Agreement # PR 9357-A

# NETSCAPE COMMUNICATIONS CORPORATION
# AND
# BELLSOUTH TELECOMMUNICATIONS, INC.
# NN PRODUCTS CORPORATE USE AND OEM LICENSE AGREEMENT

This NN Products Corporate Use and OEM Reseller License Agreement ("Agreement") is entered into on this 29thday of September, 1995 ("Effective Date") by and between Netscape Communications Corporation, a Delaware corporation ("Netscape"), with principal offices at 501 East Middlefield Road, Mountain View, California 94043 and BellSouth Telecommunications, Inc., a Georgia corporation ("BellSouth") with principal offices at 675 W. Peachtree Street, Atlanta, Georgia 30375

WHEREAS, BellSouth markets, sells and distributes telecommunications products and services

WHEREAS, Netscape has proprietary or remarketing rights to certain computer software products

WHEREAS, Netscape wishes to grant to BellSouth and BellSouth desires to obtain certain license rights to such computer software products more particularly described below in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties, and obligations of the parties.

## SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings

1.1 "Attachment(s)" means the attachments to this Agreement which are attached hereto and incorporated herein:

1.1.1 Attachment A (Description of Netscape Products), which sets forth a description of each Netscape Product available to be licensed hereunder.

1.1.2 Attachment B (Pricing, Payment Schedules and Deliverables), which sets forth pricing for BellSouth during the entire term of this Agreement, payment schedules, and specific items to be delivered to BellSouth.

1.1.3 Attachment C (Netscape's Trademarks), which sets forth the trademarks over which Netscape claims ownership.

1.1.4 Attachment D (Netscape's End User License Agreements) which sets forth Netscape's terms and conditions of licensing applicable to an end user customer.
Attachment D-1 sets forth the End User License Agreement for the Netscape NN Navigator Products.
Attachment D-2 sets forth the End User License Agreement for the Netscape NN Server Products.

1.1.5 Attachment E (Maintenance and Support) which sets forth Netscape's and BellSouth's maintenance and support obligations.

1.1.6 Attachment F (Navigator Custom Program Request Form) which sets forth the form by which BellSouth may request customization of the Netscape NN Navigator Products



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1.1.7 Attachment G (Netscape Internal OEM Price List) which sets forth the portion of Netscape's internal price matrix used to determine per copy prices for the Netscape Products for OEM customers.

1.1.8 Attachment H (Netscape Registration Wizard Changes) which sets forth the changes to the Netscape Registration Wizard

1.1.9 Attachment I (NonDiscrimination Compliance Agreement).

1.2 "BellSouth's Product(s)" means BellSouth's network product and service offerings (with features such as customer care, managed connectivity, security, directory, content services and the like such that BellSouth's network product and service offerings have substantial intrinsic value on a standalone basis) developed and/or marketed by BellSouth with which the Netscape NN Products will be bundled and distributed, including modifications to and evolutions of such products and services and any new products or services introduced or offered by BellSouth during the term hereof which provide similar or complementary functions and capabilities and which BellSouth elects to bundle or package with the NN Products.

1.3 "Derivative Work(s)" means a revision, modification, translation, abridgment, condensation or expansion of a Netscape Product or Documentation or any form in which a Netscape Product or Documentation may be recast, transferred, or adapted, which, if prepared without the consent of Netscape, would be a copyright infringement.

1.4 "Distributor" means a third party and/or affiliated company of BellSouth which acquires possession of the Netscape NN Products from BellSouth without becoming an End User and is authorized by BellSouth to distribute the Netscape NN Products on tangible media, Netscape's end user license agreement, and BellSouth's Product to End Users.

1.5 "Documentation" means those software user manuals, reference manuals and installation guides, or portions thereof, which are provided in conjunction with the Netscape Products listed in Attachment A and which Netscape may update from time to time.

1.6 "End User" means any third party licensed by BellSouth or a Distributor to use, but not to further distribute, the Netscape NN Products. For End Users that are entities, End User also means each individual or entity within an entity that uses the Netscape NN Products.

1.7 "Major and Minor Updates" mean updates, if any, to the Netscape Products. Major Updates involve additions of substantial functionality while Minor Updates do not. Major Updates are designated by a change in the number to the left of the decimal point of the number appearing after the product name while Minor Updates are designated by a change in such number to the right of the decimal point. Netscape is the sole determiner of the availability and designation of an update as a Major or Minor Update. Major Updates exclude software releases which are reasonably designated by Netscape as new products. Where used herein "Updates" shall mean Major Updates or Minor Updates interchangeably.

1.8 "Netscape Products" means the executable version (but not the source code version) of the computer software products listed or described in Attachment A as Netscape may update and provide hereunder from time to time.



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1.8.1 "Netscape NN Products" means the Netscape Products listed in Section A of Attachment A

1.9 "Program Errors" means one or more reproducible deviations in the Netscape Products from the applicable specifications shown in the Documentation.

1.10 "Registered User" means an End User of a Netscape NN Navigator Product that subscribes, initiates use or otherwise accesses any BellSouth Product and continues to subscribe, use or access such BellSouth Product sixty (60) days after: (a) first subscribing, initiating use or accessing such BellSouth Product; or (b) an evaluation period, if any, which does not exceed thirty (30) days."

