NETSCAPE

NETSCAPE COMMUNICATIONS CORPORATION

INSTANT MESSAGING SERVICE, NETCASTER CONTENT DISTRIBUTION AND NAVIGATOR LICENSE AGREEMENT

This Instant Messaging Service, Netcaster Content Distribution and Navigator License Agreement (the "**Agreement**"), is entered into as of September 30, 1997 (the "**Effective Date**") by and between Netscape Communications Corporation, a Delaware corporation ("**Netscape**"), and America Online, Inc., a Delaware corporation ("**AOL**").

RECITALS

A. Netscape is in the business of developing, manufacturing, marketing and distributing Internet-related products and technology, provides related services, and in connection with its marketing efforts, maintains World Wide Web sites for the provision of local-language geographically-targeted Internet content, navigation and directory services;

B. AOL is in the business of operating online services and creating and hosting online and Internet-related content, including navigational and directory services;

C. AOL has developed an instant messaging service that enables registered users to send and receive, in real-time, private, personalized text messages and to ascertain the online status of other registered instant messaging users;

D. AOL and Netscape desire to promote certain AOL client software that enables registered users to access such service;

E. Netscape has developed an Internet-based push delivery software application marketed by Netscape under the "Netcaster" mark;

F. AOL desires to have a channel included in Netcaster that delivers certain AOL content to users;

G. Netscape has developed certain Internet client software;

H. AOL and Netscape desire to jointly modify a version of such client software, for integration with AOL's existing client software that enables AOL members to access the America Online service; and

I. The parties desire to enter into this Agreement to set forth the terms and conditions relating to the instant messaging service, the distribution of AOL content in Netcaster and the modification of Netscape's Internet client

software and integration of such modified software with AOL's existing client software.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

For purposes of this Agreement, in addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below:

1.1. **"AIM Service"** means an instant messaging service that enables registered users to send and receive, in real-time private, personalized text messages and to ascertain the online status of other registered instant messaging users, including, without limitation, the Co-Branded Instant Messenger Client and Service Clients, and each page within the AOL Web Site that a user accessing the service through the Co-Branded Integrated Messenger Client or any Service Client must access to use any feature or function of the service, including, without limitation, the AOL Co-Branded Registration Page, and that is produced, managed, operated and maintained by AOL; provided, that the AIM Service shall not include the "buddy list"/instant messaging service that enables subscribers to the AOL Online Service to send and receive, in real-time, private, personalized text messages and to ascertain the online status of other subscribers of the AOL Online Service and registered users of the AIM Service solely through the AOL Online Client.

1.2. **"AOL AIM Client"** means version 1.0 of the client software program available from AOL that enables registered users to access the AIM Service.

1.3. **"AOL Channels"** means the AOL Super Channels and the AOL Promotional Channel.

1.4. **"AOL Co-Branded Registration Page"** means that portion of the AOL Web Site that is branded with the Co-Branded Client Service Name and developed by AOL in accordance with Section 2.6.2 primarily to enable users of the Co-Branded Instant Messenger Client to register for the AIM Service.

1.5. **"AOL Channels List"** means that portion of the Channel Finder that may contain a listing of the AOL Channels.

1.6. **"AOL Content"** means the AOL Super Channels Button, AOL Promotional Button, Preview Page, AOL Channels List, AOL Channels and the Configuration Screens.

1.7. **"AOL Facility"** means the facility under the exclusive control of AOL and located at 111 Academy, Irvine, California 92612.

1.8. **"AOL Home Page"** means the home page of the AOL Web Site.

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1.9. **"AOL Online Client"** means the client software distributed by AOL to subscribers and potential subscribers of the AOL Online Service for the purpose of enabling such subscribers or potential subscribers to access the AOL Online Service.

1.10. **"AOL Online Service"** means the America Online® brand service.

1.11. **"AOL Promotional Channel"** means the Channel produced by AOL in accordance with Section 3.3.2.

1.12. **"AOL Promotional Channel Button"** means the hypertext link to a subscription area where such end user can specify that it would like to add the AOL Promotional Channel to the list of Channels that appear in such end user's My Channels Page.

1.13. **"AOL Super Channels"** means those Channels produced by AOL and/or a Content Provider that (i) feature push-delivery, Internet-based content in the U.S. English-language, (ii) are branded by AOL or co-branded by AOL and such Content Provider and (iii) mutually agreed to by Netscape and AOL pursuant to Section 3.3.1; provided, that the AOL Super Channels do not include the AOL Promotional Channel.

1.14. **"AOL Super Channels Button"** means the hypertext link to the AOL Channels List that may be included in the Channel Finder pursuant to the terms hereof.

1.15. **"AOL Web Site"** means AOL's principal collection of U.S. English-language HTML documents targeted at English-speaking end users in the U.S. and accessible by the public via the Internet at the URL currently located at http://www.aol.com and/or at such other URL or URLs as AOL may designate from time to time.

1.16. **"Channel"** means a conduit for delivering dynamic HTML-based, pushed content via the Internet as well as the content delivered through such conduit, which Channel features regularly updated content and is accessible through the Netscape Netcaster.

1.17. **"Channel Finder"** means the portion of the Selector Page menu style interface which includes listings of companies and/or services that have agreed with Netscape to distribute content to end users through a Channel.

1.18. **"Co-Branded Instant Messenger Client"** means the object code version, for each of the platforms set forth in Exhibit A attached hereto, in the U.S. English-language and in the primary language of each of the territories selected by AOL pursuant to Section 2.4.5, of the AOL AIM Client that is branded with the Co-Branded Instant Messenger Service Name and modified in accordance with the terms of this Agreement, and any and all user documentation related thereto and Co-Branded Instant Messenger Client Updates.

1.19. **"Co-Branded Instant Messenger Service Name"** means (i) the name agreed to by the parties for the purpose of co-branding the AIM Service accessible through the Co-Branded Instant Messenger Client and (ii) any replacement name(s) determined by mutual agreement of the parties.

1.20. **"Co-Branded Instant Messenger Client Specifications"** means the technical, engineering and functional specifications for the AOL AIM Client that are set forth in Exhibit A attached hereto as modified solely by AOL in accordance with Section 2.1.1 or as otherwise agreed in writing by Netscape and AOL.

1.21. **"Co-Branded Instant Messenger Client Updates"** means the object code version of any improvement, update, modification, enhancement or other change to the Co-Branded Instant Messenger Client developed by or for AOL and provided to Netscape hereunder.

1.22. **"Co-Branded Instant Messenger User"** means a user that registers for the AIM Service (i) through the Co-Branded Instant Messenger Client, (ii) from Netscape Netcenter or, subject to AOL's written consent, additional locations on the Netscape Web Site, (iii) from the AOL Co-Branded Registration Page, or (iv) with respect to users of the Co-Branded Instant Messenger Client, from the AOL Web Site or any third party web site.

1.23. **"Communicator/Navigator Enhancements"** means the object code versions of Netscape Communicator and/or Netscape Navigator that have been (i) customized, enhanced or otherwise modified by Netscape to include additional features and/or functions, and that have been commercially released by Netscape to other licensees of Netscape Communicator or Netscape Navigator, respectively, with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 2.0 vs. 3.0) or (ii) developed by Netscape to (a) correct any failure of the Netscape Communicator or the Netscape Navigator to conform to Netscape's respective specifications therefor and (b) include substantial additional features and/or functions, and that have been commercially released by Netscape to other licensees of Netscape Communicator or Netscape Navigator, respectively, with a version number that differs from that of the prior version in the number to the right to the decimal point (e.g. 2.0 vs. 2.1).

1.24. **"Communicator/Navigator Updates"** means the object code versions of Netscape Communicator and/or Netscape Navigator that have been developed by Netscape to correct any failure of the Netscape Communicator or the Netscape Navigator to conform to Netscape's respective specifications therefor, do not include substantial additional features and/or functions and have been commercially released by Netscape to other licensees of Netscape Communicator or Netscape Navigator, respectively, with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g. 2.0 vs. 2.1).

1.25. **"Components"** means the object code version of any software program that Netscape, with AOL's assistance, shall mutually agree in writing to develop for integration into the AOL Online Client for use with the AOL Online Service or other AOL products or services.

1.26. **"Confidential Information"** means any and all information related to a party that such party treats as confidential and any information relating to third parties that such party has an obligation to treat as confidential, which is disclosed by such party

to the other party in the course of performing the duties and obligations of this Agreement, whether such information is in oral, written, graphic or electronic form; provided that (a) if such information is in writing or other tangible form, it is clearly marked as "proprietary" or "confidential" when disclosed to the receiving party; or (b) if such information is not in tangible form, it (i) is identified as "proprietary" or "confidential" when disclosed and (ii) is summarized in a writing which is marked "proprietary" or "confidential" and is delivered to the receiving party within thirty (30) days after the date of disclosure. Confidential Information shall not include any information, data or material which: (a) the disclosing party expressly agrees in writing is free of any non-disclosure obligations; (b) at the time of disclosure to the receiving party was known to the receiving party (as evidenced by documentation in the receiving party's possession) free of any non-disclosure obligations; (c) is independently developed by the receiving party (as evidenced by documentation in the receiving party's possession); (d) is lawfully received by the receiving party, free of any non-disclosure obligations, from a third party having the right to so furnish such Confidential Information; or (e) is or becomes generally available to the public without any breach of this Agreement or unauthorized disclosure of such Confidential Information by the receiving party.

1.27. **"Configuration Screen"** means the user interfaces produced by AOL and presented to users who wish to subscribe to, and customize the content received from, each AOL Channel.

1.28. **"Content Provider"** means a company which is participating in the Netscape Netcaster Service by providing content and/or a link to a content-related site through an AOL Super Channel.

1.29. **"Development Facility"** means the Netscape facility located at the address set forth on the signature page hereto or at such other address as Netscape may designate in writing.

1.30. **"Embeddable Browser"** means the object code form of the Internet browser software that consists of certain portions of the Netscape Navigator, version 4.0.3, or subsequent versions as mutually agreed by the parties, as modified by Netscape, with AOL's assistance, for integration with the AOL Online Client in accordance with Section 4.

1.31. **"More Channels Page"** means that portion of the Channel Finder which includes the listings of companies and/or services that are not afforded primary positioning in the Netscape Netcaster Service and that have agreed with Netscape to distribute content to end users through a Channel.

1.32. **"My Channels Page"** means the user customizable portion of the Selector Page which includes the listings for the Channels which an end user has elected to receive.

1.33. **"Navigator Source Code"** means the human-readable version of Netscape Navigator, version 4.0.3 or subsequent versions and related technical notes that Netscape may provide to AOL from time to time hereunder.

1.34. **"Netscape Communicator"** means the unmodified U.S. English-language version and, to the extent that AOL selects additional territories in accordance with Section 2.4.5 with respect to the AIM Service or Section 3.3.5 with respect to the Netscape Netcenter Service, the version for the primary language of each such territory, of the Netscape-distributed Internet client software marketed by Netscape under the "Communicator" mark.

1.35. **"Netscape Home Page"** means the home page of the Netscape Web Site.

1.36. **"Netscape Navigator"** means the unmodified U.S. English-language version and, to the extent that AOL selects additional territories in accordance with Section 2.4.5 with respect to the AIM Service or Section 3.3.5 with respect to the Netscape Netcenter Service, the version for the primary language of each such territory, of the Netscape-distributed Internet client software marketed by Netscape under the "Navigator" mark.

1.37. **"Netscape Netcaster"** means the unmodified U.S. English-language, and, to the extent that AOL selects additional territories in accordance with Section 3.3.5, the version for the primary language of each such territory, Internet-based push delivery software application.

1.38. **"Netscape Netcaster Service"** means the distribution of U.S. English-language content to end users by means of the Netscape Netcaster client software in the U.S. English-language or in the primary language of each of the territories selected by AOL pursuant to Section 3.3.5.

1.39. **"Netscape Netcenter"** means that area of the Netscape Web Site which Netscape promotes as "Netscape Netcenter," which area offers Internet content, navigation and directory services targeted at the business user, and any successor area thereto.

1.40. **"Netscape Product"** means the Netscape Communicator, version 4.04, and the Netscape Navigator, version 4.04, for the platforms and distributions set forth in Exhibit B attached hereto, and any Communicator/Navigator Enhancement and Communicator/Navigator Update thereto, and the corresponding versions of such Communicator/Navigator Enhancements and Communicator/Navigator Updates that have been localized by or for Netscape for the primary language of any additional territory selected by AOL in accordance with Section 2.4.5.

1.41. **"Netscape Web Site"** means Netscape's principal collection of U.S. English-language HTML documents targeted at English-speaking end users in the U.S. and accessible by the public via the Internet at the URL currently located at http://home.netscape.com and/or at such other URL or URLs as Netscape may designate from time to time.

1.42. **"Netscape's Universal Registration"** means the database registration process used in Netcenter to collect and manage user names.

1.43. **"Pop-Up Disapproval Rating"** means that the number of complaints received by Netscape about the pop-up screen described in Section 5.1.3 from any user

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receiving such pop-up screen is equal to or exceeds ten percent (10%) of the total number of users that have registered for the AIM Service with respect to the specific one-week pop-up screen promotion for the AIM Service or of users that have registered for Netscape Netcenter with respect to the specific one-week pop-up screen promotion for Netscape Netcenter.

1.44. **"Preview Page"** means an HTML file, or file of such other format as may be designated from time to time in writing by Netscape, which presents end users with an overview of the AOL Promotional Channel.

1.45. **"Program Error"** means a defect or combination of defects in the Co-Branded Instant Messenger Client that results in a material failure of the Co-Branded Instant Messenger Client to function in accordance with the Co-Branded Instant Messenger Client Specifications. Program Errors shall exclude those defects caused by modification or alteration of the Co-Branded Instant Messenger Client by persons other than AOL or its authorized agents.

1.46. **"Registrations"** means the sum of (i) the number of Co-Branded Instant Messenger Users that, with respect to each such Co-Branded Instant Messenger User, was not, on the date that such user became a Co-Branded Instant Messenger User, a then-current subscriber to the AOL Online service or a registered AIM Service user (as determined by an unique email address) and (ii) the product obtained by multiplying ten (10) by the number of users that subscribe to the AOL Online Service from the "Try AOL" button on the Co-Branded Instant Messenger Client and remains a subscriber to the AOL Online service for ninety (90) days. In the event that AOL shall no longer make the AIM Service available to all users without charge, the parties will negotiate in good faith the number of "Registrations" that shall be deemed to occur pursuant to clause (i) above in the event of the registration by a user to become a Co-Branded Instant Messenger User.

1.47. **"Selector Page"** means the menu style interface presented when an end user presses or clicks on the tab calling up the Netscape Netcaster within Netscape Communicator and Netscape Navigator.

1.48. **"Service Ad Inventory"** means the electronic advertising inventory within the AIM Service.

1.49. **"Service Clients"** means the AOL AIM Client and any other client software program (other than the Co-Branded Instant Messenger Client) the primary functionality of which is to enable registered users to access the AIM Service and that is developed by or for AOL or promoted by AOL.

1.50. **"Service Client Updates"** means the object code version of any (i) update, upgrade, enhancement or port of any Service Client as made generally available by or for AOL, (ii) any internationalized or localized version of any Service Client that is made generally available by or for AOL, and (iii) any successor product to any Service Client as made generally available by or for AOL.

