alumni of the university are principals of these vigorous companies."

"We are pleased that the university is not interfering with the marketing of our independently developed products and that their alumni are not being accused of doing something wrong," said Jim Clark, chairman and CEO of Netscape Communications.

**EXHIBIT 10.11**



1. **PARTIES:** THIS LEASE, is entered into on this 14<sup>th</sup> day of October, 1994, between Ellis-Middlefield Business Park, a California Limited Partnership, whose address is 10600 North De Anza Boulevard, Suite 200, Cupertino, CA 95014 and Mosaic Communications Corporation, a Delaware Corporation, whose address is 501 East Middlefield Road, Mountain View, CA 94043, hereinafter called respectively Landlord and Tenant.

2. **PREMISES:** Landlord hereby leases to Tenant, and Tenant hires from Landlord those certain Premises with the appurtenances, situated in the City of Mountain View, County of Santa Clara, State of California, and more particularly described as follows, to-wit: that certain real property commonly known and designated as 487 and 501 East Middlefield Road ("Building 1" and "Building 2" respectively) consisting of two 2-story office/R&D buildings of 49,362 square feet each and totaling 98,724 rentable square feet ("Buildings") including 375 parking stalls as outlined on Exhibit "A".

3. **USE:** Tenant shall use the Premises only for the following purposes and shall not change the use of the Premises without the prior written consent of Landlord: Office, research and development, marketing, light manufacturing, storage and other incidental uses. Landlord makes no representation or warranty that any specific use of the Premises desired by Tenant is permitted pursuant to any Laws.

4. **TERM AND RENTAL:** The term ("Lease Term") shall be for eighty-four (84) months, commencing, on Substantial Completion of the Tenant Improvements (as those terms are defined in paragraph 7) for Building 2, ("Commencement Date"), and ending on that date eighty-four calendar months after the Commencement Date (the "Expiration Date"), unless the lease is sooner terminated in accordance with its terms. "The Building 1 Rent Commencement Date" shall mean the earlier to occur of (i) December 1, 1995, or (ii) Substantial Completion of the Tenant Improvements for Building 1 and acceptance of Building 1 by Tenant. In addition to all other sums payable by Tenant under this Lease, Tenant shall pay as base monthly rent ("Base Monthly Rent") for the Premises the following amounts:

Month 1 through Building 1 Rent Commencement Date:	\$61,702.00 per month
Building 1 Rent Commencement Date through Month 42:	\$123,405.00 per month
Month 43 through Month 84:	\$138,213.60 per month

Base Monthly Rent shall be due on or before the first day of each calendar month during the Lease Term. All sums payable by Tenant under this Lease shall be paid in lawful money of the United States of America, without offset or deduction (except as specifically set forth herein), and shall be paid to Landlord at the address specified in paragraph 1 of this Lease or at such place or places as may be designated in writing from time to time by Landlord. Base Monthly Rent for any period less than a calendar month shall be a pro rata portion of the monthly installment.

5. **SECURITY DEPOSIT:**

A. Upon execution of this Lease, Tenant shall deliver to Landlord a standby letter of credit in the face amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00) and in form reasonably acceptable to Landlord, as security for Tenant's performance of its obligations hereunder. Tenant shall renew or replace such letter of credit as necessary during the term of this Lease so as to maintain in effect a letter of credit during the entire term of this Lease, as the same may be extended, plus a period of thirty (30) days (herein referred to as the "Letter of Credit"), subject to the provisions of subparagraph D below. At least thirty (30) days prior to expiration of any letter of



credit, the term thereof shall be renewed or extended for a period of at least one (1) year. Tenant's failure to so renew or extend the letter of credit shall be a material default of this Lease by Tenant.

B. Landlord may make partial drawings under the Letter of Credit in an amount sufficient to remedy a default by Tenant upon certification to the issuer that an Event of Default (taking into account any applicable notice and cure periods) has occurred under this Lease and Landlord is entitled under this paragraph to draw on the Letter of Credit. Landlord shall be entitled to make complete drawings against the Letter of Credit provided that an Event of Default has occurred under paragraph 22(A) of this Lease, in that Tenant has defaulted in the payment of Base Monthly Rent and all applicable notice and cure periods with respect to such default have run. In the event that Landlord makes a complete drawing under the Letter of Credit, Landlord shall hold the balance of any proceeds received as a cash security deposit pursuant to subparagraph C.

C. The Letter of Credit, any cash received by Landlord after drawing on the Letter of Credit and any cash deposited by Tenant with Landlord pursuant to subparagraph D are referred to herein as the "Security Deposit." If Tenant fails to perform its obligations under the Lease, Landlord may draw on all or any part of the Security Deposit for the payment of any Base Monthly Rent or other sum in default or to remedy any other default of Tenant hereunder, to the extent permitted by law. If any portion of the Security Deposit is drawn upon, Tenant, upon demand by Landlord, shall promptly either restore the Security Deposit to the full original amount (as the same may have been decreased pursuant to this paragraph) or obtain an increase in the Letter of Credit which constitutes the Security Deposit so that the undrawn amount of the Letter of Credit equals the required amount of the Security Deposit. Landlord shall invest the any portion of the security deposit held by Landlord as a cash security deposit in an interest bearing account, such interest to be paid to Tenant quarterly.

D. Notwithstanding the foregoing, Tenant shall be entitled (i) to reduce the face value of the Letter of Credit to Three Hundred Thousand and No/100 Dollars (\$300,000.00), in the event that Tenant achieves four (4) consecutive quarters of profitability; and (ii) to replace the Letter of Credit with a cash security deposit in the amount of one hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) in the event that Tenant's net worth exceeds Twenty-Five Million and No/100 Dollars (\$25,000,000.00). Satisfaction of the foregoing criteria shall be determined based on Tenant's most recent audited financial statements.

E. Cash deposits shall be returned to Tenant within ten (10) days after the Expiration Date and surrender of the Premises to the Landlord, (i) less any amount deducted by Landlord in accordance with this paragraph and Landlord's written notice itemizing the amounts and purposes for such deduction, (ii) plus any interest payable to Tenant pursuant to subparagraph C. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said deposit to Landlord's successor in interest.

6. **LATE CHARGES:** Tenant hereby acknowledges that late payment by Tenant to Landlord of Base Monthly Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative, processing, accounting charges, and late charges, which may be imposed on Landlord by the terms of any contract, revolving credit, mortgage or trust deed covering the Premises. Accordingly, if any installment of Base Monthly Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee when due, Tenant shall pay to Landlord a late charge equal to five (5%) percent of such overdue amount which late charge shall be due and payable on the same date that the overdue amount in question was due. Landlord agrees to waive said late charge in the event all amounts set forth in any notice served upon Tenant by Landlord to pay rent or quit in connection with the overdue amount are paid in full within ten (10) days after Landlord's service upon Tenant of such notice to quit or pay rent. The parties hereby agree that such late charge represents a fair and reasonable

estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

## **7. CONSTRUCTION AND POSSESSION:**

**A. Landlord's Obligation to Construct:** Tenant desires that certain alterations/improvements be made to the Building 2 prior to the Commencement Date and to Building 1 prior to Tenant's occupancy of Building 1 ("Tenant Improvements"). Landlord agrees that it will construct the Tenant Improvements. The Tenant Improvements for Building 2 shall be constructed by Sobrato Construction, as general contractor, in accordance with (i) working drawings and specifications prepared by Reel Grobman Associates, to be attached as Exhibit "B" ("Building 2 Working Drawings") and (ii) all existing applicable municipal, local, state and federal laws, statutes, rules, regulations and ordinances. Tenant Improvements for Building 1 will be constructed in accordance with (i) working drawings and specifications prepared by Tenant's architects ("Building 1 Working Drawings") and (ii) all existing applicable municipal, local, state and federal laws, statutes, rules, regulations and ordinances. Building 1 working Drawings and Building 2 Working Drawings are sometimes referred to herein as the "Working Drawings."

**B. Contribution to Tenant Improvement Costs:** Landlord shall be responsible for and shall pay the cost of the Tenant Improvements up to the amount of Four Hundred Thousand Dollars (\$400,000.00) ("Tenant Improvement Allowance") but subject to the provisions of subparagraph 7(C) below. No more than half of the Tenant Improvement Allowance shall be used by Tenant for Building 2. The cost of the Tenant Improvements shall include a fee of (i) eight percent (8%) of all hard construction costs actually incurred and paid by the general contractor to subcontractors for construction of the Tenant Improvements for Sobrato Construction Corporation construction overhead, supervision and profit, and (ii) up to 15¢ per square foot to be reimbursed to Tenant for programming, space planning and design services provided by Reel Grobman. Costs in excess of said Tenant Improvement Allowance, if any, shall be paid for by Tenant in cash within fifteen (15) days following Substantial Completion of the Tenant Improvements. All costs for Tenant Improvements shall be reasonably documented to and verified by Tenant.

Landlord shall make any modifications to the existing Premises required, now or in the future, by the City of Mountain View or any other governmental authority having jurisdiction over the Premises as a condition of Tenant's occupancy of the Premises with respect to applicable building codes and the Americans with Disabilities Act. Such modifications shall not be deemed to constitute "Tenant Improvements" for purposes of this paragraph 7, and the cost of making such modifications shall be paid by Landlord and shall not be deducted from the Tenant Improvement Allowance. Landlord shall not be obligated, however, to make any modifications to the existing improvements if such requirements result from the installation of the Tenant Improvements or from Alterations.