## SECTION 2. GRANT OF LICENSES AND RIGHTS

2.1 Netscape NN Product License

2.1.1 Subject to the terms and conditions of this Agreement, and payment of the applicable license fees, Netscape hereby grants and BellSouth hereby accepts, a nonexclusive, nontransferable license to: (a) use and reproduce the Netscape NN Products (in executable form only); and (b) distribute by sublicense such Netscape NN Product copies to Distributors and End Users solely when bundled with, or in conjunction with a BellSouth Product. BellSouth will submit in writing to Netscape the identity of the reproduction entities and the locations where such reproductions will occur. After receipt of such notice, Netscape shall have ten (10) days in which to make known to BellSouth any legitimate objections to such designation. BellSouth may grant to Distributors the right to distribute the Netscape NN Products when bundled with or in conjunction with a BellSouth Product to End Users

2.1.2 Documentation License. Subject to the terms and conditions of this Agreement, and payment of the applicable license fees, Netscape hereby grants and BellSouth hereby accepts, a nonexclusive, nontransferable license to use and reproduce the Documentation for the Netscape NN Product, and to distribute to Distributors and End Users such Documentation solely in conjunction with the BellSouth Product when bundled with the Netscape NN Products. BellSouth will submit in writing to Netscape the identity of the reproduction entities and the locations where such reproductions will occur. After receipt of such notice, Netscape shall have ten (10) days in which to make known to BellSouth any legitimate objections to such designation.

2.1.3 Derivative Works of Documentation and Netscape NN Navigator Products. Netscape hereby grants and BellSouth hereby accepts a nonexclusive, nontransferable license to use the OEM Toolkit to prepare Derivative Works of the Documentation and the object code of the Netscape NN Navigator Products solely in order to customize, interface, integrate and/or combine the Documentation and the Netscape NN Navigator Product with BellSouth Products, provided that each such Derivative Work: (a) of the Netscape NN Navigator Product includes a Netscape NN Navigator Product subject to applicable license fees payable pursuant to Section 4 of this Agreement; and (b) of the Documentation does not modify the underlying content with respect to the specification, operation or functionality of the Netscape Products. Notwithstanding the foregoing,



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any BellSouth information incorporated into a Derivative Work shall remain the property of BellSouth.

2.1.4 Licenses Dependent on Bundling. The licenses granted in Section 2.1.1 and 2.1.3 are conditional upon marketing and bundling each Netscape NN Product as required therein. If BellSouth fails to so market and bundle the Netscape NN Products, the licenses shall be immediately revocable by Netscape.

2.2 Other Restrictions

Source Code Restrictions. BellSouth agrees not to (a) decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine source code for the executable code of the Netscape Products, (b) modify, adapt, translate or otherwise create any Derivative Works based upon the Netscape Products or Documentation except as expressly permitted pursuant to Section 2.1.3

2.3 Export

BellSouth shall comply, and shall obligate its Distributors to comply, with all then-current applicable laws, rules and regulations relating to the export of technical data, including, but not limited to any regulations of the United States Office of Export Administration and other applicable governmental agencies and BellSouth acknowledges that by virtue of certain security technology embedded in the Netscape Products, that export of such software may not be legal. Netscape agrees to cooperate in providing information requested by BellSouth as necessary to obtain any required licenses and approvals. When distributing the Netscape Products and Documentation in countries where an enforceable copyright law covering the same does not exist, BellSouth and its Distributors shall obtain a written agreement signed by the customer prohibiting the customer from making unauthorized copies of the same. BellSouth acknowledges that third party suppliers of software contained in the Netscape products may prohibit the distribution and /or use of their software in certain foreign countries after the Effective Date, and BellSouth agrees to comply with any restriction so imposed on Netscape and only to the extent so imposed on Netscape.

2.4 Encryption Features

BellSouth acknowledges that in order to utilize the cryptographic features of the Netscape NN Commerce Server Product, BellSouth must obtain a signed digital certificate from a certification authority; and that a certification authority may charge additional fees for certification services. Following receipt and successful installation of a digital certificate, BellSouth's use of the Netscape NN Commerce Server encryption features will be enabled. BellSouth acknowledges that it is responsible for maintaining the security those areas of the environment in which the Netscape NN Commerce Server Products are used (and over which BellSouth has control) and the integrity of the private key file used with the Netscape NN Commerce Server Products.

## SECTION 3. MARKETING AND DISTRIBUTION

3.1 Nonexclusivity



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Netscape and BellSouth understand that either party may enter into arrangements similar to this Agreement with third parties

3.2 Publicity

Each party agrees to submit to the other party all press releases and other publicity material relating to the signing and existence of this Agreement and each party further agrees not to publish or use such press releases, or publicity material without the other party's prior written consent.

3.3 Terms Relating to Distribution

3.3.1 General Restrictions on Distribution

BellSouth agrees to comply, and will obligate its Distributors to comply with all applicable laws, rules and regulations to preclude the acquisition of unlimited rights to technical data, software and documentation provided with the Netscape Product to a governmental agency, and ensure the inclusion of the appropriate "Restricted Rights or "Limited Rights" notices required by the U.S. Government agencies

3.3.2 Distributor License Agreement

BellSouth shall procure from each Distributor an executed copy of a distribution license ("Distributor License Agreement") sufficient to ensure that such Distributors are required to comply with the relevant terms of this Agreement. Netscape shall cooperate with BellSouth to draft a Distributor License Agreement within thirty (30) days after the Effective Date

3.3.3 End User License Agreements

BellSouth and its Distributors shall distribute the Netscape NN Products to End Users only under the terms of, and shall ensure that the Netscape NN Products are subject to applicable end user license agreements with terms at least as restrictive as those set forth in the end user license agreements attached hereto as Attachment D ("End User License Agreements").