1.51. **"Smart Update"** means that portion of the Netscape Web Site that (i) is generally maintained by Netscape within Netscape Netcenter for the purpose of permitting the electronic downloading by Internet users of software products and/or updates to or new versions of software products and (ii) is currently located at the URL http://home.netscape.com/download/su1.html. The URL for Smart Update may be changed from time to time by Netscape.

1.52. **"User Information"** means the user information (whether or not provided voluntarily by such user) that is (i) collected by Netscape in connection with the registration of a user for the Netscape Netcenter in accordance with Section 2.6.1 and that is generally required by AOL in the registration process for the AIM Service, (ii) collected by Netscape in connection with the registration of a user for an AOL Channel pursuant to Section 3.4.1, (iii) collected by AOL on the AOL Co-Branded Registration Page and that is generally required by Netscape in the registration process for Netscape Netcenter or (iv) notwithstanding clause (i) and (iii), screen name and password information.

2. THE AIM SERVICE.

2.1 Development of Co-Branded Instant Messenger Client.

2.1.1 Development of Co-Branded Instant Messenger Client. AOL agrees to use commercially reasonable efforts to develop and deliver to Netscape a Co-Branded Instant Messenger Client that conforms to the Co-Branded Instant Messenger Client Specifications on or prior to October 6, 1997. The Co-Branded Instant Messenger Client, including, without limitation, any Co-Branded Instant Messenger Client Update, shall be developed by modifying the AOL AIM Client to, (i) include one (1) additional Netscape branded button that will link to a URL on the Netscape Web Site designated from time to time by Netscape and that will be of equal size to and located between the "IM" button and "AOL Net Find" button on the AOL AIM Client user interface, (ii) include a window for one (1) or more banner advertisements, (iii) include, in place of every AOL or AOL Instant Messenger logo or mark contained in the AIM Service Client, including, without limitation, on the "log-on" screen and in the bar at the top of each other screen, the Co-Branded Instant Messenger Service Name or mutually agreed to mark, (iv) remove, except with respect to searching for people or yellow pages, all Internet search functionality and those portions of the user interface that access such functionality, including, without limitation, the "Search the Web" button that is displayed when a user clicks on the "Net Find" button of the AOL AIM Client, (v) transfer users that elect to register for the AIM Service to the AOL Co-Branded Registration Page and (vi) provide in the electronic end user license agreement that will accompany each copy of the Co-Branded Instant Messenger Client that (a) such Co-Branded Instant Messenger Client is being licensed by AOL and (b) any and all warranties by and liability, including, without limitation, any liability for indirect, consequential, incidental, exemplary or special damages, of Netscape (or AOL's suppliers) are disclaimed to the fullest extent permitted by applicable law. Notwithstanding the foregoing, the Co-Branded Instant Messenger Client delivered by AOL to Netscape on or before October 6, 1997 pursuant

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to this Section 2.1.1 does not have to conform to the requirements of clause (iii) (other than with respect to the AOL Instant Messaging logo contained on the log-on screen of the Co-Branded Instant Messenger Client) of this Section 2.1.1; provided, that AOL shall deliver to Netscape a Co-Branded Instant Messenger Client that conforms to all of the requirements of this Section 2.1.1 prior to December 31, 1997.

2.1.2 Acceptance/Rejection of Co-Branded Instant Messenger Client. Upon delivery by AOL to Netscape of a copy of the Co-Branded Instant Messenger Client required to be delivered on or before October 6, 1997 that if accompanied by a written notice from AOL indicating that such Co-Branded Instant Messenger Client is being provided for acceptance testing, Netscape shall evaluate such Co-Branded Instant Messenger Client and (i) provide to AOL, within two (2) days from the date of receipt by Netscape of such Co-Branded Instant Messenger Client, a preliminary notice setting forth a description of all Program Errors discovered to date by Netscape and (ii) a written notice of acceptance or rejection of such Co-Branded Instant Messenger Client, executed by an authorized officer of Netscape, within four (4) days of the date of receipt by Netscape of such Co-Branded Instant Messenger Client; provided, that Netscape shall only be entitled to reject the Co-Branded Instant Messenger Client in the event that the Co-Branded Instant Messenger contains a Program Error. With respect to all other copies of the Co-Branded Instant Messenger Client, including, without limitation, the Co-Branded Instant Messenger Client Updates, Netscape shall have thirty (30) days from the date of receipt from AOL of each Co-Branded Instant Messenger Client that is accompanied by a written notice from AOL indicating that such Co-Branded Instant Messenger Client is being provided for acceptance testing, to evaluate such Co-Branded Instant Messenger Client and to deliver to AOL a written notice, executed by an authorized officer of Netscape, of acceptance or rejection of the Co-Branded Instant Messenger Client; provided, that Netscape shall only be entitled to reject the Co-Branded Instant Messenger Client in the event that the Co-Branded Instant Messenger Client contains a Program Error or includes additional functionality to the functionality contained in the Co-Branded Instant Messenger Client accepted, if at all, by Netscape pursuant to the first sentence of this Section 2.1.2. Any failure of Netscape to deliver a written notice of acceptance pursuant to this Section 2.1.2 shall be deemed an acceptance of the Co-Branded Instant Messenger Client. In the event that Netscape shall notify AOL of any Program Errors in the Co-Branded Instant Messenger Client, AOL shall use commercially reasonable efforts to correct any such Program Error and redeliver such Co-Branded Instant Messenger Client to Netscape, within ten (10) days following Netscape's communication of such Program Errors to AOL, for acceptance or rejection in accordance with this Section 2.1.2. This procedure shall continue until such time as Netscape has delivered to AOL a written statement of acceptance; provided, that Netscape shall have ten (10) days from the date of receipt from AOL of a modified Co-Branded Instant Messenger Client resubmitted by AOL to Netscape for acceptance to approve or reject such resubmitted Co-Branded Instant Messenger Client pursuant to this Section 2.1.2. Acceptance of the Co-Branded Instant Messenger Client by Netscape pursuant to this Section 2.1.2 does not limit or otherwise affect AOL's warranty or support obligations hereunder.

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2.2 Delivery of Service Client.

Upon acceptance of each Co-Branded Instant Messenger Client by Netscape pursuant to Section 2.1.2, AOL shall provide Netscape with an electronic copy of such software.

2.3 Co-Branded Instant Messenger Client License.

2.3.1 License. Subject to the terms and conditions of this Agreement, AOL hereby grants to Netscape a non-exclusive (except with respect to Section 2.3.1(iii) which is exclusive), non-transferable, royalty-free, worldwide right and license to:

(i) use and reproduce the Co-Branded Instant Messenger Client Specifications for Netscape's internal use in accordance with this Agreement;

(ii) access, reproduce, use, market, display and demonstrate the Co-Branded Instant Messenger Client;

(iii) distribute by any means now known or hereinafter developed, including, without limitation, electronically, and sublicense the Co-Branded Instant Messenger Client on a stand-alone basis or as bundled with or incorporated into products developed and or marketed by or for Netscape from time to time; provided, that, except with respect to electronic distribution, no right or license is granted by AOL to Netscape to distribute the Co-Branded Instant Messenger Client on a stand-alone basis;

(iv) subject to AOL's prior written approval, modify, translate and create derivative works based on any end user documentation included in the Co-Branded Instant Messenger Client and exercise such rights and licenses with respect to such modifications, translations and derivative works as are granted in this Section 2.3.1 with respect to the Co-Branded Instant Messenger Client; and

(v) sublicense and to grant the right to grant further sublicenses of any of the rights or licenses set forth in clauses (ii), (iii) and (iv) of this Section 2.3.1 and, subject to AOL's prior written approval, clause (i) of this Section 2.3.1.

2.3.2 License Restrictions. Except as set forth in Section 2.3.1(iv), the licenses granted pursuant to Section 2.3.1 do not include the right to, and Netscape agrees not to, adapt, alter, modify, translate or create derivative works of, or reverse compile, disassemble or otherwise attempt to reconstruct the source code for, the Co-Branded Instant Messenger Client. Further, the exclusive nature of the right granted pursuant to Section 2.3.1(iii) shall not in any way affect AOL's right to distribute and sublicense the right to distribute the Service Clients.

2.3.3 Copyright Notice. Netscape agrees to reproduce, in each copy of the Co-Branded Instant Messenger Client made by Netscape, copyright notices that are included in the "about box" or "read-me" file of the Co-Branded Instant Messenger

Client delivered by AOL to Netscape hereunder and not obfuscate, remove or alter any of the patent, copyright or other proprietary rights notices included in the Co-Branded Instant Messenger Client delivered by AOL to Netscape hereunder.

2.4 Inclusion of the Co-Branded Instant Messenger Client with Netscape Products.

2.4.1 Obligation to Bundle. Subject to the terms and conditions set forth in this Agreement, Netscape agrees to bundle the Co-Branded Instant Messenger Client with each copy of the Netscape Product commercially available to the public and intended for distribution by Netscape in the U.S. English market and in the market for the primary language of each of the territories selected by AOL pursuant to Section 2.4.5. In the event that, at the end of any calendar month during the term of this Agreement, less than twenty percent (20%) of the number of downloadable Netscape Navigator and Netscape Communicator, version 5.x and later, distributions on the platforms and in the languages with which the Co-Branded Instant Messenger Client is bundled, are bundled with the Co-Branded Instant Messenger Client, Netscape agrees to create, by the end of the immediately succeeding calendar month, a downloadable version of Netscape Navigator which shall be bundled by Netscape with the Co-Branded Instant Messenger Client. Netscape's obligation to create such versions of the Netscape Navigator shall terminate at the end of any calendar month in which the number of downloadable Netscape Navigator and Netscape Communicator, version 5.x and later, distributions on the platforms and in the languages with which the Co-Branded Instant Messenger Client is bundled (excluding such additional versions of Netscape Navigator), is equal to or exceeds twenty percent (20%) of the number of downloadable Netscape Navigator and Netscape Communicator, version 5.x and later, distributions (excluding such additional versions of Netscape Navigator).

2.4.2 Exceptions to Bundling Obligation. Notwithstanding anything to the contrary set forth in Section 2.4.1, Netscape shall have no obligation to bundle the Co-Branded Instant Messenger Client on a localized version by localized version basis with the Netscape Products:

(i) to the extent that Netscape shall not have accepted, pursuant to Section 2.1.2, the Co-Branded Instant Messenger Client for each of the operating systems and distributions of the Netscape Product set forth in item 1 of Exhibit B attached hereto on or prior to October 13, 1997; provided, that Netscape's obligation to bundle the Co-Branded Instant Messenger Client shall resume with respect to Communicator/Navigator Updates or Communicator/Navigator Enhancements for each of such operating systems and distributions released by Netscape subsequent to Netscape Communicator, version 4.04, and Netscape Navigator, version 4.04, and scheduled to be released by Netscape for general public availability at least thirty (30) days after the date of acceptance by Netscape, pursuant to Section 2.1.2, of the Co-Branded Instant Messenger Client for each such operating system and distribution;

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(ii) with respect to Co-Branded Instant Messenger Client Updates, in the event that Netscape shall not have accepted, pursuant to Section 2.1.2, the Co-Branded Instant Messenger Client Update for each of the operating systems and distributions of the Netscape Products set forth in items 1 and 2 of Exhibit B attached hereto at least forty-five (45) days prior to the date of Netscape's scheduled general release to the public of the next succeeding Communicator/Navigator Enhancement for each of such operating systems and distributions; provided, (a) that Netscape's obligation to bundle such Co-Branded Instant Messenger Client Update shall resume with respect to any Communicator/Navigator Enhancements for each of such operating systems and distributions scheduled to be released by Netscape for general public availability at least forty-five (45) days after the date of acceptance by Netscape, pursuant to Section 2.1.2, of the Co-Branded Instant Messenger Client Update for each such operating system and distribution, (b) Netscape shall have no obligation to bundle such Co-Branded Instant Messenger Client Update in any Communicator/Navigator Update released by Netscape prior to the release by Netscape of a Communicator/Navigator Enhancement that is bundled with such Co-Branded Instant Messenger Client Update, and (c) Netscape's obligation to bundle the Co-Branded Instant Messenger Client, including, without limitation, any Co-Branded Instant Messenger Client Updates, most recently accepted by Netscape, if any, and bundled by Netscape with the Netscape Communicator and Netscape Navigator shall continue with respect to Communicator/Navigator Updates that are not required to be bundled with Co-Branded Instant Messenger Client Updates pursuant to Section 2.4.2(ii)(b) or Communicator/Navigator Enhancements for which Netscape is not obligated to bundle such Co-Branded Instant Messenger Client Updates pursuant to this Section 2.4.2(ii);

(iii) in the event that the compressed executable size of the Co-Branded Instant Messenger Client is greater than three (3) megabytes;

(iv) in the event that Netscape is prohibited by law or court order from distributing the Co-Branded Instant Messenger Client, or Netscape shall reasonably determine that all or any portion of the AIM Service, including, without limitation, the use, reproduction, distribution or transmission of the Co-Branded Instant Messenger Client, infringes or misappropriates the intellectual property rights of any third party;

(v) in the event that the Co-Branded Instant Messenger Client shall (a) contain any Program Error that renders any significant functionality inoperable or (b) adversely affects, in Netscape's reasonable judgment, the Netscape Product with which it is bundled; provided, that Netscape shall use commercially reasonable efforts to bundle the Co-Branded Instant Messenger Client with such Netscape Product in a manner that eliminates such adverse impact and Netscape's obligation to bundle the Co-Branded Instant Messenger Client shall resume with respect to the Communicator/Navigator Enhancement to such Netscape Product that is released by Netscape after elimination of such Program Error or adverse impact;

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(vi) in the event that the number of end user support calls that relate to the AIM Service, including, without limitation, the Co-Branded Instant Messenger Client, and that are received by Netscape and its authorized agents during any thirty (30) day period exceed thirty percent (30%) of all end user support calls that relate to those versions of the Netscape Products on the operating systems and for the distributions with which the Co-Branded Instant Messenger Client is bundled; or

(vii) AOL shall materially breach any of its obligations set forth in Section 2.6.2, 2.6.5, 2.8, 2.9.2 or 5.4 and not cure any such breach within two (2) business days of receipt of Netscape's notice thereof.

In the event that Netscape shall have bundled and made generally available to the public a Netscape Product with the Co-Branded Instant Messenger Client and Netscape is subsequently relieved of its bundling obligations pursuant to:

(a) Sections 2.4.2(iii), (iv) or (v), Netscape's bundling obligation shall, to the extent that Netscape would not have been released from its obligation to bundle a prior version of the Co-Branded Instant Messenger Client that was bundled with such Netscape Product, be required to bundle such prior version of the Co-Branded Instant Messenger Client with the first Communicator/Navigator Update made generally available to the public forty-five (45) days after the date that Netscape removed the Co-Branded Instant Messenger Client from the Netscape Product;

(b) Section 2.4.2(iv) and (vii), to the extent that, at any time after removing the Co-Branded Instant Messenger Client, Netscape would not have been released from its bundling obligations, Netscape shall be required to again bundle such version of the Co-Branded Instant Messenger Client with the first Communicator/Navigator Update made generally available to the public forty-five (45) days after the date that the condition that terminated the bundling obligation is removed; and

(c) Section 2.4.2(vi), prior to removing such Co-Branded Instant Messenger Client from the Netscape Product, upon Netscape's written notice to AOL at any time after the date that Netscape would, but for the provisions of this Section 2.4.2 (c) first be relieved of its bundling obligations pursuant to Section 2.4.2(vi), Netscape and AOL shall negotiate in good faith for a period of ten (10) days a support plan and, to the extent that an agreement is reached between Netscape and AOL, Netscape shall not be relieved of its bundling obligations pursuant to Section 2.4.2(iv) unless, at any time after the expiration of fifteen (15) days from the date of agreement of such support plan, Netscape shall again be relieved of its bundling obligations pursuant to Section 2.4.2(iv).