**C. Tenant Improvement Plans and Cost Estimate:** Tenant, at Tenant's expense, shall supply Landlord with completed working drawings and specifications ("Working Drawings") for the Tenant Improvements for (i) Building 2 by November 1, 1994 and (ii) Building 1 by October 1, 1995. Based on this information, Landlord shall prepare a fixed price proposal including a reasonable contingency of five percent (5%) for unexpected costs incurred by Landlord for the Tenant Improvement costs ("Budget") within ten (10) days of receipt of the Working Drawings. The Budget shall be based on competitive bids from at least two (2) subcontractors approved by Landlord and Tenant for each item of work consisting in excess of Ten Thousand and No/100 Dollars (\$10,000.00). Tenant shall approve the Budget (or modify the Working Drawings in which event Landlord shall revise its proposal accordingly) within five (5) days thereafter. In the event the Proposal exceeds the Tenant Improvement Allowance,

Landlord shall have the right to require Tenant to deposit cash with Landlord equal to the difference between the Budget and the Tenant Improvement Allowance ("Tenant's TI Payment"). Landlord agrees that it will construct the Tenant Improvements in accordance with the Working Drawings so that Building 2 is Substantially Complete no later than December 15, 1994 and Building 1 is Substantially Complete no later than December 1, 1995 (or on such other date as the parties may agree). If the cost to complete the Tenant Improvements exceeds the Budget, Landlord shall be responsible for such costs. If the cost to complete the Tenant Improvements is less than the Budget and Tenant has provided a Tenant's TI Payment, Landlord shall refund to Tenant the difference between the amount of the cost to complete the Tenant Improvements and the Budget up to a maximum amount of Tenant's TI Payment. In the event that Substantial Completion of the Tenant Improvements for Building 2 or Building 1 is delayed for any of the following reasons, the Commencement Date (in the case of a delay affecting Substantial Completion of the Tenant Improvements for Building 2) or the Building 1 Rent Commencement Date (in the case of a delay affecting Substantial Completion of the Tenant Improvements for Building 1) shall be deemed to occur one (1) calendar day in advance of Substantial Completion for each day of delay: (i) Tenant fails to provide the Working Drawings when required above, or (ii) Tenant fails to approve the Budget within five (5) days as provided above, (iii) Tenant makes any changes to the Working Drawings which cause Landlord's construction schedule to be delayed, or (iv) Tenant or its employees, contractors, agents or invitees delay the construction and completion of the Tenant Improvements in any other manner, the Commencement Date shall occur one (1) day in advance of Substantial Completion as defined below for each day of delay.

**D. Substantial Completion:** The terms "Substantial Completion" and "Substantially Complete" shall mean that (i) construction of the Tenant Improvements for the Building has been completed in accordance with the Working Drawings approved by Tenant to an extent that would permit Tenant to use Building for its intended purpose as certified by Tenant's architect; (ii) Building is in a "broom clean" finished condition; (iii) all utilities to be supplied to Building are available for Tenant's use; (iv) the City of Mountain View has agreed to allow Tenant to occupy the Premises as evidenced by a signed final inspection card or certificate of occupancy as applicable; and (v) access to the Premises has been tendered by Landlord to Tenant. If Landlord, for any reason whatsoever, other than a breach by Landlord of its obligations hereunder cannot deliver possession of the said Premises to Tenant by the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom; but in that event the Commencement Date, the Building 1 Rent Commencement Date and Expiration Date of the Lease and all other dates affected thereby shall be revised to conform to the date of Landlord's delivery of possession. Notwithstanding the foregoing, in the event that Substantial Completion of the Tenant Improvements for Building 2 has not occurred by February 15, 1994, then Tenant shall have the right to terminate this Lease by providing written notice to Landlord of such election Tenant's its sole and exclusive remedy for Landlord's failure to achieve Substantial Completion.

**8. ACCEPTANCE OF POSSESSION AND COVENANTS TO SURRENDER:** Landlord shall deliver the Premises to Tenant with all building systems (HVAC, electrical, plumbing and the elevator), the roof membrane and parking lot in good condition and repair. On the Commencement Date, Landlord shall deliver the keys to the Premises to Tenant and Tenant shall accept possession from Landlord subject to a "punchlist" to be created by Tenant and completed by Landlord, at Landlord's expense, of those items which Tenant reasonably believes were not in good condition and repair as of the Commencement Date. Landlord agrees that all new construction shall carry a one year warranty and that it will pass through any construction and equipment warranty with respect to the new Tenant Improvements. Tenant further agrees on Expiration Date, or on the sooner termination of this Lease, to surrender the Premises to Landlord in the same condition as received, reasonable wear and tear excepted. "Good condition" shall mean that the interior walls, floors, suspended ceilings, and carpeting within the Premises will be cleaned to the same condition as existed at the commencement of the Lease, normal wear and tear excepted. Tenant agrees, at its sole

cost, to remove all phone and data cabling from the suspended ceiling and repair or replace broken ceiling tiles, and relevel the ceiling if required. Tenant on or before the Expiration Date or sooner termination of this Lease, shall remove all its personal property and trade fixtures from the Premises, and all property and fixtures not so removed shall be deemed to be abandoned by Tenant. Tenant shall remove, at Tenant's sole cost and expense, any Alterations which Landlord indicated at the time of its consent it would require be removed prior to the Expiration Date pursuant to paragraph 10 below. Such repair and restoration shall include causing the Premises to be brought into compliance with all applicable building codes and laws in effect at the time of the removal to extent such compliance is necessitated by the repair and restoration work. If the Premises are not surrendered at the Expiration Date in the condition required by this paragraph, Tenant shall indemnify, defend, and hold harmless Landlord against actual loss or liability resulting from delay by Tenant in so surrendering the Premises.

**9. USES PROHIBITED:** Tenant shall not commit, or suffer to be committed, any waste upon the said Premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant in or around the Premises or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls, or ceiling which endanger the structure, or use any machinery or apparatus which will vibrate or shake the Premises to such an extent as to cause material damage, or in violation of any laws, discharge or release any, or place any hazardous materials in the drainage system of, or upon or in the soils surrounding the Building. No materials, supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature or any waste materials, refuse, scrap or debris (other than vehicles parked in marked parking areas, deliveries in the ordinary course of tenant's business and trash placed in containers or areas designated by landlord for such purpose) shall be stored upon or permitted to remain on any portion of the Premises outside of the Building proper without Landlord's prior approval, which approval may be withheld in its sole discretion.

**10. ALTERATIONS AND ADDITIONS:** Tenant shall be entitled without obtaining Landlord's consent, to make any alteration or addition to the Premises ("Alterations") which (i) does not affect the structure of the Building, (ii) cost does not exceed \$15,000 per alteration nor an aggregate of \$25,000 in any twelve (12) month period. All other Alterations shall require Landlord's consent, which consent shall not be unreasonably withheld. In order to obtain consent, Tenant shall deliver to Landlord the proposed architectural and structural plans for all such Alterations. Landlord shall indicate to Tenant in writing within ten (10) business days following receipt of Tenant's request, whether or not Landlord will require Tenant to remove such Alteration at the Expiration Date. After having obtained Landlord's consent, Tenant agrees that it shall not proceed to make such Alterations until Tenant has obtained all required governmental approvals and permits. Tenant further agrees to provide Landlord (i) written notice of the anticipated start date and actual start date of the work, and (ii) a complete set of half-size (15" X 21") vellum as-built drawings if available. All Alterations shall be constructed in compliance with applicable buildings codes and laws. Any Alterations, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to Landlord, but shall nevertheless be subject to removal by Tenant as provided herein. All Alterations shall be maintained, replaced or repaired by Tenant at Tenant's sole cost and expense.

**11. MAINTENANCE OF PREMISES:**

**A. Landlord's Maintenance:** Landlord at its sole cost and expense, shall maintain in good condition, order, and repair, and replace as and when necessary, the foundation, exterior load bearing walls and roof structure of the Buildings.

**B. Tenant's Maintenance:** Tenant shall, at its sole cost, keep and maintain, repair and replace, all other portions of the Premises and appurtenances and every part hereof, including but not limited to, roof membrane, glazing, sidewalks, parking areas, elevator, telephone, plumbing, electrical and HVAC systems, and the

Tenant Improvements in good and sanitary order, condition, and repair. Tenant shall provide Landlord with a copy of a service contract between Tenant and (i) a licensed air-conditioning and heating contractor which contract shall provide for periodic maintenance in conformance with the manufacturer's recommendations of all air conditioning and heating equipment at the Premises; and (ii) a licensed elevator maintenance contractor which contract shall provide for periodic maintenance in conformance with the manufacturer's recommendations of all elevator related systems. Tenant shall pay the cost of all air-conditioning heating, and elevator equipment repairs or replacements which are either excluded from such service contract or any existing equipment warranties. All wall surfaces and floor tile are to be maintained in an as good a condition as when Tenant took possession free of holes, gouges, or defacements.