3.4 Enforcement of Sublicense Agreements

BellSouth and its Distributors shall use commercially reasonable efforts to enforce each Distributor License Agreement and each End User License Agreement, whichever may be relevant, with at least the same degree of diligence used in enforcing similar agreements governing others, which in any event shall be sufficient to adequately enforce such agreements BellSouth shall use commercially reasonable efforts to protect Netscape's copyright, shall notify Netscape of any breach of a material obligation under a Distributor License Agreement or an End User License Agreement affecting the Netscape NN Products, and will cooperate with Netscape in any legal action to prevent or stop unauthorized use, reproduction or distribution of Netscape Products.

## SECTION 4. FEES AND PAYMENT

4.1

4.1.1 License Fees. BellSouth shall pay to Netscape the non-refundable prepaid royalty license fees specified in Attachment B hereto for the Netscape NN Products. In addition, upon exhaustion of the prepaid license fees for the Netscape NN Products,



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BellSouth shall pay to Netscape the royalties per license granted by BellSouth and Distributors to End Users as specified in Attachment B in connection with the distribution of all or any portion of a Netscape NN Product or Update. The prepaid license fees shall be credited against the royalties accruing under this Agreement in accordance with Attachment B hereto. Royalties will accrue in the applicable corresponding quantity upon: (a) the initial date of BellSouth's internal use of a Netscape Product; (b) on the ninety-first (91st) day after distribution by BellSouth or a Distributor of a Netscape NN Server Product copy to an End User for trial and/or evaluation purposes, or on distribution by BellSouth or a Distributor of a Netscape NN Server Product copy to an End User for any other purpose; (c)an End User of a Netscape NN Navigator Product becoming a Registered User; and (d) the initial date of BellSouth's internal use or shipment by BellSouth to a Distributor or an End User of a Netscape NN Product Major Update. BellSouth shall pay Netscape such royalties accrued during each month within thirty (30) days following the end of each quarter and each such payment shall be accompanied by a quarterly royalty report as described in Paragraph 4.3 below. BellSouth shall not distribute a then current Netscape Product to an existing End User to avoid the payment of an Update fee.

4.1.2 Service Fees. BellSouth shall pay to Netscape the applicable support and maintenance fees listed in Attachment B for the maintenance and support services described in Attachment E.

4.1.3 Update Fees. BellSouth shall pay to Netscape the fees listed in Attachment B for Major Updates.

4.1.4 Price Protection. Notwithstanding any other provision of this Agreement, Netscape assures BellSouth that the prices to BellSouth for the Netscape Products are at least as favorable as those in Attachment C for similar volumes and quantities. If during the term of this Agreement Netscape should revise the pricing set forth in Attachment C Netscape shall so notify BellSouth within ten (10) days. At BellSouth's option, and this Agreement may be amended to provide to BellSouth the revised prices for BellSouth at the applicable volume and quantity level, effective on the date of Netscape's revision of the pricing set forth in Attachment C.

4.1.5 Successor Products that Are Not Major Updates. Pricing for Netscape products that incorporate the Netscape Products or the functionality of the Netscape Products listed in Attachment A which are added to this Agreement after the Effective Date shall not exceed the prices set forth in Netscape's OEM price list for such products at the applicable volume and quantity levels for BellSouth.

4.1.6 BellSouth may purchase from Netscape any standard Netscape products not included in this Agreement which Netscape makes generally available. Any such purchase of Netscape products shall be covered by the terms and conditions of this Agreement, and any additional terms applicable to such products, unless mutually agreed otherwise.

4.2 Payment and Taxes

4.2.1 Payments. All payments shall be made net thirty (30) days in United States dollars at Netscape's address as indicated in this Agreement or at such other address as Netscape may from time to time indicate by proper notice hereunder.

4.2.2 Taxes. All fees and royalties are exclusive of all taxes, duties or levies, however designated or computed. BellSouth shall be responsible for and pay all taxes based



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upon the transfer, use, distribution of Netscape Products, or the program storage media, or upon payments due under this Agreement including, but not limited to, sales, use, or value-added taxes, duties, withholding taxes and other assessments now or hereafter imposed on or in connection with this Agreement or with any sublicense granted hereunder, exclusive of taxes based upon Netscape's net income. In lieu thereof, BellSouth shall provide to Netscape a tax or other levy exemption certificate acceptable to the taxing or other levying authority

4.3 Quarterly Reports
BellSouth and its Distributors shall maintain accurate records of the number of reproductions of the Netscape Products, the number of licenses distributed, the number of End Users and the number of Registered Users.

4.4 Audit of Records
BellSouth shall keep and maintain full, true, and accurate records containing all data reasonably required for verification of the numbers contained in BellSouth's quarterly reports. Upon expiration or termination of this Agreement, Netscape shall have the right, during normal business hours upon at least thirty (30) days prior notice, to utilize an impartial third party at Netscape's expense to audit information and verify the accuracy of the quarterly reports. Such audit will occur at BellSouth's facilities and shall not interfere with BellSouth's normal business activities. If such audit reveals that BellSouth has underpaid fees to Netscape, BellSouth shall promptly pay such underpaid fees based on the applicable prices specified in Attachment B.

## SECTION 5. DELIVERABLES, UPDATES, AND TECHNICAL SUPPORT

5.1 Deliverables
Netscape shall provide BellSouth with the deliverables indicated in Attachment B for the Netscape NN Products ("Deliverables"). All deliveries under this Agreement shall be F.O.B. Netscape.

5.2 Updates and Technical Support
Netscape shall provide BellSouth with technical support and with Updates as they become available from Netscape at the terms and conditions specified in Attachment E.