2.4.3 **Installation**. Co-Branded Instant Messenger Clients that are bundled by Netscape with Netscape Products will automatically be installed as part of the installation of the Netscape Product. When installing a Netscape Product that is bundled with a Co-Branded Instant Messenger Client, the end user will not be presented with an

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option on whether or not to install such Co-Branded Instant Messenger Client. The Co-Branded Instant Messenger Client will be developed by AOL so that the user may be presented with one (1) electronic message regarding the Co-Branded Instant Messenger Client and AIM Service upon initial reboot after installation and may be developed by AOL so that the user is presented with additional electronic messages relating to the Co-Branded Instant Messenger Client and AIM Service upon the passage of a reasonable period of time from the immediately preceding electronic message. Each such electronic message shall contain a link solely to the AOL Co-Branded Registration Page. The wording of all such electronic messages shall be developed by AOL and subject to Netscape's approval. Netscape will not modify the installation process for the Co-Branded Instant Messenger Client (including the installation scripts as supplied therein by AOL) so as to prevent AOL from presenting such electronic message to the end user.

2.4.4 Integration. AOL will promptly assist Netscape from time to time without charge and at Netscape's request in bundling the Co-Branded Instant Messenger Client with the Netscape Product and testing such bundled product.

2.4.5 Additional AIM Service Territories. AOL may, at its option, elect to include versions of the Co-Branded Instant Messenger Clients that have been localized for use in the territories and corresponding languages set forth under the heading "Additional AIM Service Territories" in Exhibit C attached hereto in the definition of "Co-Branded Instant Messenger Clients" hereunder. Such option shall be exercised, if at all, upon delivery of written notice by AOL to Netscape prior to expiration of thirty (30) days from the Effective Date. Notwithstanding anything to the contrary set forth in this Agreement, (i) Section 5 (other than Sections 5.1.1 and 5.1.2) shall not be applicable and the parties shall mutually agree on a prominent promotional plan for such Co-Branded Instant Messenger Clients and (ii) Netscape's obligations hereunder with respect to any version of the Co-Branded Instant Messenger Client (other than the U.S. English-language version), including, without limitation, the obligation to bundle such Co-Branded Instant Messenger Clients with the Netscape Products, the integration of the registration process for the AIM Service through such Co-Branded Instant Messenger Clients and the installation and electronic distribution of such Co-Branded Instant Messenger Clients, are subject to technical feasibility through the exercise by Netscape of commercially reasonable efforts and (other than with respect to Sections 2.4.2(i), 5.1.1 and 5.1.2) Netscape's customary practices in each of the respective territories; provided, that the foregoing "customary practices" provision is not intended to defeat the general purpose of this Section.

2.5 Delivery of Co-Branded Instant Messenger Client Updates

To the extent that any Service Client Update shall be developed by or for AOL, AOL shall, concurrently with the earliest release of any beta or commercial version thereof, deliver to Netscape one (1) copy of the beta or commercial version, respectively, of such Service Client Update. In addition, AOL agrees that no more than fifteen (15)

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days after the earliest release of any commercial version of a Service Client Update, AOL shall deliver to Netscape a Co-Branded Instant Messenger Client Update that contains all of the functions and features as, and performs commensurably with, the Service Client Update. Upon receipt of each Co-Branded Instant Messenger Client Update by Netscape from AOL pursuant to this Section 2.5, acceptance testing of such Co-Branded Instant Messenger Client Update shall commence in accordance with Section 2.1.2.

2.6 AIM Service Features.

The AIM Service shall conform with the following requirements:

2.6.1 Netcenter Based Registration by Netscape. Netscape shall use commercially reasonable efforts to create, manage and maintain an AIM Service registration process on the Netscape Netcenter registration page that is currently located at the URL "http://home.netscape.com/netcenter/ncreg/html/.start". The design of such registration process shall be coordinated between Netscape and AOL. Each party shall use commercially reasonable efforts to design and implement such registration process on or before November 1, 1997. The Netscape Netcenter registration page shall be designed to automatically register a user for the AIM Service, unless such user specifically elects not to register for the AIM Service. If a user does not affirmatively elect not to register for the AIM Service, the user at some point in the registration process will select a screen name and password. Netscape and AOL shall use commercially reasonable efforts to coordinate the real-time transfer of such User Information from Netscape to AOL to allow the user to immediately acquire a unique instant messaging address (screen name) sufficient to enable such user to send and receive, in real-time, private personalized text messages and to ascertain the online status of other registered instant messaging users. Notwithstanding anything to the contrary set forth in this Section 2.6.1, Netscape shall have no obligation pursuant to this Section 2.6.1 in the event that Netscape shall not be required to bundle any Co-Branded Instant Messenger Client, including, without limitation, any Co-Branded Instant Messenger Client Update, with a Netscape Product pursuant to Section 2.4.2.

2.6.2 Registration by AOL. AOL agrees to use commercially reasonable efforts to design, develop, produce and manage the AOL Co-Branded Registration Page. The design of the AOL Co-Branded Registration Page shall be developed by AOL and subject to Netscape's approval. The AOL Co-Branded Registration Page will (i) be hosted and maintained on servers operated by AOL, (ii) be the sole location that users may register for the AIM Service from a button on the Co-Branded Instant Messenger Client or from any electronic promotion for the Co-Branded Instant Messenger Client, including, without limitation, the pop-up screen promotions set forth in Section 5.1.3 and the electronic messages provided to a user pursuant to Section 2.4.3, (iii) implement the Netscape Netcenter identification cookie code, (iv) not, except as provided in clause (viii), contain any links, including, without limitation, any links contained in any advertisement, (v) assign to each user a unique identifier sufficient to enable AOL to fulfill its reporting requirements and calculate its payment obligations hereunder, (vi) assign a unique instant messaging address (screen name) to such user

sufficient to enable such user to send and receive, in real-time, private personalized text messages and to ascertain the online status of other registered instant messaging users, (vii) transfer, on a real-time basis, all User Information collected by AOL in connection with such registration to a location designated by Netscape from time to time, (viii) upon completion of the registration process, transfer such user to the Netscape Home Page and (ix) contain the Co-Branded Instant Messenger Service Name on each page.

2.6.3 Netscape Design Contributions. Subject to the terms and conditions of this Agreement, Netscape hereby grants to AOL a non-exclusive, non-transferable license to use and reproduce Netscape's Design Contributions (as defined below) solely in connection with the development by AOL of the AOL Co-Branded Registration Page or any page of the AIM Service jointly developed by Netscape and AOL. No right or license is granted to AOL to distribute or sublicense all or any portion of Netscape's Design Contributions. "Netscape's Design Contributions" means Netscape's contributions under this Agreement to the look and feel and overall design of the AOL Co-Branded Registration Page. Upon the expiration or termination of this Agreement, AOL will immediately discontinue all of its use of Netscape's Design Contributions.

2.6.4 Co-Branded Instant Messenger Service Name. AOL shall not independently use the Co-Branded Instant Messenger Service Name without Netscape's prior written consent unless such use occurs in connection with AOL's advertising, sales and promotional efforts solely in connection with use of the AIM Service through the Co-Branded Instant Messenger Client. This Section 2.6.4 shall not restrict or otherwise affect AOL's right to use the marks "AOL," "Instant Messenger" or "AOL Instant Messenger" in connection with the use or distribution of the Service Client or in any other manner.

2.6.5 Production of AIM Service. AOL agrees to operate and manage the AIM Service in accordance with the terms of this Agreement and to host and maintain the AIM Service. AOL agrees that the AIM Service shall provide the same features, functions and programming provided by AOL, including, without limitation, advertising, programming, production and level of performance, to users accessing the AIM Service through the Co-Branded Instant Messenger Client (provided that such users are using the most recent version delivered by AOL to Netscape) as to users accessing the AIM Service through any other Service Client. Without limiting the generality of the foregoing, AOL agrees that (i) registered users of the AIM Service will be able to access through the Co-Branded Instant Messenger Client (provided that such users are using the most recent version delivered by AOL to Netscape) all of the features and functions provided by AOL and accessible by registered users that access the AIM Service through any Service Client and that registered users that access the AIM Service through any Service Client will be able to access in the same manner all of the features and functions provided by AOL and accessible by registered users of the AIM Service through the Co-Branded Instant Messenger Client (provided that such users are using the most recent version delivered by AOL to Netscape), (ii) users that access the AIM Service through the Co-Branded Instant

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Messenger Client (provided that such users are using the most recent version delivered by AOL to Netscape) shall not be disadvantaged or suffer from inferior production, programming or performance relative to users that access the AIM Service through any Service Client, (iii) a registered user of the AIM Service shall be able to interact with other registered users of the AIM Service without regard as to whether such users are accessing the AIM Service through the Co-Branded Instant Messenger Client or Service Client, (iv) the most favorable terms and conditions, including, without limitation, all economic and financial terms, pursuant to which AOL provides the AIM Service to users that access the AIM Service through the AOL AIM Client shall be no more favorable to users thereof than the terms and conditions, including, without limitation, all economic and financial terms, pursuant to which AOL provides the AIM Service to the users that access the AIM Service through the Co-Branded Instant Messenger Client and (v) users that access the AIM Service through the AOL AIM Client will not be afforded benefits, including, without limitation, rebates, discounts on the AIM Service or other services offered by AOL or other promotional consideration, not otherwise made available by AOL to users that access the AIM Service through the Co-Branded Instant Messenger Client.

2.6.6 AOL Trademark License. To the extent that AOL has any right, title or interest in the Co-Branded Instant Messenger Service Name, AOL hereby grants to Netscape a non-exclusive, non-transferable license to use such Co-Branded Instant Messenger Service Name in connection with the AIM Services.

2.7 Technical Support.

AOL shall

(a) to the extent that Netscape shall provide any front line support to the users of the Co-Branded Instant Messenger Client, AOL shall, at no cost to Netscape, provide back-end support to Netscape support personnel. AOL shall appoint a technical contact to whom Netscape may address all technical questions relating to the AIM Service, and use its reasonable commercial efforts to promptly remedy any malfunctioning of the AIM Service, including, without limitation, the correction of Program Errors and delivery to Netscape of corresponding Co-Branded Instant Messenger Client Updates with respect thereto in accordance with Exhibit D attached hereto; provided, however, that AOL will provide the foregoing no less effectively and timely than it provides such services for the benefit of any other distributor of Service Clients;

(b) to the extent that any users of the AIM Service will contact AOL for maintenance and support in connection with the AIM Service, AOL shall not refer such users to Netscape; and

(c) provide to Netscape, at no charge, such reasonable amounts of training as Netscape reasonably deems necessary from time to time to fulfill its obligations hereunder.

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2.8 Advertising.

2.8.1 Service Ad Inventory. AOL shall be responsible for all production and programming of advertisements on the Service Ad Inventory. Commencing on the Effective Date, AOL will manage and sell all advertising and sponsorships within the Service Ad Inventory, and AOL will manage the advertising product and services with the same degree of professionalism AOL exercises with respect to the AOL Web Site or Web sites that AOL manages on behalf of any third party.

2.8.2 Equivalent Effort. To the extent that AOL shall serve different advertisements to different Service Clients and/or the Co-Branded Instant Messenger Client, in selling Service Ad Inventory and providing advertising services hereunder, AOL will not promote, market or otherwise carry out such services in a manner that is more favorable to advertisements to be served to, or third parties purchasing such Service Ad Inventory to be served to, Service Clients than the advertisements to be served to, or third parties purchasing such Service Ad Inventory to be served to, the Co-Branded Instant Messenger Client.

2.8.3 Prohibited Advertising. Notwithstanding anything to the contrary set forth in Sections 2.8.1 and 2.8.2, in light of Netscape's extensive involvement with the education community, AOL agrees that it will not accept, in the Service Ad Inventory, advertising for or directly related to tobacco, alcohol, weapons, pornographic products or services or gambling services. AOL further agrees that it will not accept, in the Service Ad Inventory, (a) advertising that is unlawful, fraudulent, defamatory, vulgar, obscene, profane or, racially or ethnically objectionable, including, without limitation, any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national or international law or (b) advertising for any product or service that directly competes with a product or service developed and marketed by Netscape.

2.9 Exclusivity.

2.9.1 Netscape.

(a) In the event that Netscape becomes aware of any efforts to develop or promote an open protocol for an instant messaging service that enables registered users to send and receive, in real-time, private, personalized text messages or to ascertain the online status of other instant messaging users (the "Protocol"), Netscape shall notify AOL that Netscape has become aware of such Protocol. Subject to any Netscape obligation to maintain the confidentiality of such Protocol, Netscape shall disclose such Protocol to AOL. In the event that the Protocol, or any other protocol for an instant messaging service that enables registered users to send and receive, in real-time, private, personalized text messages or to ascertain the online status of other instant messaging users, shall be submitted to a standards organization and such standards organization shall approve such Protocol or other protocol or such Protocol or other protocol shall be

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generally implemented, Netscape shall, notwithstanding Section 2.9.1(b), have the right to implement and distribute such Protocol or other protocol.

(b) Netscape will not distribute any product or service developed by Netscape or any third party that (i) combines functionality that enables registered users to both send and receive, in real-time, private, personalized text messages and to ascertain the online status of other registered instant messaging users and (ii) is configured to connect to an instant messaging service other than the AIM Service. Netscape will not advertise, market or promote any product or service developed by Netscape or any third party that (A) combines functionality that enables registered users to both send and receive, in real-time, private, personalized text messages and to ascertain the online status of other registered instant messaging users and (B) is or can be configured to connect to an instant messaging service other than the AIM Service. Notwithstanding anything to the contrary set forth herein, Netscape shall be entitled to advertise, market, promote and distribute products that enable direct peer to peer messaging between client applications and Excite PAL to the extent included in the skus for Netscape Communicator Deluxe Edition, and Netscape Communicator Publishing Suite as of the Effective Date. Netscape agrees not to include Excite PAL in the next succeeding skus for such products.

(c) In the event that AOL shall enter into an agreement with any entity that is a direct competitor of Netscape to develop or distribute, directly or indirectly, any Service Client, AOL shall provide Netscape written notice immediately upon entering into such agreement. Upon receipt of such notice, all of Netscape's obligations under this Section 2.9(a) and (b) shall immediately terminate. For a period of fifteen (15) days from the date of execution of such agreement, (i) AOL agrees not to make any public statement or official disclosure, issue a press release or otherwise announce the agreement, or any of the transactions or activities contemplated thereby, with such direct competitor of Netscape, and (ii) Netscape agrees not to make any public statement or official disclosure, issue a press release or otherwise announce any agreement, transaction or activity that Netscape would have been prohibited from engaging in under Section 9(a) or 9(b), had Netscape's obligations under such Sections not been terminated.