Tenant shall also be responsible, at its sole cost and expense for the preventive maintenance of the membrane of the roof, which responsibility shall be deemed properly discharged if (i) Tenant contracts with a licensed roof contractor who is reasonably satisfactory to both Tenant and Landlord, at Tenant's sole cost, to inspect the roof membrane at least every six (6) months, with the first inspection due the sixth (6th) month after the Commencement Date, and (ii) Tenant performs, at Tenant's sole cost, all preventive maintenance recommendations made by such contractor within a reasonable time after such recommendations are made. Such preventive maintenance might include acts such as clearing storm gutters and drains, removing debris from the roof membrane, trimming trees overhanging the roof membrane, applying coating materials to seal roof penetrations, repairing blisters, and other routine measures. Tenant agrees, at its expense, to water, maintain and replace, when necessary, any shrubbery and landscaping. The foregoing notwithstanding, Tenant shall have no obligation to maintain Building 1 prior to the Building 1 Rent Commencement Date.

**C. Capital Repairs:** In the event Tenant's maintenance or repair obligations hereunder would require Tenant to pay for a capital repair or replacement costing in excess of Five Thousand and No/100 Dollars (\$5,000.00), (i) Tenant shall be required to pay that portion of the cost equal to the product of such total cost multiplied by a fraction, the numerator of which is the number of years remaining in the Lease Term, the denominator of which is the useful life (in years) of the replacement; and (ii) Landlord shall pay the balance of such cost.

## **12. HAZARD INSURANCE:**

**A. Tenant's Use:** Tenant shall not use, or permit said Premises, or any part thereof, to be used, for any purpose other than that for which the said Premises are hereby leased; and no use shall be made or permitted to be made of the said Premises, nor acts done, which will cause an increase in premiums or a cancellation of any insurance policy covering said Premises, or any part thereof, nor shall Tenant sell or permit to be kept, used or sold, in or about said Premises, any article which may be prohibited by the standard form of fire insurance policies. Tenant shall, at its sole cost and expense, comply with any and all requirements, pertaining to said Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said Premises and appurtenances.

**B. Landlord's Insurance:** Landlord agrees to purchase and keep in force fire, extended coverage, earthquake (if commercially available and carried by other owners of industrial buildings in Santa Clara County), owner's liability, and 12 month rental loss insurance. The amount of the said insurance shall not exceed the replacement cost of the Building (not including any Tenant Improvements or Alterations paid for by Tenant) as determined by Landlord's insurance company's appraisers. The Tenant agrees to pay to the Landlord as additional rent, on demand made as and when such cost is incurred, the full cost of said insurance as evidenced by insurance billings to the Landlord, and in the event of damage covered by said insurance, the amount of any deductible under such policy. Payment shall be due to Landlord within ten (10) days after written invoice to Tenant. Notwithstanding the foregoing, Tenant's obligation to pay for the cost of any earthquake insurance premiums shall be limited to an amount equal to or less than four (4) times the cost of

the fire and extended coverage premiums. It is understood and agreed that Tenant's obligation under this paragraph will be prorated to reflect the commencement and termination dates of this Lease. The foregoing notwithstanding, Tenant shall have no obligation to reimburse Landlord for casualty insurance for Building 1 prior to the Building 1 Rent Commencement Date.

**C. Tenant's Insurance:** Tenant, at its sole cost, agrees to insure any Tenant Improvements paid for by Tenant, and Alterations for their full replacement value (without depreciation) and to obtain public liability and property damage insurance for occurrences within the Premises with combined limits for bodily injury and property damage of not less than \$1,000,000.00 per occurrence and a general aggregate limit of not less than \$5,000,000.00. Tenant shall name Landlord and Landlord's lender as an additional insured, shall deliver a copy of the policies and renewal certificates to Landlord. All such policies shall provide for thirty (30) days' prior written notice to Landlord of any cancellation, termination, or reduction in coverage.

**D. Waiver:** Landlord and Tenant hereby waive any and all rights each may have against the other on account of any loss or damage occasioned to the Landlord or the Tenant as the case may be, or to the Premises or its contents, and which may arise from any risk covered by their respective insurance policies (or which would have been covered had such insurance policies been maintained in accordance with this Lease), as set forth above. The parties shall use their reasonable efforts to obtain from their respective insurance companies a waiver of any right of subrogation which said insurance company may have against the Landlord or the Tenant, as the case may be.

**13. TAXES:** Tenant shall be liable for, and shall pay prior to delinquency, all taxes and assessments levied against personal property and trade or business fixtures located in the Premises, and agrees to pay, as additional rental, all real estate taxes and assessment installments (special or general) or other impositions or charges which may be levied on the Premises, upon the occupancy of the Premises and including any substitute or additional charges which may be imposed during, or applicable to the Lease Term (including real estate tax increases due to a sale or other transfer of the Premises subject to the limitation contained herein), as they appear on the City and County tax bills during the Lease Term, and as they become due. Notwithstanding the foregoing, if property taxes increase during the Lease Term as a result of a reassessment due to a voluntary change of ownership, Tenant shall be responsible for payment of the resulting property tax increase as follows: during the first twelve month period following the transfer, Tenant shall be responsible for payment of thirty three percent (33%) of the tax increase; during the second twelve month period, Tenant shall be responsible for payment of sixty seven percent (67%) of the tax increase, thereafter Tenant shall be responsible for payment of the entire tax increase. It is understood and agreed that Tenant's obligation under this paragraph will be prorated to reflect the Commencement and Expiration Dates and that, notwithstanding anything to the contrary contained or implied above, under no circumstances will Tenant be responsible for any taxes (whether resulting upon reassessment or otherwise) relating to the period of time prior to the Commencement Date or subsequent to the Expiration Date. If, at any time during the Lease Term a tax, excise on rents, business license tax, or any other tax, however described, is levied or assessed against Landlord, as a substitute or addition in whole or in part for taxes assessed or imposed on the Premises, Tenant shall pay and discharge his pro rata share of such tax or excise on rents or other tax before it becomes delinquent, except that this provision is not intended to cover net income taxes, inheritance, gift or estate tax imposed upon the Landlord. If by virtue of any application or proceeding brought by or on behalf of Landlord, there results a reduction in the assessed value of the Building during the Lease Term, Tenant agrees to reimburse Landlord its out of pocket costs incurred by Landlord in connection with such application or proceeding applicable to the Premises and provided further such costs do not exceed the amount of the first years' savings. Notwithstanding the foregoing, Tenant shall not be required to reimburse Landlord for taxes allocable to Building 1 prior to the Building 1 Rent Commencement Date.

14. **UTILITIES:** Tenant shall pay directly to the providing utility all water, gas, heat, light, power, telephone and other utilities supplied to the Premises. Landlord shall not be liable for a loss of or injury to property, however occurring (but not including losses or injury resulting from the negligence or willful misconduct of Landlord), through or in connection with or incidental to furnishing or failure to furnish any utilities to the Premises and Tenant shall not be entitled to abatement or reduction of any portion of the Base Monthly Rent so long as any failure to provide and furnish the utilities to the Premises is due to a cause beyond the Landlord's reasonable control.

15. This paragraph intentionally left blank

16. **FREE FROM LIENS:** Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant or claimed to have been performed for Tenant and shall hold Landlord harmless from any costs and expense related to such liens including attorney's fees. In the event of any lien arising from work performed for Tenant, Tenant shall have the right to contest such liens if Tenant obtains a bond equal to 150% of the amount of such lien to prevent enforcement of the lien during such contest or otherwise makes adequate provision to prevent enforcement of the lien during such contest.

17. **COMPLIANCE WITH GOVERNMENTAL REGULATIONS:** Except as provided in paragraph 7 and subject to the provisions below, Tenant shall, at its sole cost and expense, comply with all of the requirements of all Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises, and shall faithfully observe in the use of the Premises all Municipal ordinances and State and Federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such ordinance or statute in the use of the Premises, shall be conclusive of that fact as between Landlord and Tenant. In the event Tenant's obligations hereunder would require Tenant to pay for a capital repair or replacement costing in excess of Five Thousand and No/100 Dollars (\$5,000.00) and such obligation does not arise from Tenant's specific use of the Premises, (i) Tenant shall be required to pay that portion of the cost equal to the product of such total cost multiplied by a fraction, the numerator of which is the number of years remaining in the Lease Term, the denominator of which is the useful life (in years) of the replacement; and (ii) Landlord shall pay the balance of such cost.

18. **TOXIC WASTE AND ENVIRONMENTAL DAMAGE:**

A. **Tenant's Responsibility:** Without the prior written consent of Landlord, Tenant shall not bring, use, or permit upon the Premises, or generate, create, release, emit, or dispose (nor permit any of the same) from the Premises any toxic or hazardous gaseous, liquid or solid materials or waste, including without limitation, material or substance having characteristics of ignitability, corrosivity, reactivity, or toxicity or substances or materials which are listed on any of the Environmental Protection Agency's lists of hazardous wastes or which are identified in Sections 66680 through 66685 of Title 22 of the California Administrative Code as the same may be amended from time to time ("Hazardous Materials") except in full compliance with all applicable laws. Notwithstanding the foregoing, it is understood and agreed that the onsite migration from adjacent properties of materials which is not caused by Tenant does not constitute "permission" by Tenant of such materials on the Premises. In order to obtain consent, Tenant shall deliver to Landlord its written proposal describing the toxic material to be brought onto the Premises, measures to be taken for storage and disposal thereof, safety measures to be employed to prevent pollution of the air, ground, surface and ground water. Landlord's approval may be withheld in its reasonable judgment. In the event Landlord consents to Tenant's use of Hazardous Materials on the Premises, Tenant represents and warrants that Tenant will (i) adhere to all reporting and inspection requirements imposed by Federal, State, County or Municipal laws, ordinances or regulations and will provide Landlord a copy of any such reports or agency inspections, (ii) obtain and provide Landlord copies of all

necessary permits required for the use and handling Hazardous Materials on the Premises, (iii) enforce Hazardous Materials handling and disposal practices consistent with industry standards, (iv) surrender the Premises free from any Hazardous Materials arising from Tenant's bringing, using, permitting, generating, emitting or disposing of Hazardous Materials, and (v) properly close the facility with regard to Hazardous Materials including the removal or decontamination of any process piping, mechanical ducting, storage tanks, containers, or trenches which have come into contact with Hazardous Materials and obtain a closure certificate from the local administering agency prior to the Expiration Date if required by law.