5.3 Customization of Netscape NN Products
Netscape agrees to perform customization on current and future versions of Netscape NN Navigator Products in accordance with Attachment F at no charge to BellSouth until Netscape provides BellSouth with the OEM Toolkit associated with the then current version of the Netscape NN Navigator Product. Netscape shall use its best commercial efforts to perform the engineering tasks on Attachment H relating to auto-registration programs at no charge to BellSouth within thirty (30) days of the Effective Date.



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## SECTION 6. TRADEMARKS AND TRADE NAMES

6.1 License to Use

Whenever BellSouth distributes or provides or makes reference to the Netscape Products or the functionality of the Netscape NN Product provided within the BellSouth Product, then BellSouth shall use (and is hereby granted a non-transferable, non-exclusive restricted license to use) those Netscape trademarks and trade names relating to the applicable Netscape Products in any advertising, marketing, technical or other materials related to such Netscape Products in accordance with Netscape's then current trademark guidelines (which as of the Effective Date bears a printing footer of 41--1320-00) BellSouth must use the "Netscape Navigator Included" logo in and on all packaging and other material in accordance with the Netscape Navigator logo guidelines (which as of the Effective Date bears a printing footer of 41-014456-00), provided, however, that BellSouth may use the Netscape Navigator logo in a size up to fifty percent (50%) less than the size listed in such guidelines for CD-ROM and CD-ROM Packaging when used on 3.5 inch (or smaller form factor) software magnetic media diskettes Netscape agrees that if during the term of this Agreement, BellSouth provides Netscape with an actual sample of use of the Netscape Navigator logo in BellSouth's service territory by an authorized Netscape OEM that is at variance with Netscape's guidelines, and such variance is authorized by Netscape in its agreement with such OEM, then Netscape shall give BellSouth the opportunity to substitute all of the terms and conditions that apply to such other OEM for the comparable terms and conditions of this Agreement, so that BellSouth may use the Netscape Navigator logo on similar media for similar uses as authorized by Netscape for such other OEM. In addition, BellSouth may use the Netscape Navigator logo in the same size as used by Netscape if Netscape uses a size smaller than the size listed in the Netscape Navigator guidelines for the applicable material. Revisions to Netscape's trademark or logo guidelines shall not apply retroactively to preexisting material. In the event a revision to such guidelines includes a reference to third party trademarks to be used in advertising, marketing, technical or other materials, then BellSouth is not required to use such third party trademarks, but may, in its sole discretion use such third party trademarks. BellSouth need not use Netscape's trademarks and trade names in any country in which their connotation is offensive and will consult with Netscape as to the foreign translation of Netscape trademarks and trade names so that Netscape can help ensure uniformity with their use by Netscape or third parties BellSouth shall clearly indicate Netscape's ownership of such trademarks or trade names specified in Netscape's trademark and trade name listing indicated in Attachment C. All such usage shall inure to Netscape's benefit. BellSouth agrees not to register, and agrees not to authorize others to register, any Netscape trademarks or trade names without Netscape's express prior written consent. Upon Netscape's reasonable request from time to time BellSouth agrees to provide Netscape with copies of goods bearing Netscape's trademarks and trade names so that Netscape can verify their adequate quality. BellSouth shall suspend use of Netscape trademarks and trade names if such quality is reasonably deemed inferior by Netscape until BellSouth has taken such steps as Netscape may reasonably require to solve the quality deficiencies. A list of Netscape's current trademark registrations and pending applications is indicated in Attachment C. Netscape reserves the right to update Attachment C from time to time in accordance with the notice requirements under this Agreement.

## SECTION 7. PROPRIETARY RIGHTS



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7.1 Proprietary Rights

Title to and ownership of all copies of the Netscape Products and Documentation whether in machine-readable or printed form, and including, without limitation, Derivative Works, compilations, or collective works thereof and all related technical know-how and all rights therein (including without limitation rights in patents, copyrights, and trade secrets applicable thereto), are and shall remain the exclusive property of Netscape and its suppliers. BellSouth shall not take any action to jeopardize, limit or interfere in any manner with Netscape's ownership of and rights with respect to the Netscape Products and Documentation. BellSouth shall have only those rights in or to the Netscape Products and Documentation granted to it pursuant to this Agreement.

7.2 Proprietary Notices

7.2.1 No Alteration of Notices. BellSouth and its employees and agents shall not remove or alter any trademark, trade name, copyright, or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Netscape Products and Documentation delivered to BellSouth by Netscape and shall use the same notices, legends, symbols, or labels in and on copies of Netscape Products and Documentation made pursuant to Section 2 as are contained in and on such Netscape Products and Documentation.

7.2.2 Notice. Each portion of the Netscape Products and Documentation reproduced by BellSouth shall include the intellectual property notice or notices appearing in or on the corresponding portion of such materials as delivered by Netscape hereunder. BellSouth shall ensure that all copies of the Netscape Products made pursuant to this Agreement conspicuously display the following notice:

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Netscape shall notify BellSouth of the appropriate year changes. Such notice shall be on labels on all media containing Netscape Products. If the copyright symbol "©" cannot technically be reproduced, BellSouth shall use the word "Copyright" followed by the notation "(c)" in its place.