2.9.2 AOL. AOL agrees not to include in the AIM Service, or any page directly linked from the AIM Service or directly accessible through the Co-Branded Instant Messenger Client (collectively "AIM Pages"), content that is reasonably expected to cause a significant number of users to convert from products developed and marketed by Netscape to products that directly compete with a product developed and marketed by Netscape. Netscape and AOL agree to meet on or before October 6, 1997 to design a plan with the intent to implement the provisions of this Section by not linking the AIM Pages to any pages that contain products that directly compete with a product developed and marketed by Netscape.

2.10 . Co-Branding Option. AOL shall have the option, upon delivery of the Co-Branded Instant Messenger Client required to be delivered to Netscape on October 6, 1997, to brand the Co-Branded Instant Messenger Client with the Co-Branded Instant

Messenger Service Name or solely under the AOL Instant Messenger mark. Such election shall be automatically made by AOL based upon the branding contained in the Co-Branded Instant Messenger Client required to be delivered to Netscape on October 6, 1997. In the event that AOL elects to brand the Co-Branded Instant Messenger Client with the Co-Branded Instant Messenger Service Name, all of the terms and conditions hereof shall apply to such Co-Branded Instant Messenger Client. In the event that AOL shall elect to brand the Co-Branded Instant Messenger Client solely under the AOL Instant Messenger mark: (i) AOL shall not be required to comply with Section 2.1.1 (iii) or Section 2.6.4; (ii) all references in the Agreement to the Co-Branded Instant Messenger Service Name shall be deemed to be a reference to "AOL Instant Messenger;" and (iii) Netscape's obligations pursuant to Section 5.1.4(a) shall be limited to maintaining the Co-Branded Instant Messenger Client listing in SmartUpdate (and on any successor thereof) with third party components, but above the fold.

3. NETCASTER.

3.1 Intentionally Omitted.

3.2 Services Provided by Netscape.

3.2.1 Selector Page. End users operating the Netscape Netcaster will be able to access the Netscape Netcaster Service by pressing or clicking on a tab which will reside on the electronic desktop of the end user's computer monitor screen. Netscape will produce the Netscape Netcaster Service so that when an end user launches the Netscape Netcaster Service, the end user is presented with the Selector Page substantially similar to the layout of the page described in Exhibit F attached hereto. The Selector Page shall include hyperlinks to the Channel Finder, the AOL Channels List, the More Channels Page and the My Channels Page, as well as other features including user configuration and navigation options. Notwithstanding the foregoing, Netscape reserves the right to determine other means whereby end users may access Netscape Netcaster Service functionality including, but not limited to, a special Netscape Netcaster service which is served to end users based on a user's IP address or the native language of the Netscape Communicator or Netscape Navigator which an end user is running, and which Netscape Netcaster service is separate and distinct from the Netscape Netcaster Service described in this Agreement.

3.2.2 Election of AOL Channels. Within fifteen (15) days from the Effective Date, AOL shall deliver to Netscape a written election to include in the Channel Finder, either the AOL Promotional Channel Button or the AOL Super Channels Button. Failure of Netscape to receive a written election from AOL pursuant to this Section 3.2.2 prior to the expiration of such fifteen (15) day period shall be deemed to be an election by AOL to include the AOL Promotional Button in the Channel Finder Service.

3.2.3 AOL Super Channels Button. In the event that AOL shall elect to have the AOL Super Channels Button included in the Channel Finder, AOL agrees to launch and have fully functional at least nine (9) AOL Super Channels and the AOL

Promotional Channel within sixty (60) days of the Effective Date. Subject to the provisions of Section 3.2.5, the AOL Super Channels Button shall be included in the Channel Finder with prominence materially similar to that of the hypertext link to the More Channels Page included in the Channel Finder. Netscape will produce the AOL Super Channels Button in the Channel Finder such that when an end user presses or clicks on the AOL Super Channels Button, the AOL Channels List will appear and when an end user presses or clicks on an AOL Channel listed in the AOL Channels List, such end user will be linked to a subscription area where such end user can specify that it would like to add an AOL Channel to the list of Channels which appear in such end user's My Channels Page. If an end user chooses to add an AOL Channel to its My Channels Page, the end user will be asked, if the user is not already a registered Netscape Netcenter user, to register for such AOL Channel, as such registration process is described in Section 3.4.1.

3.2.4 AOL Promotional Channel Button. In the event that AOL shall elect, or be deemed to elect, to include the AOL Promotional Channel Button on the Channel Finder, subject to the provisions of Section 3.2.5, the AOL Promotional Channel Button shall be included under the tab labeled "General" in the Channel Finder with prominence materially similar to that of the premier provider listings included in the Channel Finder. Netscape will produce the AOL Promotional Channel Button in the Channel Finder such that when an end user presses or clicks on the AOL Promotional Channel Button such end user's Preview Page will appear. AOL will supply Netscape with Preview Page which conforms to the specifications in Exhibit G-1. The Preview Page will be linked to a subscription area where an end user can specify that they would like to add the AOL Promotional Channel to the list of Channels which appear in that end user's My Channels Page. If the end user chooses to add any Channel, such as the AOL Promotional Channel, to its My Channels Page, the end user will be asked, if the user is not already a registered Netscape Netcenter user, to register for the AOL Promotional Channel, as such registration is described in Section 3.4.1.

3.2.5 Specifications. The specifications of the Selector Page, the Channel Finder, the My Channels Page and their placement within the Netscape Netcaster are set forth on Exhibit F and Exhibit G-1 hereto; provided however, that Netscape may, upon notice to AOL, (i) change the location of such elements within the Netscape Netcaster, (ii) redesign, reconfigure or rename the Netscape Netcaster and/or the manner in which an end user interacts with the Netscape Netcaster, or (iii) revise Exhibit F or Exhibit G-1, and AOL shall promptly, and in any event, within no more than fifteen (15) days following receipt of the notice, supply Netscape with revised and fully functional materials which conform to the revised specifications. As a result of any change, redesign, reconfiguration, renaming or revision pursuant to this Section 3.2.5, the AOL Super Channel Button shall be treated with prominence materially similar to that of the hypertext link to the More Channels Page in the Channel Finder and the AOL Promotional Channel Button shall be treated with prominence materially similar to that of the premier providers listings included in the Channel Finder. If Netscape has not received such revised and conforming materials within such fifteen (15) day time period

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described above, or if the materials supplied by AOL do not function in accordance with the specifications set by Netscape, then Netscape shall either (i) post previous versions of AOL's supplied materials, or (ii) make such changes as necessary to bring the materials into conformance with the new specifications, until such time as the specifications of Exhibit F or Exhibit G-1 are again revised or AOL supplies conforming materials.

3.2.6 **Content License.** AOL hereby grants to Netscape a royalty-free, fully-paid, non-exclusive, worldwide license to access, use, display, perform, reproduce and distribute the AOL Content, and such other licenses with respect to the AOL Content as may be reasonably necessary to fulfill the intention of this Agreement.

3.3 AOL Channels.

3.3.1 **Selection of AOL Channels.** The AOL Channels List may include a listing of up to twenty (20) AOL Channels, one of which shall be the AOL Promotional Channel. AOL shall provide to Netscape a reasonably detailed description of each Channel that AOL desires to have included in the AOL Channels List and, if such proposed AOL Channel will be co-branded by AOL and a Content Provider, the name of such Content Provider. Netscape shall have fifteen (15) days from receipt of each such description to accept or reject such proposed AOL Channel. Such proposed AOL Channel shall be deemed to be an AOL Channel hereunder and may be included in the Netscape Netcaster Service only upon written acceptance thereof by Netscape.

3.3.2 **AOL Promotional Channel.** AOL shall produce and maintain an AOL Promotional Channel dedicated to the promotion of the AOL Online Service. AOL agrees that the AOL Promotional Channel will (i) be used primarily to promote the AOL Online Service to existing or potential subscribers, (ii) contain a clear and consistent message, reasonably acceptable to Netscape, that describes how to use Netscape Navigator and Netscape Communicator in conjunction with the AOL Online Service, and (iii) be available, without charge, to Netscape Netcaster end users.

3.3.3 **Channel Content.** Each AOL Channel shall present compelling, timely and topical content. The content distributed through each AOL Channel shall be in accordance with the specifications set forth in Exhibit G-2. AOL agrees not to include and agrees not to permit any Content Provider to include in the AOL Content, or on any page directly linked to any AOL Content, the name of or any information relating to any product or service that directly competes with a product or service developed and marketed by Netscape.

3.3.4 **Configuration Screen.** AOL shall present to end users subscribing to any AOL Channel a Configuration Screen describing a set of customization options as set forth in Exhibit G-2. AOL shall collect information through the Configuration Screen in accordance with the procedure described in Section 3.4.1. Netscape may, upon notice to AOL, develop additional specifications for the Configuration Screen, and AOL shall promptly, and in any event, within no more than fifteen (15) days following receipt of the notice, produce a Configuration Screen which

conforms to the new specifications. As a result of any change required to comply with such additional specifications pursuant to this Section 3.3.4, the AOL Super Channel Button shall be treated with prominence materially similar to that of the hypertext link to the More Channels Page in the Channel Finder and the AOL Promotional Channel Button shall be treated with prominence materially similar to that of the premier providers listings included in the Channel Finder.

3.3.5 Additional Netscape Netcaster Service Territories. AOL may, at its option, elect to include in the Netscape Netcaster Service AOL Promotional Channels that have been uniquely tailored to the culture, economic and linguistic qualities of, and the use of the Internet in, the territories for which Netscape has localized and deployed the localized version of the Channel Finder. As of the Effective Date, Netscape has localized and deployed the localized version of Channel Finder in the territories and corresponding languages set forth under the heading "Additional Netcaster Territories" in Exhibit C attached hereto. Such option shall be exercised, if at all, upon delivery of written notice by AOL to Netscape prior to expiration of thirty (30) days from the Effective Date. In the event that AOL exercises its option pursuant to this Section 3.3.5, AOL agrees that, with respect to the territories elected by AOL, to launch an AOL Promotional Channel in such territories as set forth in Exhibit C within sixty (60) days from the Effective Date. Notwithstanding anything to the contrary set forth in this Agreement, Netscape's obligations hereunder with respect to the Netscape Netcaster Services (other than for English-speaking end users in the U.S.), including, without limitation, the registration of subscribers in connection therewith, are subject to technical feasibility through the exercise by Netscape of commercially reasonable efforts and to Netscape's customary practices in each of the respective territories; provided, that, with respect to such territory, AOL shall not be treated in a manner that is materially different than the manner that any premier provider shall be treated in such territory.

3.4 End User Registration.

3.4.1 Registration Process. An end user who wishes to subscribe to an AOL Channel and have the subscribed-to AOL Channel appear on the end user's My Channels Page will submit to Netscape the registration information required by Netscape's Universal Registration program. End users will not be asked to register separately with AOL or any Content Provider, and neither AOL or any Content Provider shall request any additional registration information from end-users other than customization and user preference information gathered by the Configuration Screen user interface as described in Section 3.3.4. Netscape shall deliver to AOL the data collected during the registration process about those users subscribing to AOL's Channels. Such data shall be delivered to AOL at a time interval and format to be determined by Netscape. AOL agrees to comply with the terms and conditions of Netscape's Universal Registration system with respect to all such data. If Netscape determines that AOL is not complying with the terms of Netscape's Universal Registration program, Netscape may terminate this Section 3 upon notice to AOL if AOL has not complied to Netscape's reasonable satisfaction within five (5) days of written notice from Netscape.

3.5 Right to Refuse.

Netscape will have the right to review the contents and format of the AOL Content. If Netscape, in its reasonable discretion, at any time determines that the AOL Content, or on any page directly linked to any AOL Content, contains any material, or presents any material in a manner that Netscape reasonably deems patently false or a disparagement of Netscape or the Netscape products or services, Netscape will inform AOL of the reason Netscape has made such determination and may refuse to include the AOL Content in the Netscape Netcaster Service. AOL will be deemed to be in material breach of this Agreement if AOL has not revised to Netscape's reasonable satisfaction the AOL Content within two (2) business days after receipt of written notice from Netscape and, after thirty (30) days, if AOL has not cured such breach, Netscape may terminate this Section 3. Netscape reserves the right to refuse to include in the Netscape Netcaster Service any AOL Content that does not completely conform to the specifications set forth in Exhibit F and Exhibit G.

4. EMBEDDABLE BROWSER AND COMPONENTS.

4.1 Development of the Embeddable Browser and Components.

4.1.1 Development of Embeddable Browser and Components Design. Netscape shall use commercially reasonable efforts to develop (i) the Embeddable Browser (including the design and technical specifications therefor) within a period agreed to in writing by the parties (the parties currently intend that such period shall be within six (6) months from the Effective Date) and (ii) any Component (including the design and technical specifications therefor) as soon as commercially practicable after Netscape and AOL shall agree in writing to develop such Component. Netscape's obligations pursuant to this Section 4.1.1 shall be subject to AOL providing all reasonable assistance, including, without limitation, the engineering resources set forth in Section 4.1.3, requested by Netscape from time to time.

4.1.2 Acceptance/Rejection of the Embeddable Browser or Component. Upon completion of the development of the Embeddable Browser or Component pursuant to Section 4.1.1, both Netscape and AOL shall jointly evaluate the Embeddable Browser or Component to determine if the Embeddable Browser or Component materially conforms to the specifications therefor. In the event that the parties shall, within thirty (30) days of the date that the parties shall commence their evaluation of the Embeddable Browser or Component pursuant to this Section 4.1.2, discover any error in the Embeddable Browser or Component that prevents the Embeddable Browser or Component, respectively, from materially conforming to the specifications, the parties shall use commercially reasonably efforts to correct such error and re-evaluate the Embeddable Browser or Component in accordance with this Section 4.1.2. In the event that, within such 30-day period, the parties shall not discover an error in the Embeddable Browser or Component that prevents the Embeddable Browser or Component, respectively, from materially conforming to the specifications,

the Embeddable Browser or Component, as the case may be, shall be deemed to be accepted by the parties.

4.1.3 **Engineering Resources.** AOL shall bear all costs of the AOL engineers performing development services hereunder. AOL acknowledges and agrees that Netscape's performance of services pursuant to this Section 4 is subject to the Netscape engineering resources that Netscape and AOL agree to allocate to perform such services and for which AOL agrees to pay Netscape in accordance with Section 7.2. As of the Effective Date, Netscape and AOL agree that Netscape shall provide two (2) senior engineers to perform development services hereunder and AOL shall provide two (2) senior engineers, and such additional senior engineers that may be necessary to assist Netscape, to perform development services hereunder.