**B. Tenant's Indemnity Regarding Hazardous Materials:** Tenant shall comply, at its sole cost, with all laws pertaining to, and shall indemnify and hold Landlord harmless from any claims, liabilities, costs or expenses incurred or suffered by Landlord arising from any such bringing, using, permitting, generating, emitting or disposing of Hazardous Materials on, under or about the Premises by Tenant. Tenant's indemnification and hold harmless obligations include, without limitation, (i) claims, liability, costs or expenses resulting from or based upon administrative, judicial (civil or criminal) or other action, legal or equitable, brought by any private or public person under common law or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1980 ("RCRA") or any other Federal, State, County or Municipal law, ordinance or regulation, (ii) claims, liabilities, costs or expenses pertaining to the identification, monitoring, cleanup, containment, or removal of Hazardous Materials from soils, riverbeds or aquifers including the provision of an alternative public drinking water source, and (iii) all costs of defending such claims.

**C. Actual Release by Tenant:** Tenant agrees to notify Landlord of any lawsuits which relate to, or orders which relate to the remedying of, the actual release by Tenant of Hazardous Materials on or into the soils or groundwater at or under the Premises. Tenant shall also provide to Landlord all notices required by Section 25359.7(b) of the Health and Safety Code and all other notices required by law to be given to Landlord in connection with Hazardous Materials. Without limiting the foregoing, Tenant shall also deliver to Landlord, within twenty (20) days after receipt thereof, any written notices from any governmental agency alleging a material violation of, or material failure to comply with, any federal, state or local laws, regulations, ordinances or orders, the violation of which of failure to comply with, poses a foreseeable and material risk of contamination of the groundwater or injury to humans (other than injury solely to Tenant, its agents and employees within the Improvements on the Property).

In the event of any release on or into the Premises or into the soil or groundwater under the Premises of any Hazardous Materials used, treated, stored or disposed of by Tenant, Tenant agrees to comply, at its sole cost and expense, with all laws, regulations, ordinances and orders of any federal, state or local agency relating to the monitoring or remediation of such Hazardous Materials. In the event of any such release of Hazardous Materials, Tenant agrees to meet and confer with Landlord and its Lender to attempt to eliminate and mitigate any financial exposure to such Lender and resultant exposure to Landlord under California Code of Civil Procedure section 736(b) as a result of such release and promptly to take reasonable monitoring, cleanup and remedial steps given, inter alia, the historical uses to which the Property has and continues to be used, the risks to public health posed by the release, the then available technology and the costs of remediation, cleanup and monitoring, consistent with acceptable customary practices for the type and severity of such contamination and all applicable laws. Nothing in the preceding sentence shall eliminate, modify or reduce the obligation of Tenant under paragraph 20(B) of this Lease to indemnify and hold Landlord harmless from any claims liabilities, costs or expenses incurred or suffered by Landlord as provided in paragraph 20(B) of this Lease. Tenant shall provide Landlord prompt written notice of Tenant's monitoring, cleanup and remedial steps.

In the absence of an order of any federal, state or local governmental or quasi-governmental agency relating to the cleanup, remediation or other response action



required by applicable law, any dispute arising between Landlord and Tenant concerning Tenant's obligation to Landlord under this Paragraph C concerning the Level, method, and manner of cleanup, remediation or response action required in connection with such a release of Hazardous Materials shall be resolved by mediation and/or arbitration pursuant to the provisions of paragraph 44 of this Lease.

**D. Landlord's Indemnity Regarding Hazardous Materials:** Landlord shall indemnify and hold Tenant harmless from any claims, liabilities, costs or expenses incurred or suffered by Tenant related to the removal, investigation, monitoring or remediation of Hazardous Materials which are present or which come to be present on the Premises except to the extent the presence of such Hazardous Materials is caused by Tenant or by Tenant's failure to prevent a third party from dumping Hazardous Materials through the surface of the Premises. Landlord's indemnification and hold harmless obligations include, without limitation, (i) claims, liability, costs or expenses resulting from or based upon administrative, judicial (civil or criminal) or other action, legal or equitable, brought by any private or public person under common law or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1980 ("RCRA") or any other Federal, State, County or Municipal law, ordinance or regulation, (ii) claims, liabilities, costs or expenses pertaining to the identification, monitoring, cleanup, containment, or removal of Hazardous Materials from soils, riverbeds or aquifers including the provision of an alternative public drinking water source, and (iii) all costs of defending such claims.

The forgoing indemnity by Landlord to Tenant shall not apply to any mortgagee or its assignee which takes title to the Premises pursuant to a deed in lieu of foreclosure, foreclosure or otherwise. Landlord's indemnity pursuant to this paragraph 18.D shall survive the transfer of Landlord's interest in the Lease to any mortgagee or its assignee taking title to the Premises pursuant to a deed in lieu of foreclosure or otherwise, as well as the expiration or other termination of this Lease.

**E. Environmental Monitoring:** At its cost, subject to the rights of indemnity contained in subparagraph B above, Landlord and its agents shall have the right to inspect, investigate, sample and/or monitor the Premises, including any air, soil, water, groundwater or other sampling or any other testing, digging, drilling or analysis to determine whether Tenant is complying with the terms of this paragraph 18.

**19. INDEMNITY:** As a material part of the consideration to be rendered to Landlord, Tenant hereby waives all claims against Landlord for damages to goods, wares and merchandise, and all other personal property in, upon or about said Premises and for injuries to persons in or about said Premises, from any cause arising at any time to the fullest extent permitted by law, and Tenant shall indemnify and hold Landlord exempt and harmless from any damage or injury to any person, or to the goods, wares and merchandise and all other personal property of any person, arising from the use of the Premises, Building, and/or Project by Tenant, its employees, contractors, agents and invitees or from the failure of Tenant to keep the Premises in good condition and repair, as herein provided including Landlord's costs and expenses and reasonable attorney's fees incurred in defending such claims, except to the extent due to the negligence or willful misconduct of Landlord.

**20. ADVERTISEMENTS AND SIGNS:** Tenant will not place or permit to be placed, in, upon or about the said Premises any signs not approved by the city or other governing authority. The Tenant will not place, or permit to be placed, upon the Premises, any signs, advertisements or notices without the written consent of the Landlord as to type, size, design, lettering, coloring and location, and such consent will not be unreasonably withheld. Any sign so placed on the Premises shall be removed by Tenant, at its expense, prior to the Expiration Date or promptly following the earlier termination of the lease and Tenant shall repair, at its sole cost and expense, any damage or injury to the Premises caused thereby, and if not so removed by Tenant then Landlord may have same so removed at Tenant's expense.

**21. ATTORNEY'S FEES:** In case a suit or alternative form of dispute resolution should be brought to interpret this Lease, to enforce any obligation under this Lease, for the possession of the Premises, for the recovery of any sum due hereunder, or because of the breach of any other covenant herein, the losing party shall pay to the prevailing party a reasonable attorney's fee as part of its costs which shall be deemed to have accrued on the commencement of such action. In addition, the prevailing party shall be entitled to recover all costs and expenses including reasonable attorney's fees incurred by the prevailing party in enforcing any judgment or award against the other party. The foregoing provision relating to post-judgment costs is intended to be severable from all other provisions of this Lease.

**22. TENANT'S DEFAULT:** The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant (an "Event of Default"):

- a) Any failure by Tenant to pay any rent under this Lease on or before the date such rent is due under this Lease, which failure continues for five (5) days following notice to Tenant;
- b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion;
- c) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days after the filing); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within ninety (90) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within ninety (90) days. The notice requirements set forth herein are in lieu of and not in addition to the notices required by California Code of Civil Procedure Section 1161. Any notice given by Landlord to Tenant pursuant to California Civil Code 1161 with respect to any failure by Tenant to pay rent under this Lease on or before the date the rent is due shall provide Tenant with a period of no less than ten (10) days to pay such rent or quit.

**A. Remedies:** In the event an Event of Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

- a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
- b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Tenant proves could have been reasonably avoided; plus
- c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, and
- e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

The term "rent", as used herein, shall be deemed to be and to mean the minimum monthly installments of Base Monthly Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease, all other such sums being deemed to be additional rent due hereunder. As used in (a) and (b) above, the "worth at the time of award" is to be computed by allowing interest at the rate of the discount rate of the Federal Reserve Bank of San Francisco plus five (5%) percent per annum. As used in (c) above, the "worth at the time of award" is to be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San

Francisco at the time of award plus one (1%) percent.