## SECTION 8. CONFIDENTIAL INFORMATION AND DISCLOSURE

8.1 Confidential Information

Each party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar Confidential Information and to use such Confidential Information only as permitted under this Agreement. For purposes of this Agreement "Confidential Information" shall mean technical, business, financial and product development plans, forecasts, and strategies that are marked "Confidential" or if disclosed verbally, identified as confidential at the time such confidential information is conveyed, and reduced to writing and marked "Confidential" within thirty (30) days after the date of disclosure. Each party agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of Confidential Information including, without limitations disclosing Confidential Information only to its employees (a) with a need to know to further permitted uses of such information and (b) who are parties to appropriate agreements sufficient to comply with this Section 8, and (c) who are informed of the nondisclosure/ non-use obligations imposed by this Section 8 and both



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parties shall take appropriate steps to implement and enforce such non-disclosure/non-use obligations. The foregoing restrictions on disclosure and use shall survive for Three (3) years following termination of this Agreement but shall not apply with respect to any Confidential Information which (i) was or becomes publicly known through no fault of the receiving party (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party, (iii) is independently developed by the receiving party without the participation of individuals who have had access to the Confidential Information, (iv) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; and (v) the receiving party is legally compelled to disclose, provided, however, that prior to any such compelled disclosure, the receiving party will (a) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure and (b) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure.

8.2 Confidentiality of Agreement

Unless required by law, and except to assert its rights hereunder or for disclosures to its attorneys, accountants, financial advisors and employees on a "need to know" basis, each party agrees not to disclose the terms of this Agreement or matters relating thereto without the prior written consent of the other party, which consent shall not be unreasonably withheld.

## SECTION 9. WARRANTIES

9.1. Limited Warranty

Subject to the limitations set forth in this Agreement, Netscape warrants only to BellSouth that the Netscape Products when properly adapted, installed, and used will substantially conform to the specifications in the Documentation in effect when the Netscape Products are shipped to BellSouth. Netscape's warranty and obligation shall extend for a period of ninety (90)) days ("Warranty Period") from the date Netscape first delivers each master of each version of the Netscape Products to BellSouth. All warranty claims not made in writing or not received by Netscape within the time period specified above shall be deemed waived. Netscape's warranty and obligation is solely for the benefit of BellSouth, who has no authority to extend this warranty to any other person or entity. NETSCAPE MAKES NO WARRANTY THAT ALL ERRORS OR FAILURES WILL BE CORRECTED. However, Netscape does warrant, to the best of its knowledge, that when delivered or provided, the Netscape NN Products, including all Updates, maintenance and support, shall be free of software traps, viruses, worms, trap doors, back doors and other code designed to intentionally: (a) interfere with BellSouth's use of the Netscape NN Products in accordance with the Documentation; or (b) destroy BellSouth's data.

9.2 EXCLUSIVE WARRANTY



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THE EXPRESS WARRANTY SET FORTH IN PARAGRAPH 9.1 CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE NETSCAPE PRODUCTS. NETSCAPE AND ITS SUPPLIERS MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) WITH RESPECT TO THE NETSCAPE PRODUCTS. NETSCAPE AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NETSCAPE AND ITS SUPPLIERS DO NOT WARRANT, FOR EXAMPLE, THAT THE NETSCAPE PRODUCTS ARE ERROR-FREE, THAT OPERATION OF THE NETSCAPE PRODUCTS WILL BE UNINTERRUPTED OR SECURE, THAT THE NETSCAPE PRODUCTS WILL MEET BELLSOUTH'S APPLICATIONS OR OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY BELLSOUTH. IN ADDITION, THE SECURITY MECHANISM IMPLEMENTED BY THE NETSCAPE PRODUCTS HAVE INHERENT LIMITATIONS AND BELLSOUTH MUST DETERMINE THAT THE NETSCAPE PRODUCT SUFFICIENTLY MEET ITS NEEDS. HOWEVER, NETSCAPE WILL USE ITS BEST COMMERCIAL EFFORTS TO IMPLEMENT LEADING EDGE SECURITY MECHANISMS THERE IS ALSO NO IMPLIED WARRANTY OF NON-INFRINGEMENT. THE SOLE REMEDY FOR INFRINGEMENT IS PROVIDED IN SECTION 10.

9.3 Defects Not Covered by Warranties

If Netscape's ability to perform warranty services is affected thereby, Netscape shall have no obligations under the warranty provisions set forth in Section 9.1 (a) in the event BellSouth incorporates, attaches or otherwise engages any attachment, feature, program, or device to the Netscape Products, or any part thereof, if such attachment, feature, program or device is the source of any nonconformance; or (b) if any nonconformance is caused by: accident; transportation, neglect or misuse; alteration, modification, or enhancement of the Netscape Products by BellSouth other than from proper use of the OEM Toolkit; failure to provide a suitable installation environment; use of supplies or materials not meeting specifications set forth in the Documentation; use of the Netscape Products for other than the specific purpose for which the Netscape Products are designed; use of the Netscape Products on any systems other than the operating system specified in the Documentation for such Netscape Products; or BellSouth's use of defective media or defective duplication of the Netscape Products.

9.4 Exclusive Remedy

If BellSouth finds what it believes to be errors or a failure of the Netscape Products to meet specifications set forth in the Documentation which significantly affects performance, and provides Netscape with a written report during the Warranty Period, Netscape will use its best commercial efforts (which for Priority 1 and 2 Program Errors shall be efforts no less commensurate than the fees paid by BellSouth) to correct promptly, in accordance with the matrix set forth in Attachment E, at no charge to BellSouth, any such errors or failures. This is BellSouth's sole and exclusive remedy for any express or implied warranties hereunder.

