Netscape

SUMMARY OF AOL/NETSCAPE CONTRACT
April 5, 1996

1. License Grant

a. Overview. The license granted by Netscape is an object code-only license that permits AOL to use, reproduce, and distribute Netscape products. However, in negotiating the agreement, Netscape was very concerned about maintaining control over the distribution of its products. As a consequence, the agreement provides a number of restrictions on the means of distribution and the circumstances under which AOL, AOL affiliates and distributors can distribute Netscape products. These complex restrictions and limitations vary according to the product being distributed and according to who is doing the distributing. Because of the complexity of these restrictions, it is recommended that AOL frequently refer to the actual language of the agreement to ensure that it is in compliance with the license grant for each product. This summary only provides an overview of the types of restrictions that apply.

b. Bundled Distribution. The agreement creates a distinction between bundled distribution, which is distribution of a Netscape product for use in connection with an AOL service, and unbundled distribution, which is any other distribution. Customized products, (the **integrated browser** and the **dual-branded browsers** (both standard and Gold)) may only be distributed through bundled distribution. Furthermore, the **integrated browser** can only be distributed in connection with an AOL service that is accessed and provides material content through proprietary communications protocols other than standard Internet or Internet compatible protocols. **Non-customized products** (standard and Gold Navigator, add-ons, tools and servers) may be distributed through either bundled or unbundled distribution. Unbundled distribution of a product may only be done in such packages and forms as are provided by Netscape and may not be done through electronic distribution or speculative distribution (discussed below). Unbundled distribution must be done pursuant to Netscape's standard reseller agreement. (Section 2)

c. Electronic Distribution. The agreement limits when AOL can distribute products electronically (i.e., without use of a storage medium). Only certain products can be distributed electronically - the **integrated browser**, the **dual-branded standard browser**, the **dual-branded and Netscape-branded premium browser** (Gold), and **add-ons**. Servers, tools, and the Netscape-branded standard browser (Navigator) may not be distributed by electronic distribution at all. Furthermore, except for the integrated browser, electronic distribution can only be done by AOL (not AOL Affiliates or distributors) and may only occur from a single website or location for each of AOL, GNN and AOL Japan. For AOL Europe, electronic distribution may occur from up to 3 websites. Electronic distribution of the **integrated browser** may be done by anybody from any number of locations. (Section 2.10)

d. Speculative Distribution. The agreement defines speculative distribution as distributing a copy to a non-subscriber for trial use with the expectation of payment when the

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user subsequently subscribes to an AOL service. Speculative distribution is permitted only for the **integrated browser**, and the **dual-branded standard browser**. However, with respect to the **dual-branded standard browser**, such speculative distribution may be done only by AOL and AOL affiliates (not by distributors). (Section 2)

e. AOL Affiliates. Subject to the restrictions on electronic distribution described above, the license rights granted to AOL are also extended to AOL Affiliates, which, for purposes of the agreement, include any entity of which AOL owns directly or indirectly 19.9% and which entity has entered into an agreement with AOL to be bound by the terms of the agreement.

f. Netscape IAPPs. The agreement provides AOL with a license to Netscape's relatively new line of products known as "Netscape IAPPs". This license is for internal use of such products by AOL only. Netscape agrees to grant rights to AOL to distribute Netscape IAPPs pursuant to Netscape's then-standard distribution agreements for such products. (Section 2.9)

g. Beta Versions. The agreement authorizes AOL to distribute beta versions of Netscape products to the extent that, and in the same manners and during the same time periods as, Netscape distributes such beta versions. In addition, AOL may continue to distribute beta versions even after Netscape has released a golden master of a product, until such time as Netscape delivers a golden master of such product to AOL. (Section 2.11)

h. Compliance with Government Regulations. AOL agrees not to remove "Restricted Rights" or "Limited Rights" notices for licensed products. AOL shall require all affiliates and distributors to comply with export restrictions with respect to the 128-bit key encryption versions of licensed products. With respect to the 40-bit key encryption versions of licensed products, this requirement only applies to U.S. affiliates and distributors. (Section 4.1(a))