4.2 **License Rights.**

4.2.1 **Navigator Source Code License.** Subject to the terms and conditions of this Agreement, Netscape hereby grants to AOL a non-exclusive, non-transferable license to access, modify and use the Navigator Source Code solely at the Development Facility and the AOL Facility, to assist Netscape in the development and testing of the Embeddable Browser and Components in accordance with the terms hereof. Notwithstanding anything to the contrary set forth herein, no right or license is granted to AOL to access or use any components of the Navigator Source Code (i) at the AOL Facility that are licensed to Netscape by a third party or (ii) that are not reasonably necessary to develop the Embeddable Browser or Component in accordance with the respective design therefor. The license granted by Netscape to AOL pursuant to this Section 4.2.1 shall, unless sooner terminated in accordance with the terms of this Agreement, expire with respect to the development of the Embeddable Browser and each Component on the date that the Embeddable Browser or such Component, respectively, is deemed accepted by the parties pursuant to Section 4.1.2.

4.2.2 **Evaluation License.** Subject to the terms and conditions of this Agreement, Netscape hereby grants to AOL a non-exclusive, non-transferable license to install, reproduce and use a reasonable number of copies of the object code version of the Embeddable Browser and each Component, at the AOL Facility, solely for the purposes of determining whether to enter into an agreement with Netscape pursuant to Section 4.5.

4.2.3 **AOL Online Client License.** Subject to the terms and conditions of this Agreement, AOL hereby grants to Netscape a non-exclusive, non-transferable license to access and use the AOL Online Client solely to develop the Embeddable Browser and Components. AOL shall deliver such AOL Online Client to Netscape as soon as commercially practicable after the Effective Date.

4.3 **Navigator Source Code Restrictions.**

4.3.1 **AOL Engineers.** Only employees of AOL who have a reasonable need to have access to the Navigator Source Code in order to perform such

services, and who sign an Acknowledgment in the form of Exhibit H attached hereto, will have access to the Navigator Source Code. All such employees of AOL will be required to comply with Netscape's reasonable facilities and security rules while at the Development Facility.

4.3.2 Export Restrictions. Due to U.S. Export Rules and Regulations, disclosure of Navigator Source Code to a person who is not a U.S. citizen or permanent resident ("Non-Approved Individuals") may require an approved export license. AOL will not permit any Non-Approved Individuals to access the Navigator Source Code without Netscape's prior written consent. If a Non-Approved Individual is involved, then execution of Netscape's "Certification by Foreign National Employee or Visitor" by the Non-Approved Individual will also be required prior to permitting such access.

4.3.3 No Removal. No AOL employee shall (a) remove in any manner any Navigator Source Code from the Development Facility or the AOL Facility, including, without limitation, by electronic transmission, nor (b) access the Navigator Source Code from outside the Development Facility or the AOL Facility (i.e., no off-site modem access, etc.).

4.3.4 Security Procedures. To the extent that Netscape authorizes AOL, pursuant to Section 4.3.3, to remove the Navigator Source Code from the Development Site, AOL agrees that all access and use of the Navigator Source Code and storage of the Navigator Source Code during any period of non-use shall be solely at the AOL Facility in accordance with the following procedures:

(a) AOL shall designate an employee (the "Manager") that has managerial or supervisory powers over the employees referenced in Section 4.3.1 and who shall have responsibility for preserving the security of the Navigator Source Code at all times;

(b) AOL shall permit access to and use of the Navigator Source Code solely in a room at the AOL Facility to which access may be obtained only through a key or computerized card-access security device and shall store the Navigator Source Code, during all periods of non-use, in a locked and secured storage area at the AOL Facility that may be accessed only by the Manager;

(c) AOL shall, in the event that all or any portion of the Navigator Source Code is provided in machine-readable form, install such Navigator Source Code on a single stand-alone computer (i) solely during periods that the employees referenced in Section 4.3.1 are accessing and using the Navigator Source Code for the used authorized herein and, during periods of non-use, delete such Navigator Source Code in its entirety from such computer system and store such Navigator Source Code on physical storage media in accordance with Section 4.3.4(b), (ii) that limits access to the Navigator Source Code through a password-based computer control facility solely to the employees referred in Section 4.3.1 and (iii) that is not networked or connected

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with any other computing device or otherwise capable of permitting such Navigator Source Code to be downloaded to or accessed from any other computing device; and

(d) the Manager shall maintain and retain accurate records indicating each person that has accessed the Navigator Source Code and the date(s) of such access, and shall upon Netscape's request from time to time, provide such records to Netscape.

4.3.5 Restrictions on Employee Services. Without limiting the generality of this Section 4.3 or Section 9, AOL agrees to separate the AOL employees that have accessed or used the Navigator Source Code, solely during that period in which any portion of the Navigator Source Code is located at the AOL Facility, from its other development efforts during such period and relating to any of the functionality embodied within such portion of the Navigator Source Code.

4.4 Restrictions and Limitations.

4.4.1 Except for the limited right to use the Navigator Source Code in accordance with Section 4.2.1 and the limited right to use the Embeddable Browser and Components in accordance with Section 4.2.2, no right or license is granted to AOL to use, modify, create derivative works based on, distribute, market, reproduce or access the Navigator Source Code, Embeddable Browser or Components. Without limiting the generality of the foregoing, AOL shall not copy the Navigator Source Code in whole or in part. AOL shall not (i) adapt, alter, modify, translate or create derivative works of the Embeddable Browser or Components, (ii) reverse compile, disassemble or otherwise attempt to reconstruct the source code for the Embeddable Browser or Components, (iii) electronically transfer the Embeddable Browser, Components or Navigator Source Code from one computer to another over a network, (iv) assign, pledge, rent, lease or loan the Embeddable Browser, Components or Navigator Source Code, (v) obfuscate, remove or alter any of the trademarks, trade names, logos, patent or copyright notices, confidential or proprietary legends or other notices or markings on or in the Embeddable Browser, Components or Navigator Source Code, and all such markings shall be included in all copies thereof made by AOL (to the extent any copies are authorized), (vi) add, or permit any third party to add, any markings, notices or legends to the Embeddable Browser, Components or Navigator Source Code without Netscape's express written consent or (vii) publish or otherwise disclose to any third party the results of any benchmark tests run on the Embeddable Browser or Components.

4.5 Distribution Agreements.

4.5.1 Integrated Browser Distribution Agreement. In the event that, after acceptance of the Embeddable Browser pursuant to Section 4.1.2, AOL shall desire to obtain the right to distribute the object code version of the Embeddable Browser for use solely with the AOL Online Service, the parties shall negotiate in good faith the terms of such distribution agreement; provided, that if AOL shall agree to make the Embeddable Browser the default browser for use with the AOL Online Service (i.e., if

and for so long as the distribution of the Embeddable Browser accounts for at least eighty-five percent (85%) of all browsers being distributed (both physically and electronically) by or for AOL), AOL shall have a license to distribute such Embeddable Browser solely as integrated into the AOL Online Client for use with the AOL Online Service pursuant to terms of Netscape's then current standard OEM Agreement (or on such other terms as the parties may mutually agree) and (i) Netscape will not charge AOL for the distribution of such Embeddable Browser, (ii) the term of such distribution agreement shall be five (5) years, (iii) such Embeddable Browser shall be branded solely by AOL, (iv) the parties shall agree to cooperate in a manner substantially similar to the manner provided herein with respect to the development of the Embeddable Browser in order to facilitate the development of enhancements and updates to the Embeddable Browser based upon enhancements and updates to the Netscape Navigator, and (v) if and so long as the distribution of such Embeddable Browser accounts for at least eighty-five percent (85%) of all browsers being distributed (both physically and electronically) by or for any third party operating the localized version of the AOL Online Service, such distribution agreement shall provide that AOL can sublicense such Embeddable Browser to such third party solely for use in conjunction with the online client for such localized AOL Online Service.

4.5.2 **Components Distribution Agreement.** In the event that, after acceptance of a Component pursuant to Section 4.1.2, AOL shall desire to obtain the right to distribute the object code version of such Component, the parties shall negotiate in good faith the terms of such distribution agreement.

4.6 Return of Navigator Source Code.

Unless sooner required pursuant to Section 13.4, promptly, and in any event within five (5) days after the expiration of the right to use the Navigator Source Code pursuant to Section 4.2.1, AOL shall return to Netscape all Navigator Source Code and the source code version of the Embeddable Browser and any Components, and any and all copies or extracts thereof. Upon Netscape's request, an officer of AOL shall promptly certify in writing as to AOL's compliance with this Section 4.6

5. MARKETING ACTIVITIES.

5.1 Netscape Promotions.

Netscape will provide AOL with the following promotions for the use of the AIM Service through the Co-Branded Instant Messenger Client:

5.1.1 Toolbars and Menu Bar.

(a) *Personal Toolbar.* Each Netscape Product that is bundled by Netscape with the Co-Branded Instant Messenger Client pursuant to Section 2.4.1 shall contain on the *Personal Toolbar* (and on any successor thereof) included therein, a button for the Co-Branded Instant Messenger Client. The button will appear as the left-most

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button (unless otherwise mutually agreed) and in a manner similar to other buttons contained in the Personal Toolbars on the respective Netscape Product. When the end user places the mouse pointer over the button a Tool Tip will display a text message containing the same text appearing on the button and potentially additional trailing text. When the end user clicks on the button, the Co-Branded Instant Messenger Client will be launched.

(b) *Component Bar (*a.k.a., the "Floating Toolbar"). Netscape currently intends to include within the functionality of the Communicator/Navigator Enhancement, version 5.0, for each of Netscape Communicator and Netscape Navigator, the ability to customize the Component Bar. To the extent that Netscape does include such functionality in such Communicator/Navigator Enhancements, Netscape will with respect to such Communicator/Navigator Enhancements, in each case, to the extent that a Co-Branded Instant Messenger Client is bundled with such Netscape Product, to place a button for the Co-Branded Instant Messenger Client on such *Component Bar* of such Netscape Products. In such event, such button will be the last button listed on the *Component Bar* (i.e., it will be given the bottom-most position). The button will have a mutually agreeable design. When the end user places the mouse pointer over the button a Tool Tip may display a mutually agreeable text message that may be different from the text appearing on the button, if any (e.g., "Send an Instant Message"). If sufficient space is reasonably available, a mutually agreeable button and logo will also be displayed when the *Component Bar* is "docked" to the status bar or otherwise minimized, provided, however, that, when "docked," the Instant Messenger logo on the *Component Bar* may be different and/or smaller than when the *Component Bar* is fully shown. When the end user places the mouse pointer over the button for the Instant Messenger logo on the docked *Component Bar,* a Tool Tip may be displayed with a mutually agreeable text message (which may be different from the Tool Tip message that is displayed when the *Component Bar* is fully shown, e.g., "Instant Messenger"). When the end user clicks on the button for the Co-Branded Instant Messenger Client on the *Component Bar,* whether docked or fully shown, the Co-Branded Instant Messenger Client will be launched. In the event that Netscape does not include the ability to customize the Component Bar in Communicator/Navigator Enhancement, version 5.0, for each of Netscape Communicator and Netscape Navigator, or in the event that a customizable Component Bar is included in such Communicator/Navigator Enhancement and is not configured as provided in this Section 5.1.1(b), the parties shall mutually agree to a comparable placement of a button or other mechanism that may display a text message and/or launch the Co-Branded Instant Messenger Client.

(c) *Menu Bar.* Provided that the Co-Branded Instant Messenger Client that is bundled with the Netscape Product pursuant to Section 2.4.1 is installed, (i) the Co-Branded Instant Messenger Client shall be listed as one of the components of the Netscape Communicator under the *Communicator* selection on the main menu bar (and on any successor thereof) of Netscape Communicator and as one of the components of the Netscape Navigator under the *Navigator* selection on the main menu bar (and on any successor thereof) of Netscape Navigator; (ii) on such menu, the Co-Branded Instant

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Messenger Client shall be included in the top-most portion of such menu along with the components of the Netscape Product (e.g., Messenger Mailbox, Page Composer, and Netcaster), and not in the third party products section; (iii) as is the case with the components of the Netscape Product, the Co-Branded Instant Messenger Client will have (a) a hot key for keyboard access from such menu listing (e.g. "I"), and (b) a shortcut key listed on such menu that will allow the end user to access the Co-Branded Instant Messenger Client at any time (e.g., Ctrl+5); and (iv) when a user selects the Co-Branded Instant Messenger Client from the menu bar, the Co-Branded Instant Messenger Client will be launched.

(d) Nothing contained in this Section 5.1.1 shall be deemed to require Netscape to create a bar, toolbar, button or other feature that is not included in a Netscape Product or to maintain any such bar, toolbar, button or other feature in a Netscape Product. Any text messages required pursuant to this Section 5.1.1 shall be as mutually agreed by the parties.

5.1.2 Program Folder/Group. Upon installation by an end user of a Netscape Product that is bundled with the Co-Branded Instant Messenger Client pursuant to Section 2.4.1, any Program Folders or Program Groups created by the installation process shall include a separate icon for the Co-Branded Instant Messenger Client. The icon shall be supplied by AOL and be subject to the reasonable approval of Netscape. When an end user clicks on the icon, the Co-Branded Instant Messenger Client will be launched.

5.1.3 Pop-ups. Netscape will conduct the following series of pop-up screen promotions to test how Netscape customers react to such promotions, with the objective of doing further pop-up screen promotions:

(a) Commencing by November 1, 1997, Netscape shall cause, for seven (7) days over the next thirty (30) day period, a pop-up screen to appear to users that access the Netscape Home Page and that have not registered for Netscape Netcenter. Such pop-up screen will appear on at least thirty percent (30%) of the hits to the Netscape Home Page. Such pop-up screen will promote Netscape Netcenter and encourage the end-user to register for Netcenter. On or about October 24 1997, the parties shall collaborate to determine the probability of completing the AIM Service registration process on the Netscape Netcenter registration page by October 31, 1997. If the parties mutually determine that the AIM Service registration process on the Netscape Netcenter registration page will not be completed by October 31, 1997, AOL may elect to commence the pop-up screen promotion pursuant to this Section 5.1.3(a) on December 1, 1997 in exchange for commencing the pop-up screen promotion pursuant to Section 5.1.3(b) on November 1, 1997.

(b) Commencing by December 1, 1997, Netscape shall cause, for seven (7) days over the next thirty (30) day period, a pop-up screen to appear to registered members of Netscape Netcenter that access the Netscape Home Page. Such pop-up

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screen promotion will promote the download and use of the Co-Branded Instant Messenger Client and registration for the AIM Service. In the event that a member of Netscape Netcenter shall not receive a pop-up screen promotion pursuant to this Section 5.1.3(b) during such thirty (30) day period, Netscape agrees, within fourteen (14) days after the end of such thirty (30) day period, to send an email to such members of Netscape Netcenter that did not receive such pop-up screen promotion. Such email will promote the download and use of the Co-Branded Instant Messenger Client and registration for the AIM Service. The design and wording of such pop-up screen promotions and/or email messages that relate to the access of the AIM Service through the Co-Branded Instant Messenger Client shall be as developed by AOL and approved by Netscape; provided that in the event the parties cannot agree on the design and wording of the pop-up screens the topic or topics of disagreement shall be referred to David M. Colburn on behalf of AOL and to Mike Homer on behalf of Netscape for discussion and resolution.