**B. Right to Re-enter:** In the event of any such default by Tenant, Landlord shall also have the right, after terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant and disposed of by Landlord in any manner permitted by law.

**C. Abandonment:** If Landlord does not elect to terminate this Lease as provided in paragraph 22(A) above, then the provisions of California Civil Code Section 1951.4, (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has a right to sublet and assign, subject only to reasonable limitations) as amended from time to time, shall apply and Landlord may from time to time, without terminating this Lease, either recover all rental as it becomes due or relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness other than Base Monthly Rent due hereunder from Tenant to Landlord; second, to the payment of any reasonable cost of such reletting; third, to the payment of Base Monthly Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Base Monthly Rent as the same may become due and payable hereunder. Landlord shall have no obligation to relet the Premises following a default if Landlord has other available space within the Building or Project. Should that portion of such rentals received from such reletting during any month, which is applied by the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any reasonable costs and expenses incurred by Landlord in such reletting.

**D. No Termination:** No re-entry or taking possession of the Premises by Landlord pursuant to 22(B) or 22(C) of this Article 22 shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such default.

**23. SURRENDER OF LEASE:** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not automatically effect a merger of the Lease with Landlord's ownership of the Premises. Instead, at the option of Landlord and subject to the provisions of paragraph 29, Tenant's surrender may terminate all or any existing sublease or subtenancies, or may operate as an assignment to Landlord of any or all such subleases or subtenancies, thereby creating a direct Landlord-Tenant relationship between Landlord and any subtenants.

**24.** This paragraph intentionally left blank

**25. LANDLORD'S DEFAULT:** In the event of Landlord's failure to perform any of its covenants or agreements under this Lease, Tenant shall give Landlord written notice of such failure and shall give Landlord thirty (30) days or such other reasonable opportunity to cure or to commence to cure such failure prior to any claim for breach or for damages resulting from such failure. In addition, upon any such failure by Landlord, Tenant shall give notice by registered or certified mail to any person or entity with a security interest in the Premises ("Mortgagee") that has provided Tenant with and address and notice of its interest in the Premises, and shall provide such Mortgagee a reasonable opportunity to cure such failure. Tenant agrees that each of the Mortgagees to whom this Lease has been assigned is an expressed third party beneficiary hereof. Tenant shall not make any prepayment of rent more than one (1)

month in advance without the prior written consent of such Mortgagee.

**26. NOTICES:** All notices, demands, requests, or consents required to be given under this Lease shall be sent in writing by U.S. certified mail, return receipt requested, or by personal delivery or confirmed facsimile transmission addressed to the party to be notified at the address for such party specified in paragraph 1 of this Lease, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days prior notice to the notifying party.

**27. ENTRY BY LANDLORD:** Tenant shall permit Landlord and his agents upon prior notice to Tenant (except in the case of emergency) to enter into and upon said Premises at all reasonable times subject to any security regulations or requirements of Tenant for the purpose of inspecting the same or for the purpose of maintaining the Premises or for the purpose of making repairs, alterations or additions to any other portion of said Premises or for the purpose of erecting additional building(s) and improvements on the land where the Premises are situated, or on adjacent land owned by Landlord as permitted under this Lease. Tenant shall permit Landlord and his agents, at any time within one hundred eighty (180) days prior to the Expiration Date to place upon the Premises "For Lease" signs and exhibit the Premises to real estate brokers and prospective tenants at reasonable hours.

**28. DESTRUCTION OF PREMISES:**

**A. Destruction by an Insured Casualty:** In the event of a partial destruction of the Premises (i) by a casualty of a type required to be insured against by Landlord under the terms of this Lease and (ii) for which Landlord has not been required by Landlord's lender holding an encumbrance on the Premises to utilize substantially all of the insurance proceeds to pay down the loan secured by the Premises, Landlord shall forthwith repair the same provided such repairs can be made within one hundred eighty (180) days from the date of destruction, and such partial destruction shall in no way annul or void this Lease, except that Tenant shall be entitled to a proportionate reduction of Base Monthly Rent while such repairs are being made, such proportionate reduction to be based upon the extent to which damage or destruction or the making of such repairs shall interfere with the business carried on by Tenant in the Premises. For purposes of this paragraph "partial destruction" shall mean destruction of no greater than one-third (1/3) of the replacement cost of the Premises, including the replacement cost of the Tenant Improvements paid for by Landlord. In the event (i) the Premises are more than partially destroyed, (ii) the repairs cannot be made in one hundred eighty (180) days, Landlord or Tenant may elect to terminate this Lease within fifteen (15) days of determination by Landlord of the foregoing. Landlord shall not be required to restore Alterations or replace Tenant's fixtures or personal property. In respect to any partial destruction which Landlord is obligated to repair or may elect to repair under the terms of this paragraph, the provision of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4, of the Civil Code of the State of California and any other similarly enacted statute are waived by Tenant and the provisions of this paragraph 28 shall govern in the case of such destruction.

**B. Destruction by an Uninsured Casualty:** In the event of a total or partial destruction of the Premises (i) by a casualty of a type not required to be insured against by Landlord under the terms of this Lease or (ii) for which Landlord has been required by Landlord's lender holding an encumbrance on the Premises to utilize substantially all of the insurance proceeds to pay down the loan secured by the Premises which exceeds five percent (5%) of the replacement cost of the Building, the Lease shall automatically terminate, unless (i) Landlord elects to rebuild, and (ii) the damage can be repaired within one hundred eighty (180) days. If Landlord elects to contribute to payment for an uninsured loss, such contributed amount shall be amortized over the useful life of the improvements and such amortization shall be reimbursed by Tenant to Landlord as additional rent together with interest at the prime rate of Union Bank plus two percent (2%).

**29. ASSIGNMENT OR SUBLEASE:**

**A. Consent by Landlord:** In the event Tenant desires to assign this Lease or any interest therein including, without limitation, a pledge, mortgage or other hypothecation, or sublet the Premises or any part thereof, Tenant shall deliver to Landlord executed counterparts of any such agreement and of all ancillary agreements with the proposed assignee or subtenant, financial statements, and any additional information as reasonably required by Landlord to determine whether it will consent to the proposed assignment or sublease. The notice shall give the name and current address of the proposed assignee/subtenant, proposed use of the Premises, rental rate and current financial statement; and upon request to Tenant, Landlord shall be given additional information as reasonably required by Landlord to determine whether it will consent to the proposed assignment or sublease. Landlord shall then have a period of ten (10) business days following receipt of the foregoing agreement, statements and additional information within which to notify Tenant in writing that Landlord elects (i) to terminate this Lease as to the space so affected as of the date so specified by Tenant in which event Tenant will be relieved of all further obligations hereunder as to such space, (ii) to permit Tenant to assign or sublet such space to the named assignee/subtenant on the terms and conditions set forth in the notice, or (iii) to refuse consent. If Landlord should fail to notify Tenant in writing of such election within said ten (10) business day period, Landlord shall be deemed to have elected option (ii) above. If Landlord exercises its option to terminate this Lease in part in the event Tenant desires to sublet or assign part of the Premises, then (i) this Lease shall end and expire, with respect to such part of the Premises, on the date upon which the proposed sublease was to commence, and (ii) from and after such date, the Base Monthly Rent and Tenant's allocable share of all other costs and charges shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises. If Landlord does not exercise its option to terminate this Lease, Landlord's consent (which must be in writing and in form reasonably satisfactory to Landlord) to the proposed assignment or sublease shall not be unreasonably withheld, provided and upon condition that: (i) the use of the Premises by the proposed assignee or subtenant is limited to the use expressly permitted under this Lease; (ii) the proposed assignee or subtenant is a company with sufficient financial worth and management ability to undertake the financial obligation of this Lease, and Landlord has been furnished with reasonable proof thereof; (iii) the proposed assignment or sublease shall be in form reasonably satisfactory to Landlord; (iv) Tenant shall reimburse Landlord on demand for any costs that may be incurred by Landlord in connection with said assignment or sublease, including the costs of making investigations as to the acceptability of the proposed assignee or subtenant and legal costs incurred in connection with the granting of any requested consent up to a maximum amount of Five Thousand and No/100 Dollars (\$5,000.00); and (v) Tenant shall not have advertised or publicized in any way the availability of the Premises without prior notice to Landlord. In the event all or any one of the foregoing conditions are not satisfied, Landlord may, in its sole discretion, withhold its consent to the proposed assignment or sublease.

**B. Assignment or Subletting Consideration:** Any rent or other economic consideration realized by Tenant under any such sublease and assignment in excess of the rent payable hereunder, after the net unamortized cost of the Tenant Improvements for which Tenant has itself paid, and reasonable subletting and assignment costs, shall be divided and paid fifty percent (50%) to Landlord and fifty percent (50%) to Tenant. Tenant's obligation to pay over Landlord's portion of the consideration shall constitute an obligation for additional rent hereunder. The above provisions relating to Landlord's right to terminate the Lease and relating to the allocation of bonus rent are independently negotiated terms of the Lease, constitute a material inducement for the Landlord to enter into the Lease, and are agreed as between the parties to be commercially reasonable. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease except as specifically provided herein. Any assignment or subletting which conflicts with the provisions hereof shall be void.

**C. No Release:** Any assignment or sublease shall be made only if and shall not be effective until the assignee or subtenant shall execute and deliver to

further liability in reference thereto.