i. Use of Agreements. Except with respect to the distribution of the integrated browser, AOL shall require all distributors to sign Distributor License Agreements to ensure the compliance of such distributors with the terms of the agreement. AOL shall also only distribute licensed products to end-users under the terms of an End-User License Agreement, the terms of which Netscape may modify from time to time. The End-User License Agreements may be in the form of online or shrink-wrap agreements. AOL shall enforce such Distributor License Agreements and End-User License Agreements with the same degree of diligence as it uses to enforce similar agreements covering its own products. (Section 4.1(b), (c) and (d) and Section 4.3)

2. **Marketing and Promotion.**

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a. Netscape Navigator Included. AOL is granted the right to use "Netscape Navigator Included" on **advertising, marketing and other materials** in connection with the distribution by AOL of customized browser products (i.e., with either the integrated browser or the stand-alone dual-branded browser). The use of "Netscape Navigator Included" is mandatory on **packaging** containing a Netscape client product. (Sections 5.1 and 5.4)

b. Permissive Use of Netscape Trademarks. AOL is granted the right to use Netscape trademarks on **advertising, marketing and other materials** in connection with the distribution of the Netscape products to which those trademarks pertain. The Netscape trademarks may be used in conjunction with AOL trademarks. The use of the Netscape trademarks must be in compliance with Netscape's standard trademark guidelines. If Netscape changes its trademarks or its trademark guidelines, AOL can deplete existing and contractually committed for inventories of products and materials before complying with the new guidelines or using the new trademarks. AOL need not use Netscape trademarks in any country in which their connotation is offensive. AOL must clearly indicate Netscape's ownership of the Netscape trademarks. (Section 5.1)

c. Mandatory Use of Netscape Trademarks. If AOL distributes Netscape browsers in larger volumes than it distributes any other browser, AOL must display a Netscape trademark wherever an AOL trademark appears in connection with the marketing or promotion of the Internet browsing ability of a Netscape browser or of the AOL service. AOL must use a Netscape trademark on **packaging** containing Netscape products. AOL may deplete existing inventories of marketing and packaging material before complying with these mandatory uses of the Netscape trademarks, provided that such depletion does not take longer than 120 days. (Section 5.4)

d. Nonremoval of Notices. AOL shall not remove or alter any trademark, copyright or other proprietary notice, legend symbol or label appearing on or in licensed products or on Netscape packaging. AOL shall place a Netscape copyright notice on media and media packaging containing a licensed product in the same manner as AOL places its own copyright notices. (Section 5.2).

e. Toolbar. The toolbar of the integrated browser shall contain a Netscape trademark which, when pressed, functions as a link to the Netscape website. On any screens of the integrated browser on which there is no toolbar, but on which an AOL trademark appears, a Netscape trademark will also appear. (Section 5.3)

f. Press Releases. Neither party shall issue a press release concerning the agreement without the approval of the other. (Section 6.1)

g. Retail Promotions. For limited promotional periods, Netscape shall place advertising materials supplied by AOL into the retail packaging of the Netscape Navigator. Such

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advertising materials must provide some promotional offer (e.g. 10 free hours) and meet Netscape's reasonable size and delivery requirements. Netscape will promote ART on the retail packaging when the ART Player Plug-In is included in the retail box. The parties shall also discuss other promotions and bundling, including disks or CD-ROMs, in connection with the retail packaging. (Section 6.2)

h. Netscape Registration Server. Netscape shall provide a most preferred listing on its registration server to 3 AOL services selected by AOL. (Section 6.3)

i. Introductions. Netscape shall introduce AOL to the 15 largest organizations with which Netscape has relationships for the indirect distribution of products. (Section 6.4)