(c) AOL may, upon written notice to Netscape prior to the expiration of ten (10) days after each of the first three (3) calendar quarters during the term of this Agreement, elect to have Netscape provide a promotion pursuant to this Section 5.1.3(c). Netscape shall, subject to agreement by the parties of AOL's promotional activities pursuant to Section 5.1.3(d), during the calendar quarter in which Netscape received an AOL written election pursuant to this Section 5.1.3(c), promote the download and use of the Co-Branded Instant Messenger Client and registration for the AIM Service in accordance with this Section 5.1.3(c) as follows:

(i) In the event that, with respect to an election made by AOL pursuant to this Section 5.1.3(c) immediately succeeding the first, second or third calendar quarter, the aggregate number of Registrations during such immediately preceding quarter or quarters exceed 1,250,000, 2,500,000 or 3,750,000, respectively, Netscape shall provide a pop-up screen promotion for three (3) days during such quarter; provided, in the event that both the pop-up screen promotions conducted in accordance with Sections 5.1.3(a) and 5.1.3(b) shall have received a Pop-Up Disapproval Rating or the pop-up screen promotion conducted in accordance with Section 5.1.3(c) shall have received a Pop-up Disapproval Rating. Netscape shall have no obligation to provide additional promotions pursuant to this Section 5.1.3(c).

(ii) In the event that, with respect to an election made by AOL pursuant to this Section 5.1.3(c) immediately succeeding the first, second or third calendar quarter, the aggregate number of Registrations during such immediately preceding quarter or quarters does not exceed 1,250,000, 2,500,000 or 3,750,000, respectively, Netscape shall provide a pop-up screen promotion for seven (7) days during such quarter, provided in the event that both the pop-up screen promotions conducted in accordance with Sections 5.1.3(a) and 5.1.3(b) shall have received a Pop-Up Disapproval Rating, Netscape shall use commercially reasonable efforts to promote through emails, including, without limitation, the emails required to be provided pursuant to Section 5.1.4(b), and other direct promotional vehicles for seven (7) days during such

quarter, the download and use of the Co-Branded Instant Messenger Client and registration for the AIM Service to substantially all users that access the Netscape Home Page during such seven (7) days.

The design and wording of such pop-up screens or other promotional vehicles that relate to the access of the AIM Services through the Co-Branded Instant Messenger Client shall be as developed by AOL and approved by Netscape; provided that in the event the parties cannot agree on the design and wording of the pop-up screens the topic or topics of disagreement shall be referred to David M. Colburn on behalf of AOL and to Mike Homer on behalf of Netscape for discussion and resolution. Pop-up screen promotions provided by Netscape pursuant to this Section 5.1.3(c) will appear on at least thirty percent (30%) of the hits to the Netscape Home Page.

(d) Each time that AOL shall make an election pursuant to Section 5.1.3(c) to have Netscape conduct an additional pop-up screen promotion, AOL agrees to conduct on behalf of Netscape, during the same quarter(s) in which Netscape is obligated to conduct such additional promotion(s), promotional activities for Netscape Netcenter as mutually agreed to in good faith by the parties. In connection with any promotion conducted by AOL pursuant to this Section 5.1.3(d), such promotional activities shall be designed (as mutually agreed to by the parties) to, and AOL agrees to use commercially reasonable efforts to ensure that, each such promotional activity is displayed to substantially all AOL Online Service subscribers during each period for which AOL makes an election pursuant to Section 5.1.3(c) and, shall have a value of $333,333 (based on AOL's standard advertising rate card). Netscape agrees if the promotions and advertising provided by AOL to Netscape pursuant to this Section 5.1.3(d) are linked to pages within Netcenter, such pages will not contain any advertising, promotion, link or other content that refers specifically to the Netscape Products during the period that AOL is providing such advertising or promotion. The parties agree to cooperate with each other with reference to the timing of the advertising and promotions provided by AOL and the content on the Netcenter pages linked to by such advertising and promotion to ensure compliance with the foregoing sentence.

(e) AOL may, at its option, with respect to any quarter, elect to increase the value of the promotional activity conducted by AOL pursuant to Section 5.1.3(d) in multiples of $333,333 (up to a maximum increase of $1,000,000). In such event, the number of days of pop-up screen promotions to be provided by Netscape for such quarter pursuant to Section 5.1.3(c) shall be increased by three (3) days during such quarter for each $333,333. AOL shall not be entitled to make an election pursuant to this Section 5.1.3(e) in the event that both the pop-up screen promotions conducted in accordance with Section 5.1.3(a) and 5.1.3(b) shall have received a Pop-Up Disapproval Rating.

(f) In the event that AOL no longer makes the AIM Service available to all users without charge, the parties shall mutually agree to redefine "Pop-Up Disapproval Rating" as it applies to this Section 5.1.3.

5.1.4 Netcenter.

(a) Subject to the terms and conditions of this Agreement and within fifteen (15) days of the acceptance by Netscape pursuant to Section 2.1.2 of a Smart Update compliant version of the Co-Branded Instant Messenger Client, Netscape shall maintain the Co-Branded Instant Messenger Client listing in Smart Update (and on any successor thereof) in a manner that will, subject to completion of the applicable registration process and end user system compatibility (i.e., appropriate configurations and ability to automatically install), permit users to download the Co-Branded Instant Messenger Client. Netscape agrees that the Co-Branded Instant Messenger Client shall receive at least as prominent a position within Smart Update as other Netscape components and will not require scrolling or clicking for the user to view, unless other Netscape components are required to be viewed in a similar manner. Notwithstanding anything to the contrary set forth in this Section 5.1.4(a), Netscape shall have no obligation pursuant to this Section 5.1.4(a) to the extent that Netscape shall not be required to bundle any Co-Branded Instant Messenger Client, including, without limitation, any Co-Branded Instant Messenger Client Update, with a Netscape Product pursuant to Section 2.4.2 provided, however that if, at any time after being relieved of its obligation under this Section 5.1.4(a) to list the Co-Branded Instant Messenger Client for download within Smart Update, Netscape is once again required to bundle a Co-Branded Instant Messenger Client or Co-Branded Instant Messenger Client Update under Section 2.4.2, then Netscape shall within fifteen (15) days thereafter be required to resume its obligations under this Section 5.1.4(a).

(b) Netscape agrees to send an official email via Netscape's quarterly Navigator and Communicator Product News Letter which is sent to all registered users of Netscape Navigator and Netscape Communicator, who are not already registered users of the Co-Branded Instant Messenger Client, that promotes the Co-Branded Instant Messenger Client and encourages the registration and use of the Co-Branded Instant Messenger Client. The wording of that portion of such emails that pertains to the Co-Branded Instant Messenger Client shall be as mutually agreed by the parties.

(c) Netscape will, subject to Netscape's standard terms and conditions applicable to participation in Netscape Netcenter, including, without limitation, approval of AOL's programming and the execution of Netscape's Netcenter Agreement, permit AOL to maintain a listing for the AIM Service within the Community Channel of Netscape Netcenter that will (i) link to a separate area designed and maintained by Netscape on the Netscape Web Site, (ii) be regularly programmed by AOL with information concerning the use of the AIM Service through the Co-Branded Instant Messenger Client, (iii) that shall appear in each listing of the areas or services contained within the Community Channel of Netscape Netcenter with prominence materially similar to that of such other areas or services and (iv) be accessible from an instant messaging link listed on the vertical, expanding "site map toolbar" that appears on the left-hand side of the screen on certain pages within Netscape Web Site or, if Netscape

creates a Community subheading, under the Netscape Netcenter heading, such instant messaging link shall be listed under the Community subheading.

5.1.5 **NetSearch Button.** As soon as commercially practicable after the initial availability of the AOL Co-Branded Registration Page, Netscape will place a button or strip promoting the Co-Branded Instant Messenger Client and/or the AIM Service (which button or strip will link to the Co-Branded AOL Registration Page or other mutually agreed upon page that contains the Co-Branded Instant Messenger Service Name) on the NetSearch page of its web site, above the fold. The design of such button/strip will be mutually agreed upon by the parties within the parameters of Netscape's NetSearch guidelines.

5.1.6 **Unsold Netscape Ad Inventory.** Upon AOL's written election delivered to Netscape within thirty (30) days from the Effective Date, Netscape will make available to AOL, for six (6) months from the Effective Date, ten percent (10%) of Netscape's unsold ad inventory on the Netscape Web Site at no cost. Upon AOL's written election delivered to Netscape within thirty (30) days of the end of the six (6) month anniversary of the Effective Date, Netscape will make available to AOL, prior to expiration of the twelve (12) month anniversary of the Effective Date, ten percent (10%) of Netscape's then-current unsold ad inventory at no cost. AOL will dedicate all such inventory to promoting the use of the AIM Service through the Co-Branded Instant Messenger Client. Any such advertising shall be subject to Netscape's standard advertising policies, as such policies may exist from time to time. Netscape shall determine the particular advertising inventory that AOL shall receive under this section 5.1.6 in cooperation with AOL. Unsold ad inventory will be determined on a dynamic basis, which shall be at least daily.

5.1.7 **Status of Registrations.** Netscape and AOL shall each appoint a project manager that shall be responsible for evaluating the effectiveness of the marketing activities performed pursuant to this Agreement. The project managers shall attend a monthly telephone conference and a formal quarterly meeting to discuss the impact of such marketing activities on the number of Registrations and to consider improvements to such activities for the purpose of increasing Registrations to an annualized rate that would cause the Agreement to expire on the twelve (12) month anniversary of the Effective Date.

5.1.8 **Release of Netscape's Marketing Obligations.** Netscape shall have no obligation pursuant to this Section 5.1 in the event that Netscape shall not be required to bundle any Co-Branded Instant Messenger Client, including, without limitation, any Co-Branded Instant Messenger Client Update, with a Netscape Product pursuant to Section 2.4.2.

5.2 **AOL Promotions.**

5.2.1 **AOL Online Service.** AOL shall provide the following promotions to Netscape on the AOL Online Service.

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(a) AOL's co-branded Netscape Navigator shall be listed and made available for download from within the *Internet Connection* channel (and on any successor thereof), in the area entitled *Internet Software* (which is accessible by clicking on the *Internet Extras* button on the main page of the *Internet Connection* channel). Placement of the Netscape Navigator in the Internet Software area shall be prominently listed in the List Box (not under subfolders).

(b) Netscape shall be given a promotion within the *Computers and Software* channel (and on any successor thereof), in the area entitled *Multimedia Showcase* (which resides on AOL.COM and is accessible from a list box in the *PC Multimedia Zone* area within the *Computers and Software* channel). The location and extent of such promotion and the particular Netscape products to be promoted shall be as mutually agreed by the parties.

5.2.2 *AOL Netmail* Promotion. AOL is currently developing a service that will allow subscribers to the AOL Online Service to access their AOL email with a standard Internet browser through a new area on AOL.COM which is tentatively entitled *AOL Netmail*. Upon Netscape's request, Netscape and AOL shall use commercially reasonable efforts to develop a means by which Netscape Product users may use the *AOL Netmail* service and access their email on the AOL Online Service. After the *AOL Netmail* area is made generally available and users of Netscape Products are able to access the *AOL Netmail*, Netscape and Netscape Products will be promoted on the first page of such *AOL Netmail* area. Such promotion shall, upon Netscape's request and at no cost to Netscape, consist of the Netscape Products being listed and made available for download, as well as other Netscape products mutually agreed to by the parties.

5.2.3 Unsold AOL Ad Inventory on the AIM Service. In the event that AOL shall elect to obtain a portion of Netscape's unsold ad inventory pursuant to Section 5.1.6, AOL will make available to Netscape, during the period(s) that AOL's election shall apply, ten percent (10%) of the unsold Service Ad Inventory at no cost. Netscape will dedicate all such ad inventory to promoting any Netscape products or services. Any such advertising shall be subject to AOL's standard advertising policies, as such policies may exist from time to time. AOL shall determine the particular Service Ad Inventory that Netscape shall receive under this Section 5.2.3 in cooperation with Netscape. Unsold ad inventory will be determined on a dynamic basis, which shall be at least daily.

5.3 Press Plans.

AOL and Netscape agree to participate in a joint press announcement regarding the relationship created hereby which will take place on a mutually agreed upon date. The parties shall agree to the form and content of the joint press release. Notwithstanding the foregoing, after the joint press release either party may issue its own press release, subject to the other party's prior approval of the content within the release. In any press announcement regarding the Co-Branded Instant Messenger Client, the Co-Branded

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Instant Messenger Client name and both AOL's and Netscape's name and logo shall be included in the press release, and the names and logos of Netscape and AOL shall appear with equal prominence. Interviews with the press regarding announcement of the use of the Co-Branded Instant Messenger Client to access the AIM Service shall be coordinated between both Netscape and AOL. Under no circumstances shall any press release contain the financial terms of this Agreement.

5.4 Material Harm to Netscape.

Netscape may, in its reasonable discretion, at any time refuse to accept or publish, or direct AOL to refuse to accept or publish and cease publication of any content provided by AOL through the AIM Service if such content is, in Netscape's reasonable opinion, unlawful, fraudulent, defamatory, vulgar, obscene, profane, or racially, or ethnically objectionable, including, without limitation, any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national or international law. If Netscape, in its reasonable discretion, at any time determines that any portion of the AIM Service contains any material, or presents any material in a manner that Netscape reasonably deems patently false or a disparagement of Netscape or the Netscape products and services, or an infringement of Netscape's or a third party's rights, or unlawful in any country or territory, AOL will revise to Netscape's reasonable satisfaction that material or presentation within three (3) business days of notification by any means from Netscape. Any failure to so cure, shall be deemed a material breach of this Agreement.

6. OWNERSHIP.

6.1 AIM Service.

Except for copyrighted elements contributed by Netscape, if any, to the Co-Branded Instant Messenger Client, AOL Co-Branded Registration Page and any other page developed by the parties hereunder, all right, title and interest in and to the AIM Service shall remain with AOL. Without limiting the generality of the foregoing, as between AOL and Netscape, all right, title and interest in all servers and server-based technology related to the AIM Service and developed by AOL, including, without limitation, protocols, parameters, designs, specifications and screen name algorithms and technology underlying such algorithms shall remain with AOL.

6.2 Netcenter.

AOL shall retain all right, title and interest in and to the AOL Content (including copyright ownership thereof).

6.3 Embeddable Browser and Components.

Netscape shall retain all right, title and interest in and to the Embeddable Browser, Components and any other modifications to or derivative works based on the Navigator

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Source Code. AOL shall retain all right, title and interest in and to the AOL Online Client. AOL hereby assigns to Netscape all right, title and interest that AOL may have in the Embedded Browser, Components or any such modification of or derivative work based on the Navigator Source Code. AOL agrees to execute documents reasonably requested by Netscape from time to time regarding the assignment of the Embedded Browser, Components or any such modification of or derivative work based on the Navigator Source Code to secure, confirm, perfect or record such assignment.

6.4 No Other Rights.

In no event shall AOL obtain any ownership rights under this Agreement in: (i) the Netscape design of the Netscape Web Site or any derivative works thereof, (ii) any of Netscape's trademarks, service marks or trade names, or any registrations or applications for any of them, (iii) any computer code written by or on behalf of Netscape or (iv) any Netscape Product, Netcenter, Navigator Source Code or other Netscape product. In no event shall Netscape obtain any ownership rights under this Agreement in: (i) any AOL intellectual property, including, without limitation, patent, copyright and trade secret rights, that is the basis for the AIM Service, (ii) any of AOL's trademarks, service marks or trade names, or any registrations or applications for any of them (including, without limitation, "AOL," "Instant Messenger" and "AOL Instant Messenger"), or (iii) except with respect to the Embeddable Browser, Components or any other modifications to or derivative works based on the Navigator Source Code, any computer code written by or on behalf of AOL. Without granting any license, nothing contained herein shall prevent either party from independently developing features or functionality which are similar to the features and functionality owned by the other party.