## SECTION 10. INDEMNIFICATION

10.1 Netscape shall indemnify and hold BellSouth harmless from and against any action brought against BellSouth to the extent it is based on a claim that reproduction or distribution by BellSouth of the Netscape Products furnished hereunder within the scope of a license granted



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hereunder constitutes infringement of any valid United States patent, or any copyright, trademark or trade secret enforceable, and to the extent brought, in an action in the United States. Netscape will pay resulting costs, damages and legal fees finally awarded against BellSouth in such action which are attributable to such claim provided that BellSouth: (a) promptly (within Twenty (20) days after becoming aware of such action), notifies Netscape in writing of any such claim and Netscape has sole control of the defense and all related settlement negotiations, and (b) cooperates with Netscape, at Netscape's expense, in defending or settling such claim.

10.2 Should a Netscape Product become, or be likely to become in Netscape's opinion, the subject of infringement of such copyright, patent, trademark or trade secret, Netscape may procure for BellSouth the right to continue using the same or replace or modify it to make it non-infringing. Netscape shall have no liability for: (a) use of other than the then-current unaltered version of the Netscape Product;(b) use, operation or combination of Netscape Products with non-Netscape programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (c) BellSouth's or its agent's activities after Netscape has notified BellSouth that Netscape believes such activities may result in such infringement (but this shall not relieve Netscape of any obligation hereunder prior to such notice, (d) compliance with BellSouth's designs, specifications or instructions if such infringement would have been avoided but for such compliance; (e) third party software; (f) any modification or marking of the Netscape Products not specifically authorized in writing by Netscape, or (g)BellSouth's use of any trademarks other than those listed in Attachment C and BellSouth shall indemnify and hold Netscape harmless from and against any claim based upon (b), (d), (f), or (g). The foregoing states the entire liability of Netscape and the exclusive remedy of BellSouth with respect to infringement of copyrights, patents, trademarks or trade secrets.

10.3 BellSouth agrees to indemnify and hold Netscape harmless from any claims, damages and costs incurred by Netscape related to defective disks or defective duplication in copies of the Netscape Products distributed by BellSouth.

## SECTION 11. LIMITATION OF LIABILITY

IN NO EVENT SHALL NETSCAPE OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, (AND WITH RESPECT TO THE RELATIONAL DATABASE SOFTWARE, ANY DIRECT DAMAGES) EVEN IF NETSCAPE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES,(AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY) OR FOR ANY CLAIM AGAINST BELLSOUTH BY ANY THIRD PARTY, EXCEPT AS PROVIDED IN THE SECTION ENTITLED "INDEMNIFICATION" IN NO EVENT WILL NETSCAPE OR ITS SUPPLIERS BE LIABLE FOR (a) ANY REPRESENTATION OR WARRANTY MADE TO ANY THIRD PARTY BY BELLSOUTH, ANY AGENT OF BELLSOUTH, (b) FAILURE OF THE NETSCAPE PRODUCTS TO PERFORM AS SPECIFIED HEREIN EXCEPT AS, AND TO THE EXTENT, OTHERWISE EXPRESSLY PROVIDED HEREIN; (c) FAILURE OF THE NETSCAPE PRODUCTS TO PROVIDE SECURITY, OR (d) ANY USE OF THE NETSCAPE PRODUCTS OR THE DOCUMENTATION



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OR THE RESULTS OR INFORMATION OBTAINED OR DECISIONS MADE BY END USERS OF THE NETSCAPE PRODUCTS OR THE DOCUMENTATION. THE REMEDIES PROVIDED HEREIN ARE BELLSOUTH'S SOLE AND EXCLUSIVE REMEDIES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NETSCAPE'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO BELLSOUTH FOR DAMAGES CONCERNING PERFORMANCE OR NONPERFORMANCE BY NETSCAPE OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT OR IN TORT, SHALL NOT EXCEED THE AMOUNT OF PAYMENTS MADE HEREUNDER BY BELLSOUTH PRIOR TO SUCH CLAIM

SECTION 12. TERM OF AGREEMENT

Unless sooner terminated under the provisions of Section 13, or otherwise rightfully terminated, this Agreement shall remain in effect for a period of five (5) years from the Effective Date

SECTION 13. DEFAULT AND TERMINATION

13.1 Termination for Default.

If either party defaults in any of its obligations under this Agreement, the non-defaulting party, at its option shall have the right to terminate this Agreement by written notice unless within thirty (30) calendar days after written notice of such default, the defaulting party remedies the default, or, in the case of a default which cannot with due diligence be cured within a period of thirty (30) calendar days, the defaulting party institutes within the thirty (30) calendar days steps necessary to remedy the default and thereafter diligently prosecutes the same to completion.

13.2 Bankruptcy. Either party shall have the right to terminate this Agreement if the other party ceases to do business in the normal course, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within Ninety (90) calendar days, or makes an assignment for the benefit of its creditors.

13.3 Effect on Rights

13.3.1 Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement.

13.3.2 Except as specified in Paragraphs 13.4 and 13.6 below, upon termination or expiration of this Agreement, all licenses for Netscape Products and Documentation granted under this Agreement shall terminate.

13.3.3 Except where otherwise specified, the rights and remedies granted to a party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies which the party may possess at law or in equity, including without limitation rights or remedies under applicable patent, copyright, trade secrets, or proprietary rights laws, rules or regulations.

13.4 Effect of Termination



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Return or Destruction of Netscape Products. Within thirty (30) calendar days after termination of this Agreement, BellSouth shall either deliver to Netscape or destroy all copies of the Netscape Products and Documentation (except as provided in Section 13.6) and any other materials provided by Netscape to BellSouth hereunder in its possession or under its control, and shall furnish to Netscape an affidavit signed by an officer of BellSouth certifying that such delivery or destruction has been fully effected. Notwithstanding the foregoing, and provided BellSouth fulfills its obligations specified in this Agreement with respect to such items, BellSouth may continue to use and retain copies of the Netscape NN Product and Documentation to the extent, but only to the extent, necessary to support and maintain Netscape NN Products rightfully distributed to End Users by BellSouth and Distributors prior to termination of this Agreement.