**32. SUBORDINATION:** In the event Landlord notifies Tenant in writing, this Lease shall be subordinate to any ground Lease, deed of trust, or other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to renewals, modifications, replacements and extensions thereof. Tenant agrees to promptly execute and deliver any documents which may be required to effectuate such subordination. As a condition precedent to such subordination the ground lessor of any ground lease, trustor under any deed of trust or holder of any interest to be made superior to the interest of tenant under shall agree in writing that Tenant's right to quiet possession of the Premises shall not be disturbed so long as Tenant no Event of Default has occurred and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease. Landlord shall use reasonable efforts to cause the existing lender, Principal Financial Group, to furnish to Tenant, within thirty (30) days of the date of both parties' execution of this Lease, with a written agreement providing for (i) recognition by the lender of all of the terms and conditions of this Lease, excepting paragraphs 18(D), and 39.

**33. WAIVER:** The waiver by Landlord of any breach of any term, covenant or condition, herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No payment by Tenant or receipt by Landlord of a lesser amount than any installment of rent due shall be deemed to be other than payment on account of the amount due. No delay or omission in the exercise of any right or remedy by Landlord shall impair such right or remedy or be construed as a waiver thereof by Landlord. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute acceptance of the surrender of the Premises by Tenant before the Expiration Date (only written notice from Landlord to Tenant of acceptance shall constitute such acceptance of surrender of the Premises). Landlord's consent to or approval of any act by Tenant which require Landlord's consent or approvals shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

**34. HOLDING OVER:** Any holding over after the termination or Expiration Date, shall be construed to be a tenancy from month to month, terminable on thirty (30) days written notice from either party, and Tenant shall pay Base Monthly Rent to Landlord at a rate equal to one hundred fifty percent (150%) of the Base Monthly Rent due in the month preceding the termination or Expiration Date plus all other amounts payable by Tenant under this Lease. Any holding over shall otherwise be on the terms and conditions herein specified, except those provisions relating to the Lease Term and any options to extend or renew, which provisions shall be of no further force and effect following the expiration of the applicable exercise period. Tenant shall indemnify, defend, and hold Landlord harmless from any actual loss or liability (including, without limitation, any loss or liability resulted from any claim against Landlord made by any succeeding tenant) resulting from Tenant's failure to timely surrender the Premises to Landlord.

**35. SUCCESSORS AND ASSIGNS:** The covenants and conditions herein contained shall, subject to the provisions of paragraph 29, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

**36. ESTOPPEL CERTIFICATES:** Tenant shall at any time during the Lease Term, within ten (10) days following written notice from Landlord, execute and deliver to Landlord a statement in writing certifying, if true, (i) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification); (ii)

the date to which the rent and other charges are paid in advance, if any; and (iii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults if they are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon the Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are not uncured defaults in Landlord's performance. Tenant also agrees to provide the most current three (3) years of audited financial statements (if available) within five (5) days of a request by Landlord for Landlord's use in financing the Premises with commercial lenders. Landlord covenants to hold all financial information so provided to Tenant in strict confidence and not reveal it to any other party other than a commercial lender for purposes of securing financing covering the Premises.

### **37. OPTION TO EXTEND THE LEASE TERM:**

**A. Grant and Exercise of Option:** Landlord hereby grants to Tenant, upon and subject to the terms and conditions set forth in this paragraph, an option ("Option") to extend the Lease Term for an additional term (the "Option Term"). The Option Term shall be for a period of 60 months. The Option shall be exercised, if at all, by written notice to Landlord no earlier than the date that is eighteen (18) months prior to the Expiration Date but no later than the date that is nine (9) months prior to the Expiration Date. If Tenant exercises the Option, each of the terms, covenants and conditions of this Lease except this paragraph shall apply during the Option Term as though the expiration date of the Option Term was the date originally set forth herein as the Expiration Date, provided that the Base Monthly Rent to be paid by Tenant during the Option Term shall be equal to 95% of the Fair Market Rental, as hereinafter defined, for the Premises for the Option Term. The appraisers shall be instructed that the foregoing five percent (5%) discount is intended to reduce comparable rents which include (i) brokerage commissions, (ii) tenant improvement allowances, and (iii) vacancy costs, to account for the fact that Landlord will not suffer such costs in the event Tenant exercises its Option.

Anything contained herein to the contrary notwithstanding, if there exists any material Event of Default either at the time Tenant exercises the Option or at any time thereafter prior to the commencement date of the Option Term, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in this Lease, the right to terminate the Option upon notice to Tenant, in which event the expiration date of this Lease shall be and remain the Expiration Date. As used herein, the term "Fair Market Rental" for the Premises shall mean the rental and all other monetary payments including any escalations and adjustments thereto (including without limitation Consumer Price Indexing) then being obtained for new leases of space comparable in age and quality to the Premises in the locality of the Building that Landlord could obtain during the Option Term from a third party desiring to lease the Premises for the Option Term based upon the current use and other potential uses of the Premises.

**B. Determination of Fair Market Rental:** If Tenant exercises the Option, Landlord shall send to Tenant a notice setting forth the Fair Market Rental for the Premises for the Option Term, on or before the date that is twelve (12) months prior to the Expiration Date. If Tenant disputes Landlord's determination of the Fair Market Rental for the Option Term, Tenant shall, within thirty (30) days after the date of Landlord's notice setting forth the Fair Market Rental for the Option Term, send to Landlord a notice stating that Tenant either (i) elects to terminate its exercise of the Option, in which event the Option shall lapse and this Lease shall terminate on the Expiration Date, or (ii) disagrees with Landlord's determination of Fair Market Rental for the Option Term and elects to resolve the disagreement as provided in paragraph 37(C) below. If Tenant does not send to Landlord a notice as provided in the previous sentence, Landlord's determination of the Fair Market Rental shall be the basis for determining the Base Monthly Rent to be paid by Tenant hereunder during the Option Term. If Tenant elects to resolve the disagreement as provided in paragraph 37(C) below and such procedures shall not have been concluded prior to the commencement

date of the Option Term, Tenant shall pay as Base Monthly Rent to Landlord a Base Monthly Rental equal to the average of the Fair Market Rental as determined by Landlord and the Fair Market Rental as determined by Tenant in the manner provided above. If the amount of Fair Market Rental as finally determined pursuant to paragraph 37(C) below is greater than such amount, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the Fair Market Rental as so determined in paragraph 37(C) below within thirty (30) days after the determination. If the Fair Market Rental as finally determined in paragraph 37(C) below is less than such amount, the difference between the amount paid by Tenant and the Fair Market Rental as so determined in paragraph 37(C) below shall be refunded to Tenant within thirty (30) days after the determination.

**C. Resolution of a Disagreement over the Fair Market Rental:** Any disagreement regarding the Fair Market Rental shall be resolved as follows:

1. Within thirty (30) days after Tenant's response to Landlord's notice to Tenant of the Fair Market Rental, Landlord and Tenant shall meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

2. If within the thirty (30) day period referred to in (i) above, Landlord and Tenant can not reach agreement as to the Fair Market Rental, they shall each select one appraiser to determine the Fair Market Rental. Each such appraiser shall arrive at a determination of the Fair Market Rental and submit their conclusions to Landlord and Tenant within thirty (30) days after the expiration of the thirty (30) day consultation period described in (i) above.

3. If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Fair Market Rental. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, the average of the two shall be the Fair Market Rental. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who shall within thirty (30) days after his or her selection make a determination of the Fair Market Rental and submit such determination to Landlord and Tenant. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the Fair Market Rental.

4. All appraisers specified pursuant to this paragraph shall have not less than ten (10) years experience appraising office and industrial properties in the Santa Clara Valley. Each party shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser.

**38. OPTIONS:** The rights of first offering to lease provided Tenant in paragraph 39 are personal and granted to Tenant and are not exercisable by any third party should Tenant assign or sublet all or a portion of its rights under this Lease, unless Landlord consents to permit exercise of any option by any assignee or subtenant, in Landlord's sole discretion. In the event that Tenant hereunder has any multiple options to extend this Lease, a later option to extend the Lease cannot be exercised unless the prior option has been so exercised.

**39. RIGHT OF FIRST OFFERING TO LEASE:** Landlord hereby grants Tenant a right of first offering to lease the adjacent buildings of approximately 28,800 square feet located at 455 East Middlefield Road and 32,500 square feet located at 575 East Middlefield Road or any newly constructed or build-to-suit buildings built or proposed in such locations ("Option Buildings"). Prior to Landlord offering to lease the Option Building(s) to a third party, Landlord shall give Tenant written notice of such desire and the terms and other information under which Landlord intends to lease the Option Building(s). Provided at the time of exercise, (i) there exists no material Event of Default on the part of Tenant hereunder and (ii) the Building 1 Rent Commencement Date has occurred, Tenant shall have the option, which must be exercised, if at all, by



written notice to Landlord within ten (10) business days after Tenant's receipt of Landlord's notice, to lease the Option Building(s) at the rent and terms of lease specified in the notice. In the event Tenant timely exercises such option to lease the Option Building(s), Landlord shall lease the Option Building(s) to Tenant, and Tenant shall lease the Option Building(s) from Landlord in accordance with the rent and terms specified in Landlord's notice. Landlord and Tenant shall, in good faith, attempt to reach agreement on the terms of a mutually acceptable lease agreement consistent with the terms set forth in Landlord's notice within thirty (30) days of Landlord's notice. In the event (i) Landlord and Tenant are unable to reach agreement on a mutually acceptable lease within such thirty (30) day period or (ii) Tenant fails to exercise Tenant's option within said ten (10) business day period, Landlord shall have one hundred eighty (180) days thereafter to lease the Option Building(s) at no less than ninety five percent (95%) of the rental rate and upon the same or substantially the same other terms of lease as specified in the notice to Tenant. In the event Landlord fails to lease the Option Building(s) within said one hundred eighty (180) day period or in the event Landlord proposes to lease the Option Building(s) at less than ninety five percent (95%) of the rental rate or on other material terms which are more favorable to the prospective tenant than that proposed to Tenant, Landlord shall be required to resubmit such offer to Tenant in accordance with this Right of First Offering.