j. No Negative Promotion. One of the most important clauses in the agreement from a marketing perspective is found in Section 6.5. Because of its importance, the exact language is reproduced here: "**AOL agrees that it will not market or promote any Netscape Client Product or Customized Client Product** [i.e., any Netscape browser] **in a manner that states or could reasonably be interpreted to imply that such product is inferior to any other Internet browser product. Merely making available more than one Internet browser product, or merely making available more than one Internet browser product through different manners of distribution, shall not be deemed a violation of this Section 6.5.**" Netscape's sole remedy for an uncured breach of this provision is to terminate the agreement and charge AOL for integrated browsers (i.e. DLL browsers) at the rate that is applicable to stand-alone browsers. (Section 6.5)

k. Internet Connection and GNN. AOL shall create and maintain a Netscape folder in the "Internet Connection" section of the AOL service from which a user can hyperlink to the Netscape homepage. The folder will be similar in size and shape to other folders within "Internet Connection." GNN shall continuously display a banner which is no smaller than the standard "Netscape Now" button, from which a user can hyperlink to the Netscape homepage. (Section 7.1(b))

l. Netscape Website. Netscape shall create an AOL/GNN location on its website from which a user can hyperlink to the AOL and GNN websites. As long as AOL has at least 5,000,000 users, this location will be one mouse click away from the Netscape homepage. The location will be no smaller than the Netscape banner appearing on GNN. (Section 7.1(a))

m. Coop Advertising. The parties shall establish a coop advertising program to exchange advertising space on each other's services. (Section 7.2)

n. Events. The parties intend to jointly sponsor two consumer events per year during the agreement. In 1996, the parties intend these two events to be the Olympics and the Elections. (Section 7.3)

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o. Sale of Ad Banners. AOL has the right to sell a certain amount of Netscape's ad banner inventory. For the year commencing July 1, 1996, AOL can sell 50% of such inventory and the other 50% can be sold only by Netscape. AOL will retain a commission of 21% of the gross proceeds (before reductions for buying side agency costs or ad production costs) that it receives from the sale of the ad banners. After the first year period, depending upon AOL's performance, Netscape will consider continuing to use AOL as the exclusive seller (other than Netscape) of ad banners. For each period, Netscape will allow AOL to sell no less than the amount of the ad banner inventory actually sold by AOL during the prior period. AOL shall sell the inventory on Netscape's standard terms. In selling advertising, AOL shall not favor it own websites or services over the Netscape website. (Section 7.4)

p. Quarterly Meeting. Senior marketing personnel (of at least the VP level) from AOL, GNN and Netscape will meet at least once per quarter to discuss marketing, promotion and advertising activities under the agreement. (Section 7.6)

q. Purchased Advertising Space on the Netscape Website. AOL has agreed to purchase $2,000,000 worth of advertising space on the Netscape website during the first year of the agreement. During the second year of the agreement, AOL shall have the right to purchase up to $4,600,000 worth of advertising space on the Netscape website at a 50% discount (i.e., for $2,300,000). Netscape does not accept advertising from companies that produce or provide tobacco, alcohol or pornographic products or services. Netscape can refuse any ad that does not link to an AOL website. (Section 7.5)

r. Subscriber Information. The agreement imposes the following restrictions on Netscape's use of information regarding AOL subscribers: If Netscape first becomes aware of AOL subscriber information because of the registration of Netscape products by AOL subscribers on the Netscape registration server, Netscape agrees not to (i) use such information in a way that identifies such subscribers as subscribers of the AOL service or of an online information service generally, and (ii) solicit such subscribers for the benefit of Netscape or any third party. Further, if Netscape first becomes aware of AOL subscriber information because of a link or promotion from AOL or GNN to the Netscape website, Netscape agrees not to use such information in a manner that identifies the subscribers as subscribers of an AOL service. (Section 14.4)

3. **Financial Obligations.**

a. License Fees. The pricing of licensed products and upgrades is determined according to a very complicated scheme spanning four pages of tables provided as an exhibit to the agreement. The following is an attempt to simplify the scheme as much as possible:

i. The basic license fee for normal consumer use of the **integrated browser** is $0 for the first 3 years. If AOL is still the largest online service during the following 2 years,

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the fee will remain $0, otherwise the fee will be based on MFN pricing. After the first 5 years the price will be based on MFN pricing.