13.5 Termination for Convenience

13.5.1 BellSouth may at any time after payment of the one million dollar ($1,000,000) prepayment, for its own convenience and without cause, terminate this Agreement in whole or in part by giving Netscape thirty (30) days prior written notice. Upon such termination, BellSouth's additional sole responsibility will be to pay to Netscape an amount equal to the number of licenses that BellSouth has used prior to the date of termination times the appropriate price per license as specified in Attachment B. There shall be no refund of any amounts prepaid by BellSouth.

13.6 Continuing Obligations

13.6.1 Payment of Accrued Fees and Royalties. Within Thirty (30) calendar days of termination of this Agreement, BellSouth shall pay to Netscape all sums then due and owing. Any other such sums shall subsequently be promptly paid as they become due and owing.

13.6.2 Continuance of Sublicenses. Notwithstanding the termination of this Agreement, all End User sublicenses which have been properly granted by BellSouth and Distributors pursuant to this Agreement prior to its termination shall survive.

13.5.3 Other Continuing Obligations. The respective rights and obligations of Netscape and BellSouth under the provisions of Paragraphs 2.3, 2.4, 3.3.1, 3.4, 9.2, 9.3, 9.4, 13.3, 13.4, 13.6 and Sections 4, 6, 7, 8, 10, 11 and 14 shall survive termination of this Agreement.

## SECTION 14. GENERAL PROVISIONS

14.1 Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be in writing and shall be deemed to be properly given upon the earlier of (a) actual receipt by the addressee or (b) five (5) business days after deposit in the U.S. mail, postage prepaid, when mailed by registered or certified U.S. mail, return receipt requested, or two (2) business days after being sent via private industry courier to the respective parties at the addresses first set forth above or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Paragraph 14.1. Notices to Netscape and BellSouth shall be:



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Netscape:
Netscape Communications Corp
487 E. Middlefield Road
Mountain View, CA 94043
Attn: Director Telecom Sales

BellSouth:
BellSouth Telecommunications, Inc.
675 West Peachtree St., N.E.
Room 38P40
Atlanta, GA 30375
Attn: Software Acquisition

Notices of a legal nature shall be sent to:

Netscape:
Netscape Communications Corp
487 E. Middlefield Road
Mountain View, CA 94043
Attn: Legal Dept

BellSouth:
BellSouth Telecommunications, Inc.
675 West Peachtree St., N.E.
Room 4300
Atlanta, GA 30375
Attn: General Attorney - Contracting

14.2 Waiver and Amendment
The waiver by either party of a breach of or a default under any provision of this Agreement, shall not be construed as a waiver of any subsequent breach of the same or any other provision of the Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. No amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized signatory of Netscape and BellSouth.

14.3 Assignment
Neither party may assign this Agreement without the prior written consent of the other party; provided, however, that BellSouth may assign this Agreement without such consent to a corporation or other entity that controls, is controlled by or is under common control with another corporation or entity where "control" means the direct or indirect ownership or control of more than fifty percent (50%) of the stock or other equity interest entitled to vote for the election of directors or equivalent governing body. Netscape may assign this Agreement without such consent to an entity that succeeds to all or substantially all of the business or assets of Netscape to which this Agreement relates, provided that any such assignee agrees in writing to be bound by all the terms and conditions of this Agreement. Any attempt to sublicense, assign, transfer (except as expressly provided herein) any of the rights, duties or obligations under this Agreement in derogation hereof shall be null and void.

14.4 Governing Law
This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its conflicts of laws provisions.

14.5 Relationship of the Parties
No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither BellSouth nor its agents have any authority of any kind to bind Netscape in any respect whatsoever.



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14.6 Captions and Section Headings
The captions and section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

14.7 Severability
If the application of any provision or provisions of this Agreement to any particular facts of circumstances shall be held to be invalid or unenforceable by any court of competent jurisdiction then (a) the validity and enforceability of such provision or provisions as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby and (b) such provision or provisions shall be reformed without further action by the parties hereto to and only to the extent necessary to make such provision or provisions valid and enforceable when applied to such particular facts and circumstances.

14.8 Force Majeure
Either party shall be excused from any delay or failure in performance hereunder, except the payment of monies by BellSouth to Netscape, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, labor disputes and strikes, riots, war, and governmental requirements. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

14.9 Inherently Dangerous Applications
Netscape Products are not licensed for use in any nuclear, aviation, mass transit, or medical application or any other inherently dangerous application, the use of which could result in death, personal injury, catastrophic damage or mass destruction. BellSouth agrees that it will inform its Distributors of this limitation.

14.10 Facsimile
In the event this signed Agreement, including Attachments, is transmitted via facsimile, the facsimile copy may be used in all cases as the original. Until such time as the original is received, both parties may act in reliance upon the facsimile version of this Agreement.

14.11 Nondiscrimination Compliance
Netscape agrees that it will comply with the applicable provisions of the "NONDISCRIMINATION COMPLIANCE AGREEMENT" set forth in Attachment I.



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14.12 Entire Agreement

This Agreement, including the Attachments hereto, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all proposals or prior agreements whether oral or written, and all communications between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom, and shall be the exclusive procurement vehicle for internal purchases by BellSouth of the Netscape Products. The terms and conditions of this Agreement shall prevail, notwithstanding any variance with any purchase order or other written instrument submitted by BellSouth, whether formally rejected by Netscape or not.