Notwithstanding the foregoing, this Right of First Offering shall terminate, (i) automatically upon the expiration or sooner termination of the Lease, or (ii) in the event that Landlord transfers its interest in the Premises or in the Option Building(s) after the end of the seventh (7th) year of the Lease Term.

**40. QUIET ENJOYMENT:** Upon Tenant's faithful and timely performance of all the terms and covenants of the Lease and except as otherwise provided in this Lease, Tenant shall quietly have and hold the Premises for the Lease Term and any extensions thereof.

**41. BROKERS:** Tenant represents it has not utilized or contacted a real estate broker or finder with respect to this Lease other than Cornish & Carey Commercial and its agents (Cornish & Carey") which the parties acknowledge represents both Landlord and Tenant and Tenant agrees to indemnify and hold Landlord harmless against any claim, cost, liability or cause of action asserted by any other broker or finder claiming through Tenant. Landlord agrees that it will be responsible for all fees payable to Cornish & Carey, and that it will indemnify and hold Tenant harmless against any claim, cost, liability or cause of action asserted by Cornish & Carey and by any other broker or finder claiming through Landlord.

**42. CONSTRUCTION ON ADJACENT LAND:** Tenant acknowledges Landlord's right to and hereby consents to construction of new building(s) in place of the existing Option Buildings on condition that Tenant's rights to use and enjoyment of the Premises are not adversely affected thereby. In the event that Landlord constructs such building(s), Tenant consents to the construction of a parking structure in the area shown on Exhibit "B" attached hereto and to the adjustment of the parcel comprising the Premises' lot line to accommodate such structure. In no event shall Tenant's parking be less than 375 stalls during the construction or after completion of the parking structure. In the event after completion of the parking structure, a portion of Tenant's parking is located within the parking structure, Landlord and Tenant shall enter into a common area agreement relative to the use and maintenance of the parking structure on reasonable and customary terms, *provided that such agreement shall not require Tenant to pay additional fees for parking.*

**43. EARLY OCCUPANCY OF BUILDING 1:** Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to occupy Building 1 at no cost (other than the payment of utilities) beginning on the date of execution of this Lease and continuing until the Commencement Date. The indemnity provisions of paragraph 19 and the liability insurance requirements of paragraph 12 of this Lease shall apply to such early occupancy of Building 1. Tenant may also occupy Building 1 after the Commencement Date and prior to the scheduled Building 1 Rent Commencement Date. In such event, the Building 1 Rent Commencement Date shall be advanced to the date of

Tenant first occupies any portion of Building 1 after the Commencement Date.

**44. AUTHORITY OF PARTIES:** Tenant represents and warrants that it is duly formed and in good standing and is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. At Landlord's request, Tenant shall provide Landlord with corporate resolutions or other proof in a form acceptable to Landlord, authorizing the execution of the Lease.

**45. TRANSPORTATION DEMAND MANAGEMENT PROGRAMS:** Should a government agency or municipality require Landlord to institute TDM (Transportation Demand Management) facilities and/or program, Tenant hereby agrees that the cost of TDM imposed facilities required on the Premises, including but not limited to employee showers, lockers, cafeteria, or lunchroom facilities, shall be included as Tenant Improvement Costs and any ongoing costs or expenses associated with a TDM program, such as an on-site TDM coordinator, which are required for the Premises and not provided by Tenant shall be provided by Landlord with such costs being included as additional rent and reimbursed to Landlord by Tenant.

**46. DISPUTE RESOLUTION:** Except for the failure by Tenant to timely pay the Base Monthly Rent, any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this agreement, including any claim based on contract, tort, or statute, shall be resolved at the request of any party to this agreement through a two-step dispute resolution process administered by JAMS or another judicial and mediation service mutually acceptable to the parties involving first mediation, followed, if necessary, by final and binding arbitration administered by and in accordance with the then existing rules and practice of the judicial and mediation service selected, and judgment upon any award rendered by the arbitrator(s) may be entered by any State or Federal Court having jurisdiction thereof.

**47. MISCELLANEOUS PROVISIONS:**

**A. Rent:** All monetary sums due from Tenant to Landlord under this Lease, including, without limitation those referred to as "additional rent", shall be deemed to be rent.

**B.** This subparagraph intentionally left blank

**C. Performance by Landlord:** If Tenant fails to perform any obligation required under this Lease or by law or governmental regulation, Landlord in its sole discretion may without notice and without releasing Tenant from its obligations hereunder or waiving any rights or remedies, perform such obligation, in which event Tenant shall pay Landlord as additional rent all sums paid by Landlord in connection with such substitute performance including interest as provided in paragraph 46(D) below within ten (10) days following Landlord's written notice for such payment.

**D. Interest:** All rent due hereunder, if not paid when due, shall bear interest at the lesser of the prime rate charged by Bank of America plus three percent (3%) or the maximum rate permitted under California law accruing from the date due until the date paid to Landlord.

**E. Rights and Remedies:** All rights and remedies hereunder are cumulative and not alternative to the extent permitted by law and are in addition to all other rights and remedies in law and in equity.

**F. Survival of Indemnities:** All indemnification, defense, and hold harmless obligations of Landlord and Tenant under this Lease shall survive the expiration or sooner termination of the Lease.

**G. Severability:** If any term or provision of this Lease is held unenforceable or invalid by a court of competent jurisdiction, the remainder of the Lease shall not be invalidated thereby but shall be enforceable in accordance with its terms, omitting the invalid or unenforceable term.

**H. Choice of Law:** This Lease shall be governed by and construed in accordance with California law. Venue shall be Santa Clara County.

**I. Time:** Time is of the essence hereunder.

**J. Entire Agreement:** This instrument contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner other than by an agreement in writing signed by all of the parties hereto or their respective successors in interest.

**K. Representations:** Tenant acknowledges that neither Landlord nor any of its employees or agents have made any agreements, representations, warranties or promises with respect to the demised Premises or with respect to present or future rents, expenses, operations, tenancies or any other matter. Except as herein expressly set forth herein, Tenant relied on no statement of Landlord or its employees or agents for that purpose.

**L. Headings:** The headings or titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part thereof.

**M. Exhibits:** All exhibits referred to are attached to this Lease and incorporated by reference.

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease on the day and year first above written.

**Landlord:** Ellis-Middlefield Business Park,  
a California Limited Partnership

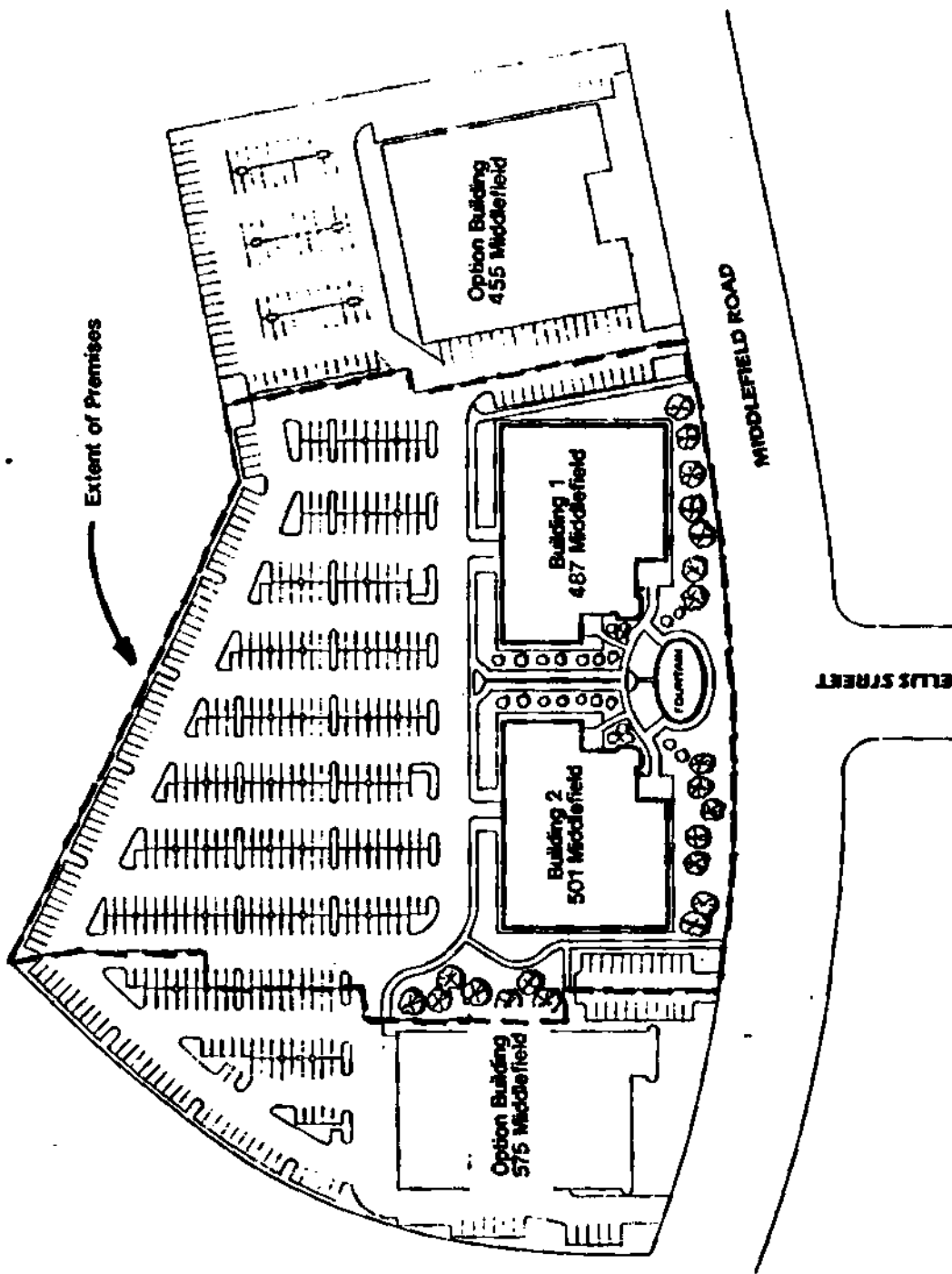
By: 