ii. The basic license fee for normal consumer use of the **stand-alone browser** is $4 for the first 500,000 copies, $3 for the next 500,000 copies, and $2 for each copy after that. However, the way this pricing is implemented, the $2 price will apply from the first copy; provided that the requisite volume of copies is obtained within each of the first 2 year periods. If the volume is not obtained, the higher pricing will apply. After the first 5 years the price will be based on MFN pricing.

iii. The basic license fee for normal consumer use of the Netscape **premium browser** (i.e. Navigator Gold) depends upon the method of distribution. If the product is distributed to all subscribers of a given AOL service, the price is 83% off the standard OEM price ($5 per copy for version 2.1 of Navigator Gold). If the product is distributed in any other way, the price is 67% off the standard OEM price ($10 per copy for version 2.1 of Navigator Gold).

iv. The basic license fee for **servers, tools** and **add-ons** is 3% off the standard OEM price. However, for basic add-ons, the fees are capped at $2,500,000 during the initial 5 year term and at $5,000,000 during the second 5 year term.

The above pricing summary does not reflect the prices if the products are distributed to non-consumers or through unbundled distribution in which case the prices are higher. Also the above summary does not reflect upgrade pricing which varies from product to product. (Attachment F)

b. Registration Server Bounties. AOL will pay Netscape $18 for each new subscriber of AOL generated from the Netscape registration server who remains active for 2 months.

c. Advertising. As described above, AOL has committed to purchase $2,000,000 of advertising from Netscape during the first year of the agreement.

d. Development of the Integrated Browser. AOL will pay Netscape $200,000 per engineer year (2000 hours) expended in the development of the integrated browser.

e. Support Services. For support services and upgrades for browser products, AOL shall pay Netscape $300,000 per year during the first 5 years. During the next 5 years, the parties shall agree on appropriate support fees. For support services and upgrades for servers, tools and add-ons, AOL shall pay Netscape 8% per year of the license fees for such products. AOL may discontinue support of any products at any time in which case the obligation to pay for support will cease.

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f. Minimum Payment. During the first 5 years of the agreement, AOL agrees to pay Netscape a minimum of $1,250,000 every six months for license fees, advertising and for additional development work (i.e., other than for development of the integrated browser). In the aggregate, this amounts to a minimum of $12,500,000 during the initial 5 year period. Amounts paid in excess of $1,250,000 in any six month period will carry forward and be applied against the next period's minimum. Also, any required minimum payment will be treated as an advance subsequently recoupable from amounts due for license fees, advertising and additional development work.

4. **Technology and Development**

a. No Source Code. The license from Netscape is object code only. AOL has rights to source code only after Netscape fails to develop the integrated browser or to timely fix bugs in the licensed products and only if such failure is not cured by having AOL engineers come out and work with Netscape personnel to remedy the problem. (Sections 2.15, 9.8, 12.3 and 12.4) If Netscape source code is released to AOL, there are elaborate confidentiality precautions which apply to its use by AOL. (Section 16.7)

b. Obligation to Make Available Via Download. One of the most important parts of the agreement concerns AOL's obligation to make the integrated browser available for download by AOL subscribers. The agreement requires that AOL have available for download from the AOL Service the integrated browser which is based upon version 3.0 of the Netscape Navigator for use with version 4.0 of the AOL access software. This is the only mandatory use of Netscape software under the agreement. (Section 2.1(b))

c. ART. Beginning with version 2.1 of the Netscape Navigator, Netscape has agreed to make available an ART player plug-in as an optional download. The ART plug-in will also be distributed by Netscape with the Navigator as a standard plug-in provided the total size of the plug-in is less than 150 KB. Netscape's obligations with respect to ART shall last for 2 years unless (i) the plug-in fails to meet Netscape's reasonable quality standards, (ii) AOL fails to provide support and maintenance for the plug-in, (iii) AOL loses its rights to ART, or (iv) the plug-in fails to function properly with the Navigator. AOL must provide Netscape with 90 days notice if it wants Netscape to stop distributing ART. (Section 8)

d. Development of Integrated Browser. As of the current date, Section 9 of the agreement which provides for the development of the integrated browser, has not yet been finalized by the parties. The following represents the language currently proposed by Netscape which AOL is considering:

i. Initial Development. Netscape is to use commercially reasonable efforts to develop the initial versions of the integrated browser and the dual-branded stand-alone browser according to the Specifications and Timetable provided as an exhibit. (The Specifications and