7. PAYMENT.

7.1 Advertising Revenue.

AOL agrees to pay Netscape fifty percent (50%) of the Net Service Ad Inventory Revenue (as defined below) that is attributable to Co-Branded Instant Messenger Users. For purposes of this Agreement, Net Service Ad Inventory Revenue shall mean the difference between (i) the gross revenue received by AOL for Service Ad Inventory and (ii) the actual agency fees incurred by AOL in connection with the placement of such Service Ad Inventory (or, if no such agency fees were incurred, fifteen percent (15%) of the gross revenues received by AOL for such specific Service Ad Inventory). For purposes of determining the amount of Net Service Ad Inventory Revenue attributable to the Co-Branded Instant Messenger Users prior to the time that AOL has the capability of accurately tracking Service Ad Inventory based on specific criteria (i.e., usage specific versions of the Co-Branded Instant Messenger Client and Service Clients), such amount shall be equal to the product obtained by multiplying (a) the Net Service Ad Inventory Revenue by (b) the percentage of all AIM Service registered users that are the Co-Branded Instant Messenger Users; provided, that for the purpose of determining the amount of Net Service Ad Inventory Revenue attributable to the Co-Branded Instant

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Messenger Users pursuant to this sentence, with respect to each such Co-Branded Instant Messenger User: (i) such Co-Branded Instant Messenger User shall be excluded from such calculation to the extent that such Co-Branded Instant Messenger User was a then-current subscriber to the AOL Online Service or a registered user of the AIM Service (other than a Co-Branded Instant Messenger User) prior to the date that such Co-Branded Instant Messenger User became a Co-Branded Instant Messenger User (as determined by unique email address) and (ii) to the extent that such Co-Branded Instant Messenger User shall have registered for the AIM Service on more than one occasion (as determined by identical email addresses), such Co-Branded Instant Messenger User shall only be considered one (1) Co-Branded Instant Messenger User. Amounts payable by AOL to Netscape pursuant to this Section 7.1 shall accrue on receipt by AOL of revenue for the Service Ad Inventory, and shall be paid by AOL to Netscape within thirty (30) days after the end of the quarter in which such amounts shall have accrued.

7.2 Engineering Costs.

7.2.1 Development Services. AOL shall pay to Netscape, for each senior engineer provided by Netscape in connection with the performance by Netscape, during the one (1) year period commencing on the Effective Date, of the development services set forth in Section 4, $250,000. The parties agree that Netscape shall initially provide two (2) such engineers for an aggregate fee of $500,000, payable in four equal installments commencing on the thirty (30) day anniversary of the Effective Date and on the expiration of each three (3) month period thereafter; provided, that in the event that the Embeddable Browser shall be accepted by the parties pursuant to Section 4.1.2 prior to payment of all amounts payable pursuant to this Section 7.2.1, all remaining amounts payable by AOL to Netscape pursuant to this Section 7.2.1 shall be paid by AOL to Netscape within thirty (30) days of the date of acceptance of the Embeddable Browser. In the event that the parties shall agree to use additional Netscape engineers to perform the development services set forth in Section 4, the parties shall agree on the amounts and timing of additional payments therefor.

7.2.2 Channel Fee. AOL shall pay to Netscape an engineering fee of $10,000 for each AOL Super Channel included in the Netscape Netcaster Service. Such fee shall be paid by AOL to Netscape at the time that AOL requests Netscape to add such AOL Super Channel to the Netscape Netcaster Service or to change such AOL Super Channel in the Netscape Netcaster Service.

7.3 Bounties.

7.3.1 Bounties. AOL agrees to pay to Netscape (i) $2.50 per subscription (a user who provides, through the Netscape registration process, information required by Netscape to subscribe for a specific AOL Super Channel) to the AOL Super Channel and (ii) $20.00 per user that subscribes to the AOL Online Service as a result of a promotion for AOL or the AOL Online Service on the Netscape Netcenter or through the AOL Promotional Channel, and remains a subscriber for ninety (90) days. Amounts

payable by AOL to Netscape pursuant to this Section 7.3 shall accrue, with respect to clause (i), on the date that a user provided to Netscape the information required to subscribe for a specific AOL Super Channel, and with respect to clause (ii) on the ninety (90) day anniversary of the date that such user subscribed to the AOL Online Service, and shall be paid by AOL to Netscape thirty (30) days after the end of the quarter in which such amounts shall have accrued.

7.3.2 **Post Termination Bounties.** Upon any termination or the expiration of this Agreement, AOL agrees to pay to Netscape $10.00 for each user that subscribes to the AOL Online Service from the "Try AOL" button on the Co-Branded Instant Messenger Client and remains a subscriber to the AOL Online Service for ninety (90) days. Amounts payable by AOL to Netscape pursuant to this Section 7.3 shall, with respect to each such subscriber, accrue on the date of such 90th day and shall be paid by AOL to Netscape within thirty (30) days after the end of the quarter in which such amounts shall have accrued.

7.4 Currency, Interest and Taxes.

All amounts payable hereunder are denominated in U.S. Dollars, and all amounts payable to Netscape hereunder shall be remitted in U.S. Dollars. Any portion of the payment which has not been paid to Netscape within the applicable time set forth herein shall bear interest at the lesser of (i) one percent (1%) per month, or (ii) the maximum amount allowed by law. All payments due hereunder are exclusive of any applicable taxes. AOL shall be responsible for all applicable national, state and local taxes, value added or sales taxes, exchange, interest, banking, collection and other charges and levies and assessments pertaining to payments other than taxes based on Netscape's net income. If AOL is required by law to make any deduction or to withhold from any sum payable to Netscape by AOL hereunder, AOL shall effect such deduction or withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Netscape with tax receipts evidencing the payments of such amounts.

8. REPORTING AND AUDIT RIGHTS.

8.1 Reporting.

Within fifteen (15) days after the end of each quarter during the term AOL shall provide Netscape with a report in common log format describing the total number of (a) the gross revenue received by AOL during such quarter from the Service Ad Inventory, the Net Service Ad Inventory Revenue received by AOL during such quarter and a detailed description of AOL's determination of Netscape's portion thereof, (b) the number of Registrations, by type of Registration, during each month within such quarter, (c) the number of Co-Branded Instant Messenger Users that registered during such quarter, (d) the number of Co-Branded Instant Messenger Users, excluded from the calculation of Net Service Ad Inventory Revenue pursuant to Section 7.1 or from the definition of Registrations pursuant to Section 1.4.6(i), (e) the total number of subscribers that have subscribed to the AOL Online Service as a result of a promotion for AOL or the

AOL Online Service on Netscape Netcenter or through the AOL Promotional Channel and that have subscribed for at least ninety (90) days, and (f) such other tracking information as the parties shall mutually agree ("Access Logs"). Within fifteen (15) days after the end of each month during the term, Netscape shall provide AOL with (A) the percentage of downloadable Netscape Navigator and Netscape Communicator distributions on bundled platforms and in the languages with which the Co-Branded Instant Messenger Client is bundled, that are bundled with the Co-Branded Instant Messenger Clients and (B) the number of new subscribers for the AOL Channels during each month.

8.2 Audit Rights.

AOL shall retain complete, clear and accurate records regarding its activities under this Agreement. Each June and December during the term of this Agreement, the parties shall review the Access Logs. Netscape shall have the right, upon no less than thirty (30) days prior written notice to AOL, to cause an independent Certified Public Accountant to inspect and audit, during AOL's normal business hours, all relevant records of AOL upon which AOL's revenue reports are based and the Access Logs. The costs of such audit shall be paid by Netscape provided, however, that if said inspection shall reveal an error in excess of five percent (5%) in monies due to Netscape by AOL, AOL shall pay for the audit. Netscape's audit rights as described herein shall continue for two (2) years after the expiration or termination of this Agreement.

9. CONFIDENTIALITY.

9.1 Confidential Information.

Notwithstanding anything to the contrary herein, the Navigator Source Code, Embeddable Browser and Components, the specifications for any of the foregoing, and any modifications for or derivative works based on the Navigator Source Code shall be deemed to be the Confidential Information of Netscape and all non-published protocols, parameters, designs, specifications and screen name algorithms related to the AIM Service and developed by AOL.

9.2 Non-disclosure and Non-use.

Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances. In any event, each party receiving Confidential Information shall (a) disclose such Confidential Information to (i) only those authorized employees and directors of such party whose duties justify their need to know such information and who have been clearly informed of their obligation to maintain the confidential and/or proprietary status of such Confidential Information; and (ii) only those third parties required for the performance of the receiving party's obligations under this Agreement pursuant to a written

confidentiality agreement as least as restrictive as the confidentiality provisions of this Agreement; and (b) use such Confidential Information only for the purposes set forth in this Agreement.

9.3 Terms of this Agreement.

Notwithstanding anything to the contrary in this Agreement, neither party shall disclose the terms of this Agreement (including the fees set forth herein) to any third party without the express prior written consent of the other party; provided, however, that either party may disclose the terms of this Agreement to its affiliates, attorneys and accountants, or to any potential investor or acquirer of a substantial part of such party's business (whether by merger, sale of assets, sale of stock or otherwise), or as may be required by law.

9.4 Certain Exceptions.

The obligations set forth in this Section 9 shall not apply to any Confidential Information which must be disclosed pursuant to applicable federal, state or local law, regulation, court order, or other legal process, provided the receiving party has given the disclosing party prior written notice of such required disclosure and, to the extent reasonably possible, has given the disclosing party an opportunity to contest such required disclosure at the disclosing party's expense.

9.5 User Information.

User Information shall (except with respect to User Information defined in Section 1.52(ii) and 1.52(iv)) be owned equally by AOL and Netscape and not be deemed Confidential Information. User Information defined in Section 1.52(ii) and 1.52(iv) shall be owned by and be deemed to be the Confidential Information of Netscape and AOL, respectively, subject to the provisions of this Section 9. With respect to the User Information defined in Section 1.5.2(iv), Netscape agrees, and with respect to the User Information defined in Section 1.5(ii), AOL agrees that:

(i) Such User Information shall not be resold or disclosed to third parties;

(ii) Such User Information may only be used for the purposes of joint promotional efforts related to access of the AIM Service through the use of the Co-Branded Instant Messenger Client or the Netscape Netcaster Service and, with respect to AOL, for the purpose of promoting AOL products and services and, with respect to Netscape, for the purpose of promoting Netscape products and services; provided, in each case such promotion is not directly competitive with the other party;

(iii) Netscape and AOL shall mutually determine in good faith to user disclosure requirements that are consistent with the Open Profiling Standard (OPS) with respect to User Information defined in Section 1.52(ii); and

(iv) Each party shall comply with the other party's then-current published privacy policies.

10. WARRANTIES.

10.1 Title.

10.1.1 AOL. AOL warrants that (i) it has the right to perform the services set forth in this Agreement, (ii) it has all necessary rights to permit the use, reproduction, transmission and distribution by Netscape of the AOL Content and Co-Branded Instant Messenger Client, (iii) Netscape shall not be obligated to pay any fees or royalties for implementing the AIM Service or any AOL Content or distributing the Co-Branded Instant Messenger Client.

10.1.2 Netscape. Netscape warrants that (i) it has the right to perform the services set forth in this Agreement, (ii) it has all necessary rights to permit the use, in accordance with the terms of this Agreement, of the Navigator Source Code, (iii) except as provided herein, AOL shall not be obligated to pay any fees or royalties for use of the Navigator Source Code ,and (iv) Excite, Inc. has waived, and no longer has the right to exercise, its "right to match" the terms of the transaction contemplated hereby as granted by Netscape to Excite pursuant to Section 11.8 of that certain Co-Marketing Service Agreement entered into between Netscape and Excite as of June 24, 1997.

10.2 Performance.

AOL warrants that the AIM Service will function substantially in accordance with the specifications therefor.

10.3 No Viruses.

AOL will use its best efforts to ensure that the Co-Branded Instant Messenger Client (i) does not contain any computer viruses or (ii) will not otherwise introduce any harmful or destructive code to the end user's computer at the time the Co-Branded Instant Messenger Client is provided to Netscape pursuant to this Agreement.

10.4 Disclaimer.

THE WARRANTIES PROVIDED BY NETSCAPE AND AOL HEREIN ARE THE ONLY WARRANTIES PROVIDED BY EITHER PARTY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES BY EITHER PARTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. INDEMNITIES.

11.1 Netscape Indemnity.

Subject to the provisions of this Section 11, Netscape shall at its expense defend any action against AOL to the extent such action is based on a claim that the Navigator Source Code, Netscape Design Contributions and Netscape Netcaster infringes any patent, copyright or trademark or misappropriates a trade secret, and Netscape shall indemnify and hold harmless AOL from and against all costs and expenses, including, without limitation, attorneys' fees and court costs, incurred by AOL in any such action and those damages and costs finally awarded against AOL in any such action which are specifically attributable to such claim, or those damages and costs agreed in any monetary settlement or compromise of such action. The foregoing obligations are conditioned on AOL notifying Netscape promptly in writing of such action, AOL giving Netscape sole control of the defense thereof (and any negotiations for monetary settlement or compromise thereof), and AOL cooperating in the defense thereof at Netscape's expense. AOL shall have the right to employ separate counsel and to participate in the defense of any claim for which Netscape must indemnify AOL hereunder and to have its own counsel in attendance at all times at its own cost. If any settlement requires an affirmative obligation of, results in any ongoing liability to, or prejudices or detrimentally impacts AOL in any way, then such settlement shall require AOL's written consent. If AOL unreasonably withholds such consent, then thereafter Netscape shall have no further indemnification obligation to AOL with respect to such claim. AOL shall not incur any costs or expenses for the account of Netscape under or pursuant to this Section 11 without Netscape's express prior written consent. **THE FOREGOING STATES THE ENTIRE LIABILITY OF NETSCAPE FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS AND ACTIONS.**

11.2 Certain Exceptions.

Netscape shall have no liability to AOL under this Section 11 or otherwise for any action or claim alleging infringement or misappropriation based upon (a) any AOL Confidential Information; (b) any use of the Navigator Source Code, Netscape Design Contribution or Netscape Netcaster in a manner other than as specified by Netscape; (c) any use of the Navigator Source Code, Netscape Design Contribution or Netscape Netcaster in combination with other products, equipment, devices, software, systems or data not supplied by Netscape (including without limitation the AOL Online Client) to the extent that such claim is directed against such combination; or (d) any alteration, modification or customization of the Navigator Source Code, Netscape Design Contribution or Netscape Netcaster by any person other than Netscape or its subcontractors or agents authorized by Netscape to perform such alteration, modification or customization.