Its: GENERAL PARTNER

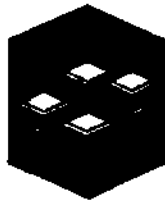
**Tenant:** Mosaic Communications,  
a Delaware Corporation

By: 

Its: CEO & President



**EXHIBIT 10.12**



1. **PARTIES:** **THIS LEASE**, is entered into on this 28th day of April, 1995, between Ellis-Middlefield Business Park, a California Limited Partnership, whose address is 10600 North De Anza Boulevard, Suite 200, Cupertino, CA 95014 and Netscape Communications Corporation, a Delaware Corporation, whose address is 501 East Middlefield Road, Mountain View, CA 94043, hereinafter called respectively Landlord and Tenant.

2. **PREMISES:** Landlord hereby leases to Tenant, and Tenant hires from Landlord those certain Premises with the appurtenances, situated in the City of Mountain View, County of Santa Clara, State of California, and more particularly described as follows, to-wit: that certain real property commonly known and designated as 575 East Middlefield Road (the "Building") consisting of single story office/R&D building of 28,800 square feet including 100 parking stalls as outlined on Exhibit "A".

3. **TERM AND RENTAL:** The term ("Lease Term") shall be for five (5) months, commencing on the 28th day of April, 1995 ("Commencement Date"), and ending on the 27th day of September, 1995, ("Expiration Date"). In addition to all other sums payable by Tenant under this Lease, Tenant shall pay as base monthly rent ("Base Monthly Rent") for the Premises the amount of Twenty Thousand One Hundred Sixty and No/100 Dollars (\$20,160.00). Base Monthly Rent shall be due on or before the first day of each calendar month during the Lease Term. All sums payable by Tenant under this Lease shall be paid in lawful money of the United States of America, without offset or deduction (except as specifically set forth herein), and shall be paid to Landlord at the address specified in paragraph 1 of this Lease or at such place or places as may be designated in writing from time to time by Landlord. Base Monthly Rent for any period less than a calendar month shall be a pro rata portion of the monthly installment.

4. **SECURITY DEPOSIT:** None required.

5. **POSSESSION:** Landlord shall deliver possession of the Premises to Tenant on the Commencement Date. Tenant agrees to accept possession of the Premises in its existing "as is" condition except that Landlord shall, at Landlord's expense, (i) make any repairs necessary to the building HVAC, electrical and plumbing systems to ensure the systems are in good operating condition and repair within fourteen (14) days following the Commencement Date and (ii) provide Tenant a cash allowance of Five Thousand and No/100 Dollars (\$5,000.00) to be utilized by Tenant for miscellaneous cosmetic work within the Building such as for the touch-up of the interior paint.

6. **OTHER LEASE PROVISIONS:** Paragraphs 3, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 44, 45, 46, and 47 of the lease between the parties dated October 14, 1994 for 487-501 East Middlefield Road are made a part of this Lease and are incorporated herein by reference.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the day and year first above written.

Landlord: Ellis-Middlefield Business Park,  
a California Limited Partnership

Tenant: Netscape Communications,  
a Delaware Corporation

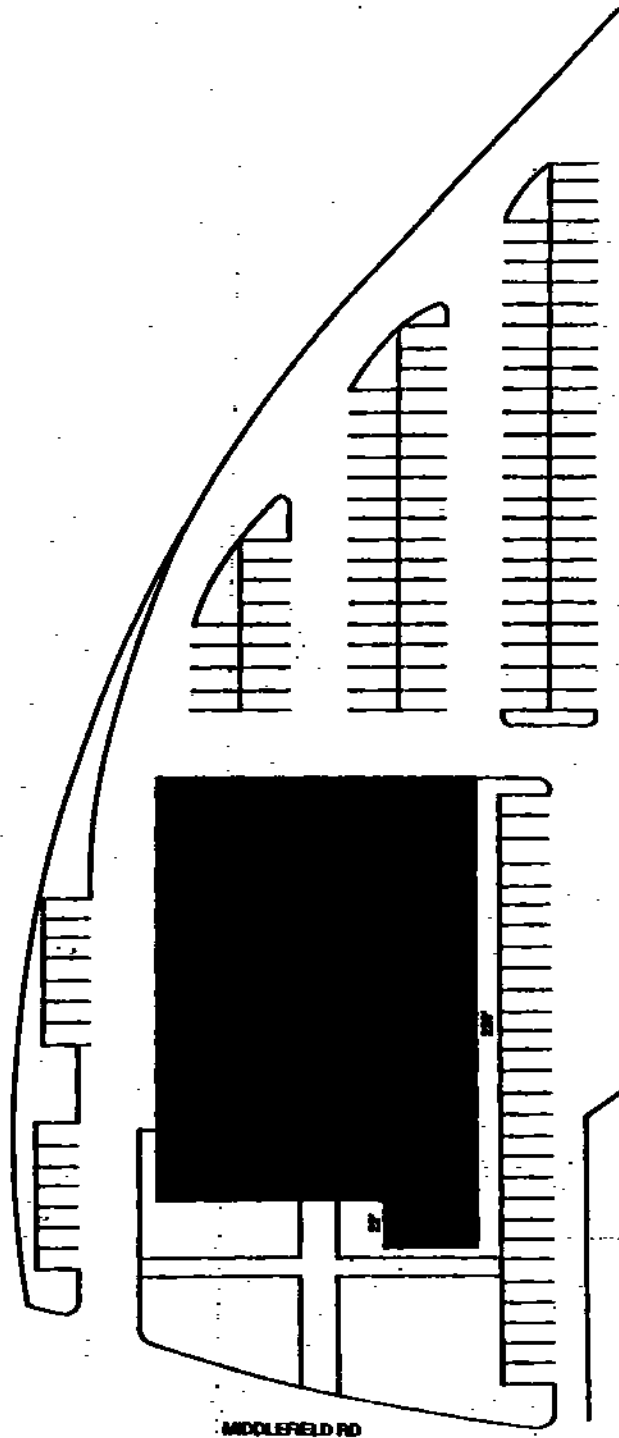
By: 

By: 

Its: 

Its: 

**EXHIBIT "A" - Premises**



**EXHIBIT 11.1**



## NETSCAPE COMMUNICATIONS CORPORATION

## Statement of Computation of Earnings Per Share

	Inception (April 4, 1994) to December 31 1994	Quarter Ended March 31, 1995
Primary:		
Weighted average common stock outstanding(1) .....	2,605,556	3,380,000
Convertible preferred stock(1) .....	—	—
Stock related to SAB No. 64 and 83 .....	<u>30,875,882</u>	<u>30,875,882</u>
Total weighted average common and common equivalent shares outstanding .....	<u>33,481,438</u>	<u>34,255,882</u>
Net loss .....	<u>(8,469,845)</u>	<u>(2,699,023)</u>
Net loss per share .....	<u>\$ (0.25)</u>	<u>\$ (0.08)</u>
Fully Diluted:		
Weighted average common stock outstanding(1) .....	2,605,556	3,380,000
Convertible preferred stock(1) .....	—	—
Stock related to SAB No. 64 and 83 .....	<u>30,875,882</u>	<u>30,875,882</u>
Total weighted average common and common equivalent shares outstanding .....	<u>33,481,438</u>	<u>34,255,882</u>
Net loss .....	<u>\$(8,469,845)</u>	<u>\$(2,699,023)</u>
Net loss per share .....	<u>\$ (0.25)</u>	<u>\$ (0.08)</u>

(1) Shares issued within 12 months of the filing date have been included in the line item entitled "Stock related to SAB 64 and 83". See Note 1 to the financial statement.

**EXHIBIT 21.1**

EXHIBIT 21.1

Subsidiary of the Registrant

Netscape Communications (Japan), Ltd.

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-H/