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Timetable also remain to be finally determined by the parties.) The first version of the integrated browser will be developed from version 3.0 of the Navigator for use with version 4.0 of the AOL access software. (Section 9.2)

ii. Concurrent Development of Upgrades. After the initial development of the customized products, Netscape is to provide upgrades or new versions to such products shortly after it develops upgrades or new versions of the Netscape Navigator. For the integrated browser, Netscape shall use commercially reasonable efforts to deliver such upgrades/new versions within 30 days and best commercial efforts to deliver such upgrades/new versions within 60 days. (There is an exception to this 30 day/60 day standard in the case of the first upgrade to the integrated browser, where Netscape shall have the longer of 120 days or 60 days following the next major version of the Netscape Navigator to deliver the upgrade). For the dual-branded stand-alone browser, Netscape shall use best commercial efforts to deliver upgrades/new versions within 30 days. (Sections 9.3 and 9.4)

iii. Acceptance. Upon delivery of a golden master of a developed product, AOL will have 15 days to determine whether the product is acceptable. (Section 9.7)

iv. Failure to Deliver. If Netscape fails to deliver acceptable software within the applicable time period and has not cured such failure within 10 days of notice of the failure, AOL may send a reasonable number of AOL engineers to work with Netscape personnel to resolve the failure. If the failure remains unresolved for 4 weeks or if Netscape refuses to allow AOL engineers access to Netscape facilities, AOL will have access to Netscape source code. (Section 9.8)

v. Localized or International Versions. If Netscape has localized or international versions of the Navigator, Netscape agrees to deliver customized versions of these products to AOL. If Netscape does not have a localized version for a particular country or territory, AOL may either develop such localized version itself or pay Netscape $60,000 per language, per platform to develop it. (Section 9.9)

vi. AOL Resources. AOL must provide Netscape with software, information and assistance as necessary to complete the development. Upon Netscape's request, AOL must provide up to 4 engineers to assist Netscape in the development of the integrated browser. AOL also has agreed to make available to Netscape those portions of the AOL source code needed for the development work. (Sections 9.5, 9.10(a) and 9.10(f))

vii. Netscape Resources. Netscape agrees to provide as many engineers as necessary to complete the development within the specified Timetable. Netscape also agrees to provide a development laboratory for the development process. (Section 9.10(b) and 9.10(e))

viii. Development Fee. AOL will pay Netscape $200,000 per engineer year

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(2000 hours) expended in the development of the integrated browser. (Section 13.1(d))

ix. Ownership of Customized Products. Netscape will retain ownership of all products developed by Netscape pursuant to the Agreement notwithstanding the assistance provided by AOL. (Section 9.13)

e. Permitted Modifications and Extensions. The agreement permits AOL to create derivative works based upon the licensed products provided that such derivative works do not involve the use or modification of the source code for such products and are created by the use of APIs which are either public or made available to AOL by Netscape. (Sections 1.1(nnn) and 2.13) The agreement specifically permits AOL to create a derivative work based upon the integrated browser which enables the integrated browser to be used with AOL services other than the AOL flagship service. (Section 2.1(a))

f. Additional Development. AOL may request that Netscape develop additional key consumer features that AOL believes are necessary to stay competitive in the online industry and Netscape agrees to negotiate with AOL in good faith concerning the development of such features. AOL may also request that Netscape do other development work which Netscape may consider doing in it sole discretion. If Netscape agrees to any additional development, it will provide AOL with the development services of 3 engineers within 60 days and 2 more engineers within a period mutually agreed by the parties. The particular terms of any additional development will be as mutually determined by the parties. If AOL requests the development of additional features which Netscape already planned to implement but that Netscape did not plan to implement for at least another 120 days, AOL may accelerate the implementation of such features by paying Netscape a fee to cover the cost of acceleration. (Section 10)