11.3 AOL Indemnity.

Subject to the provisions of this Section 11, AOL shall at its expense defend any action against Netscape to the extent such action is based on a claim that (i) the AIM Service, including, without limitation, the Co-Branded Instant Messenger Client and the AOL Co-Branded Registration Page infringes any patent, copyright or trademark or misappropriates a trade secret, or (ii) the use, reproduction, distribution, or transmission of the AOL Content and any material to which users can link through the AOL Content violates any criminal laws or any rights of any third parties, including, but not limited to, infringement or misappropriation of any copyright, patent, trademark, trade secret, music, image, or other proprietary or property right, false advertising, unfair competition, defamation, invasion of privacy or rights of celebrity, violation of any antidiscrimination law or regulation, or any other right of any person or entity, or otherwise violate any applicable local, state, national or international law, and AOL shall indemnify and hold harmless Netscape from and against all cost and expense, including, without limitation attorneys' fees and court costs, incurred by Netscape in any such action and those damages and costs finally awarded against Netscape in any such action which are specifically attributable to such claim, or those damages and costs agreed in any monetary settlement or compromise of such action. The foregoing obligations are conditioned on Netscape notifying AOL promptly in writing of such action, Netscape giving AOL sole control of the defense thereof (and any negotiations for monetary settlement or compromise thereof), and Netscape cooperating in the defense thereof at AOL's expense. Netscape shall have the right to employ separate counsel and to participate in the defense of any claim for which AOL must indemnify Netscape hereunder and to have its own counsel in attendance at all times at its own cost. If any settlement requires an affirmative obligation of, results in any ongoing liability to, or prejudices or detrimentally impacts Netscape in any way, then such settlement shall require Netscape's written consent. If Netscape unreasonably withholds such consent, then thereafter AOL shall have no further indemnification obligation to Netscape with respect to such claim. Netscape shall not incur any costs or expenses for the account of AOL under or pursuant to this Section 11 without AOL's express prior written consent. **THE FOREGOING STATES THE ENTIRE LIABILITY OF AOL FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS AND ACTIONS.**

11.4 Certain Exceptions.

AOL shall have no liability to Netscape under this Section 11 or otherwise for any action or claim alleging infringement or misappropriation based upon (a) any Netscape Confidential Information; (b) any use by Netscape of the AIM Service or the AOL Content in a manner other than as specified by AOL; (c) any use by Netscape of the AIM Service or the AOL Content in combination with other products, equipment, devices, software, systems or data not supplied by AOL (except as contemplated hereby) to the extent that the such claim is directed against such combination; (d) any alteration, modification or customization of the Co-Branded Instant Messenger Client by any person

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other than AOL or its subcontractors or agents authorized by AOL to perform such alteration, modification or customization, or (e) the Netscape Design Contributions.

12. LIMITATION OF LIABILITY.

12.1 AOL

EXCEPT FOR A BREACH BY AOL OF SECTION 9, 4.2, 4.3 4.4 OR 4.6, (A) IN NO EVENT WILL AOL BE LIABLE TO NETSCAPE FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT AOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND (B) AOL'S TOTAL LIABILITY TO NETSCAPE IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, (EXCEPT FOR DAMAGES OR ALLEGED DAMAGES ARISING UNDER SECTION 11) AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT OR TORT OR ANY OTHER LEGAL THEORY, IS LIMITED TO AND SHALL NOT EXCEED $4,000,000.

EXCEPT FOR A BREACH BY NETSCAPE OF SECTION 9, 2.3.2 OR 2.3.3, NETSCAPE'S TOTAL LIABILITY TO AOL IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT (EXCEPT FOR DAMAGES OR ALLEGED DAMAGES ARISING UNDER SECTION 11) WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLICENCE), OR OTHERWISE, AND WHETHER OR NOT NETSCAPE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, IS LIMITED TO AND SHALL NOT EXCEED $4,000,000.

SUBJECT TO THE LIMITATION OF THIS SECTION 12 AND EXCEPT FOR DAMAGES OR ALLEGED DAMAGES ARISING UNDER SECTION 11, AOL MAY SEEK TO RECOVER LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FROM NETSCAPE IN CONNECTION WITH ANY BREACH BY NETSCAPE OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

13. TERM AND TERMINATION.

13.1 Term.

Unless earlier terminated pursuant to the provisions of this Section 13.1 or Section 13.2, this Agreement shall remain in force for a period of twenty-four (24)

months from the Effective Date; provided that, this Agreement shall terminate on the (i) twelve (12) month anniversary of the Effective Date in the event that (A) AOL shall, upon written notice to Netscape at least thirty (30) days prior to the expiration of twelve (12) months from the Effective Date, elect to terminate this Agreement on the twelve (12) month anniversary of the Effective Date or (B) the number of Registrations on the twelve (12) month anniversary of the Effective Date equals or exceeds five million (5,000,000) and (ii) eighteen (18) month anniversary of the Effective Date in the event that either party shall, upon written notice to the other party at least thirty (30) days prior to the expiration of eighteen (18) months from the Effective Date, elect to terminate this Agreement on the eighteen (18) month anniversary of the Effective Date.

13.2 Termination.

13.2.1 Termination for Cause. Either party shall have the right to terminate this Agreement upon a material default by the other party of any of its material obligations under this Agreement, unless within thirty (30) calendar days after written notice of such default the defaulting party remedies such default; provided, however, that Netscape may terminate Section 4 of this Agreement immediately upon the breach by AOL of Section 4.2, 4.3, 4.4 or 9 with respect to the Navigator Source Code.

13.2.2 Termination for Convenience. AOL shall have the right to terminate (i) Section 2, (ii) Section 3, (iii) Sections 2 and 3 and (iv) this Agreement with or without cause upon delivery of thirty (30) days prior written notice to Netscape; provided, that, upon any termination of Section 2 pursuant to this Section 13.2.2, Section 5 shall be terminated concurrently therewith.

13.3 Rights Upon Termination or Expiration.

Upon expiration or termination of this Agreement, AOL shall remain obligated to provide support service under Section 2.7 for the Co-Branded Instant Messenger Services Client for a period of ninety (90) days from the time of termination or expiration. During this wind-down period, the parties shall continue to perform the respective obligations pursuant to Section 2.6.2 with the same level of care as specified in this Agreement. Upon expiration or termination of this Agreement, Netscape shall produce a version of each of the Netscape Products which is not bundled with the Co-Branded Instant Messenger Client upon the later ("End Date") of (i) Netscape's production of the next commercial release of such version of the Netscape Product, or (ii) ninety (90) days from date of expiration or termination. Following termination or expiration, Netscape (for a period of ninety (90) days from the date of expiration or termination) and its distribution channels shall be entitled to continue to exercise the rights granted hereunder with respect to all versions of the Netscape Product created prior to the End Date. All sublicenses to the Co-Branded Instant Messenger Client shall survive the expiration or any termination of this Agreement and, for one (1) year after termination or expiration of the Agreement, AOL shall provide the AIM Service to users of the Co-Branded Instant Messenger Client on the terms and conditions that AOL generally makes such AIM Service generally

available to the public. In addition to the right to receive amounts that shall have accrued at or prior to the time of the termination or expiration of this Agreement, Sections 1, 2.7 (for one (1) year after the date of termination or expiration and at AOL's standard rates and charges therefor), 4.3.4(d) (for a period of one (1) year after the date of termination or expiration), 4.6, 6, 7.3.2, 8.1 (to the extent such information relates to amounts payable pursuant to Section 7.3.2), 8.2, 9, 10.4, 11, 12, 13.3, 13.4 and 14 shall survive the termination or expiration of this Agreement for any reason. Provisions of other Sections which, by their nature, must remain in effect beyond the termination or expiration of this Agreement, shall also survive termination or expiration of this Agreement for any reason.

13.4 Return of Confidential Information.

In the event of any termination or expiration of this Agreement, each party shall, at the other party's election, either immediately return to the other party or destroy all copies and portions of the Confidential Information of the other party then in its possession in any form, including copies stored in all computer, electronic or other storage devices. Upon the request of a party, the other party shall promptly deliver to the requesting party a certificate signed by an officer of such party confirming that such party's obligations under this Section 13.4 have been fully satisfied.

14. GENERAL.

14.1 Governing Law.

This Agreement shall be subject to and governed in all respects by the statutes and laws of the State of California without regard to the conflicts of laws principles thereof. The Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue over all controversies brought by AOL, except with respect to an action brought pursuant to Section 14.11 of which the Superior Court of Loudon County and/or the United States District Court for the Eastern District of Virginia shall have exclusive jurisdiction and venue. The Superior Court of Loudon County and/or the United States District Court for the Eastern District of Virginia shall have the exclusive jurisdiction and venue over all controversies brought by Netscape, except with respect to an action brought by AOL pursuant to Section 14.11 of which the Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue in connection herewith. Each party hereby consents to such exclusive and personal jurisdiction and venue pursuant to this Section 14.1.

14.2 Entire Agreement.

This Agreement, including the exhibits and attachments referenced on the signature page hereto, constitutes the entire Agreement and understanding between the parties and integrates all prior discussions between them related to its subject matter. No modification of any of the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.

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14.3 Assignment.

Neither party may assign any of its rights or delegate any of its duties under this Agreement, or otherwise transfer this Agreement without the prior written consent of the other party; provided, that either party shall be entitled to assign this agreement without the other party's prior written consent in connection with a merger of such party with or into, or sale of all or substantially all of the assets of such party, to an entity that is not a direct competitor of the other party. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void.

14.4 Notices.

All notices required or permitted hereunder shall be given in writing addressed to the respective parties as set forth below and shall either be (i) personally delivered, (ii) transmitted by postage prepaid certified mail, return receipt requested, or (iii) transmitted by nationally-recognized private express courier or (iv) with respect to the preliminary notification of Program Errors in, and the acceptance or rejection of, the Co-Branded Instant Messenger Client required to be delivered to Netscape on or before October 6, 1997, electronic facsimile (fax), and shall be deemed to have been given on the date of receipt if delivered personally or by electronic facsimile (fax), or two (2) days after deposit in mail or express courier. Either party may change its address for purposes hereof by written notice to the other in accordance with the provisions of this Subsection. The addresses for the parties are as follows:

AOL:

America Online, Inc.
22000 AOL Way
Dulles, VA 20166
Fax: (703) 265-2208
Attn: General Counsel

Netscape:

Netscape Communications Corporation
501 East Middlefield Road, MV-002
Mountain View, CA 94043
Fax: (415) 528-4123
Attn: General Counsel

14.5 Force Majeure.

Neither party will be responsible for any failure to perform its obligations under this Agreement due to causes beyond its reasonable control, including but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods or accidents.

14.6 Waiver.

The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

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14.7 Headings.

The headings to the Sections and Subsections of this Agreement are included merely for convenience of reference and shall not affect the meaning of the language included therein.

14.8 Independent Contractors.

The parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Nothing contained in this Agreement shall be interpreted as constituting either party the joint venturer, employee or partner of the other party or as conferring upon either party the power or authority to bind the other party in any transaction with third parties.

14.9 Severability.

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable, and the other provisions of this Agreement will remain in full force and effect.

14.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original. Notwithstanding the foregoing, the parties shall deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

14.11 Equitable Relief.

Each party acknowledges and agrees that due to the unique nature of the relationship created hereby, there may be no adequate remedy at law for any breach of the obligations of this Agreement, including, without limitation, the promotion provided by each of the parties pursuant to Section 5. Accordingly, either party shall be entitled to seek appropriate equitable relief including, without limitation, specific performance and injunctive relief, in addition to whatever remedies are available at law, upon any breach or threatened breach of this Agreement.

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The parties have duly executed this Agreement as of the later of the two (2) dates set forth below.

AOL:	**Netscape:**
AMERICA ONLINE, INC.	**NETSCAPE COMMUNICATIONS CORPORATION**
By: _____	By: _____
Print Name: _____	Print Name: Michael Homer
Title: _____	Title: SVP of Sales + Mktg
Date: _____	Date: 9/30/97

Attached Exhibits:

Exhibit A:	AOL AIM Client Specifications and Co-Branded Instant Messenger Client Platforms
Exhibit B:	Netscape Products
Exhibit C:	Additional Territory Options
Exhibit D:	Support of Co-Branded Instant Messenger Client
Exhibit E:	Intentionally Omitted
Exhibit F:	Pro Forma Layout of Channel Finder Elements and Specifications
Exhibit G-1:	AOL Channels List and Preview Page Specifications
Exhibit G-2:	Channel Content Specifications
Exhibit H:	Acknowledgment

The parties have duly executed this Agreement as of the later of the two (2) dates set forth below.

AOL:	**Netscape:**
AMERICA ONLINE, INC.	**NETSCAPE COMMUNICATIONS CORPORATION**
By: David M. Colburn	By: _____
Print Name: David M. Colburn	Print Name: _____
Title: Senior Vice President	Title: _____
Date: _____	Date: _____

Attached Exhibits:

Exhibit A:	AOL AIM Client Specifications and Co-Branded Instant Messenger Client Platforms
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Exhibit G-2:	Channel Content Specifications
Exhibit H:	Acknowledgment

AOL-0000327
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF,	:	
VS.	:	C. A. NO. 98-1232
MICROSOFT CORPORATION, ET AL. DEFENDANTS	:	
STATE OF NEW YORK, ET AL. PLAINTIFFS	:	
VS.	:	C. A. NO. 98-1233
MICROSOFT CORPORATION, ET AL. DEFENDANTS	:	

WASHINGTON, D. C.
OCTOBER 29, 1998, 1998
(A. M. SESSION)
(VOLUME VIII)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS P. JACKSON

COURT REPORTER: PHYLLIS MERANA
6816 U. S. COURTHOUSE
3RD & CONSTITUTION AVE., N.W.
WASHINGTON, D. C.
202-273-0889

IT IS TO US AS TO HOW THEY GET THERE.

Q. YOU WILL HAVE TO GIVE ME JUST A MINUTE, MR. COLBURN, TO LOOK AT THE CONTRACT.

THIS IS GOVERNMENT'S EXHIBIT 1256.

IT'S NOT IN EVIDENCE. I OFFER IT MARKED AS GOVERNMENT EXHIBIT 1256.

MR. BOIES: NO OBJECTION, YOUR HONOR.

THE COURT: GOVERNMENT'S EXHIBIT 1256 IS ADMITTED.

(WHEREUPON, PLAINTIFFS' EXHIBIT NUMBER 1256 WAS RECEIVED IN EVIDENCE.)

BY MR. WARDEN:

Q. LOOKING AT PAGE 24, MR. COLBURN, SECTION 4.1.1, DO YOU SEE THAT UNDER THE HEADING, "THE DEVELOPMENT OF THE EMBEDDABLE BROWSER AND COMPONENTS"?

THE COURT: IT LOOKS LIKE THE DATE OF THIS CONTRACT IS SEPTEMBER 30TH, '97.

MR. WARDEN: NO, THAT'S --

THE COURT: LOOK ON THE NEXT-TO-LAST PAGE.

MR. WARDEN: YES. OKAY. ENTERED INTO SEPTEMBER 30, 1997. YES, THAT'S CORRECT, YOUR HONOR.

THE COURT: WHAT PAGE WERE YOU ON AGAIN?

MR. WARDEN: I WAS ON PAGE 24.

THE COURT: "EMBEDDABLE BROWSER AND COMPONENTS"?

MR. WARDEN: YES, YOUR HONOR.