g. Netscape Development Plans. Netscape agrees to keep AOL informed of its development and release schedules and to provide AOL with alphas and betas as it makes such products available to its preferred customers. Netscape will also provide AOL with specifications and test plans to the extent it makes them available to preferred customers. (Section 11.1)

h. Open APIs. Netscape agrees to maintain open, public APIs with respect to its browser products. (Section 11.2)

i. Compatibility. Netscape agrees that all Netscape browsers and add-ons will be compatible with (i) WINSOCK, TCP/IP and similar widely adopted industry standards whether existing now or in the future, and (ii) each other and Netscape's APIs. (Section 11.3)

j. Developer's Program. The parties will negotiate in good faith the creation, deployment and implementation of a development program to promote the combined tools and formats of the parties. Netscape may also permit AOL to participate as a prominent participant

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in Netscape's developer's conferences. (Section 11.4)

k. Quarterly Meeting. Senior product management personnel (of at least the VP level) from AOL, GNN and Netscape will meet at least once per quarter to discuss development and release schedules, specifications, test plans, product standards propagation, deployment of consumer features, developers' programs and other development matters. (Section 7.6)

l. Warranty and Remedies. Netscape warrants that for a period of 6 months its products will be in conformance with specifications and backward compatible with at least the last 2 major releases of the product. Netscape shall provide AOL with support and maintenance (including bug fixes) for the licensed products. If Netscape fails to perform its support obligations, then after a short cure period, AOL may send AOL engineers to Netscape to work with Netscape personnel to resolve the problem. If a problem remains unresolved for a period of time (which varies according to the severity of the problem), the Netscape source code will be released to AOL. (Section 12)

m. Support and Maintenance. AOL must provide first level (frontline) telephone support to all end-users of licensed products. AOL may designate no more than 6 contact persons to contact Netscape for support. Netscape will provide backline support. Netscape engineers will be available by telephone 8 a.m. to 5 p.m. PST Monday through Friday to respond to all types of problems. Netscape engineers will also be available by pager 24 hours a day, 7 days a week to respond to Level 1 and Level 2 problems. Netscape shall respond to and fix bugs within the times set forth in Section 4.4 of Attachment G (these response times vary with the severity of the problem). Netscape shall also provide AOL with sufficient training to enable AOL personnel to provide AOL's frontline support obligations. Netscape shall also provide AOL with its database of technical support information. (Attachment G)

5. **Term and Termination.**

a. Term. The basic term of the agreement is 5 years. The agreement will automatically renew for a second 5 year period unless AOL decides not to renew by notifying Netscape at least 180 days prior to the end of the first 5 year period. (Section 17.1)

b. Termination. Either party may terminate the agreement upon the material breach by the other party of such party's obligations or representations under the agreement if such breach remains uncured for 60 days after notice. In addition, AOL may terminate the agreement if more than 50% of Netscape is acquired by a competitor of AOL. (Section 17.2)

c. Change of Control of AOL. If more than 50% of AOL is acquired by a competitor of Netscape, Netscape does not have the right to terminate the agreement but does have the right to do some or all of the following: (i) terminate the provisions pertaining to the website promotions and all advertising-related activity (i.e. all of Section 7), (ii) convert the

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advantageous pricing terms provided to AOL to Netscape's standard pricing terms, and (iii) terminate AOL's right to access source code upon a breach of the agreement. (Section 17.3)

d. Post-Termination License Rights. After termination of the agreement, for all products, all existing sublicenses to end-users will continue in effect. Further, AOL will be able to grant new sublicenses of the integrated browser for a period of 9 months following termination and new sublicenses of the dual-branded stand-alone browser and dual-branded stand-alone premium browser (i.e. Gold) for a period of 120 days following termination. AOL's use of the licensed products following termination is limited to the extent necessary to provide support for such products to end-users. (Section 17.7)

6. **Legal Liabilities.**

a. Representations and Warranties. Each party made fairly standard representations and warranties to the other concerning: (i) authority and ability to enter into the agreement, (ii) no third party claims, (iii) no infringement of third-party intellectual property. (Section 18) The agreement specifically provides that neither party makes any representation to the other concerning the commercial success or revenue to be realized from the agreement. (Section 14.3)

b. Intellectual Property Indemnification. Subject to standard provisions and exceptions, Netscape agrees to defend and indemnify AOL against any infringement claims in connection with the licensed products pertaining to (i) any patents existing as of the date of the agreement, (ii) U.S. patents existing after the date of the agreement, or (iii) U.S. trademarks, trade secrets and copyrights. Similarly, AOL agrees to defend and indemnify Netscape against the same types of claims in connection with the AOL access software. These indemnity provisions are the sole remedy either party has against the other with respect to intellectual property rights, including claims arising out of a breach by either party of their respective representations and warranties concerning intellectual property rights. However, if Netscape breaches an intellectual property representation or warranty and the breach either (i) deprives AOL of the benefit of the bargain of the agreement, or (ii) materially adversely affects AOL's ability to compete as an online service, AOL also has the right to terminate the agreement. (Section 19)

c. Limitation of Liability. The agreement places a cap on the amount for which one party can be liable to the other. The cap is equal to the greatest of (i) the total amount paid by AOL to Netscape under the agreement, (ii) the total amount paid by Netscape to AOL under the agreement, or (iii) $20,000,000. The cap does not apply to claims for misappropriation of intellectual property, breaches of confidentiality, payment of fees required under the agreement, or the parties' intellectual property indemnification obligations. The agreement also precludes claims for consequential damages except in connection with claims for misappropriation of intellectual property, breaches of confidentiality, or the parties' intellectual property indemnification obligations. (Section 20)

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7. **Miscellaneous.**

a. Confidentiality. The agreement contains fairly standard provisions concerning the obligations of the parties to keep confidential each other's technology and materials and the terms of the agreement. These provisions also prohibit either party from soliciting employees of the other party that has worked on matters pertaining to the agreement. (Section 16)

b. Changes Over Time. During negotiation, both parties agonized at length over how to address potential future changes in communications and computer technology and the evolution of the parties' respective business models. The result of this soul searching is the lengthy Section 21, entitled Changes Over Time. Section 21 sets forth a very general statement of the parties' intent in forming the agreement and makes clear that this intent should not be unwound by changes in technology or the marketplace but rather should carry forward and be applied in a meaningful way in the event of changed circumstances. Section 21 contains a number of examples of the types of changes the parties anticipate could affect the agreement. To implement Section 21, the parties have agreed to meet quarterly to advise each other of pending technological and business changes and to agree upon alternative ways of implementing the agreement in light of such changes. If the parties are unable to determine a means of continuing to implement the intent of the agreement, an arbitrator is empowered to impose changes to the agreement to account for such changes.

c. Governing Law. The agreement is governed by California law. Actions may be brought either in Santa Clara County, California or Fairfax County, Virginia. (Section 22.16)

d. Dispute Resolution. In the event of any dispute concerning the agreement, the parties will first each appoint a representative to negotiate a resolution of the dispute within 15 days and if such negotiation is unsuccessful, each party will then appoint an officer of at least the Senior Vice President level to resolve the dispute within the succeeding 15 days. If the dispute remains unresolved, the CEOs of the companies will then meet to attempt to resolve the dispute. If there is still no resolution and the dispute concerns Section 6 (Promotional Activity), Section 7 (Website Promotions and Advertising), Section 9 (Development of the Integrated Browser), Section 10 (Additional Development Services) or Section 21 (Changes over Time), the dispute will be submitted to binding arbitration. Further, if the dispute concerns release of source code, the dispute will be submitted to expedited binding arbitration. All other disputes concerning the agreement will not be subject to arbitration. (Section 22.15)

e. Equitable Relief. Netscape may pursue equitable relief with respect to all licensed products, except with respect to the integrated browser. With respect to the integrated browser, Netscape's remedies are limited to an action at law for damages. (Section 22.12)

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