AUTHORIZED SIGNATURES

In order to bind the parties to this Agreement, their duly authorized representatives have signed their names below on the dates indicated.

| NETSCAPE COMMUNICATIONS CORPORATION | BELLSOUTH TELECOMMUNICATIONS, INC |
|---|---|
| By: _____ Authorized Signature | By: _____ Authorized Signature |
| Name: _____ Print or Type | Name: S. J. Coleman Print or Type |
| Title: _____ | Title: Director |

Netscape Sales Rep: Bob Timbrook
Telephone Number: 770 795 8553

REVIEWED BY
NETSCAPE LEGAL
Initial: _____



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ATTACHMENT A

NETSCAPE PRODUCT DESCRIPTIONS[1]

| A. Netscape NN Products | Platforms |
|---|---|
| Navigator 1.1 LAN | Macintosh and UNIX |
| Navigator 1.2 LAN | Windows |
| Navigator 1.1 Personal Edition | Windows |
| Navigator Direct 1.0 | Windows |
| Navigator Gold 1.0 | Windows |
| Commerce Server 1.0 | UNIX or NT |
| Communications Server 1.0 | UNIX or NT |
| Proxy Server 1.0 | UNIX |
| News Server 1.0 | UNIX |

Standard Published Documentation for Netscape NN Products

B OEM Tool Kit 1.0 when available.

[1] As of the Effective Date



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## ATTACHMENT B
## PRICING, PAYMENT SCHEDULES AND DELIVERABLES

A. Netscape NN Products

1. Prepayment of fees for Netscape NN Products. BellSouth agrees to pay to Netscape a nonrefundable prepayment against future-owed fees for the Netscape NN Products equal to One Million dollars ($1,000,000), $500,000 due upon the Effective Date and $500,000 due within six (6) months thereafter. Of the one million dollars of prepaid fees, two hundred fifty thousand dollars ($250,000) shall be a prepayment of royalty license fees specifically for version 1.x through 3.x of the Netscape NN Navigator Products, four hundred thousand dollars ($400,000) shall be a prepayment of the first year's fees for the maintenance and support described in Attachment E, and three hundred fifty thousand dollars ($350,000) shall be a prepayment of royalty license fees for any Netscape NN Products.

All prepaid royalty license fees are recoverable at a One Hundred percent (100%) rate, meaning that for each One dollar ($1.00) of royalty due up to the total $600,000 prepayment, One dollar ($1.00) is credited to the applicable BellSouth Netscape NN Product prepaid royalty license fee accounts. After the prepaid license fee accounts are fully depleted, royalties for the Netscape NN Product will be paid net thirty (30) days in accordance with Section 2 of this Attachment B and Section 4 of this Agreement.

2. Pricing for Netscape NN Products. Subject to the provisions of Section 4.1.4, the per product price during the term of this Agreement for the Netscape NN Products shall be as follows:

| Product | Per Product Price | Initial Quantity of Licenses |
|---|---|---|
| Navigator LAN | $3.00 | An aggregate of 1,000,000 |
| Navigator Direct and Personal Edition | $3.75 | Navigators |
| Commerce Server 1.0 (Unix) | $3520 | An aggregate of 200 servers |
| Commerce Server (NT) | $2108 | |
| Communications Server 1.0 (Unix) | $1196 | |
| Communications Server (NT) | $ 636 | |
| Proxy Server 1.0 | $2000 | |
| News Server 1.0 | $2000 | |

Navigator Gold shall be priced at a discount of 82% from Netscape's quantity one end user price or the price set forth in Netscape's OEM price list for the applicable volume and quantities for BellSouth, whichever is lower.

3. Maintenance and Support. BellSouth agrees to pay to Netscape the following annual fees for the maintenance and support described in Attachment E hereto for the Navigator NN Products:

A) $400,000 for the first year, and
B) either



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i) $200,000 for the second and each subsequent year through the fifth year in those years in which no Registered User uses Navigator Gold or subsequent product lines, or

ii) $250,000 for the second and each subsequent year through the fifth year in those years in which any Registered User uses Navigator Gold or subsequent product lines.

4 Major Updates BellSouth agrees to pay to Netscape a royalty license fee of $5 50 per license for each Major Update of the Netscape NN Navigator Products (except Navigator Gold) after version 2.0. With respect to Major Updates to Navigator Gold, Netscape and BellSouth agree to negotiate in good faith and expeditiously to agree on pricing for such updates following the Effective Date. Notwithstanding the foregoing, Netscape agrees that such pricing shall not exceed a number equal to the product of:

A) the minimum of

i) 1 47 or

ii) the ratio of the then-current Navigator LAN and Personal Edition Major Update license fee ($5.50 as of the Effective Date) to the then-current Navigator Personal Edition new license license fee ($3 75 as of the Effective Date), and

B) the Navigator Gold license fee as calculated in the last sentence of Item 2 of this Attachment B.

5. Deliverables.

One (1) reproducible master of each Netscape NN Product,
One (1) electronic copy and one (1) bound, paper copy of the Documentation for each Netscape NN Product.

Ship to address for deliverables. BellSouth Telecommunications, Inc.
Netscape Administrator
Suite 320
1100 Ashwood Parkway
Atlanta, Georgia 30338.

6 The OEM Toolkit 1.0 shall be provided to BellSouth, when available at no charge



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## ATTACHMENT C
## NETSCAPE TRADEMARKS

Netscape Trademarks

The following are trademarks of Netscape Communications Corporation in the United States and/or other countries:

the Netscape Communications Corporation logo
Netscape
Netsite
Mozilla
Netscape Navigator
Netscape Internet Applications
Netscape Communications Server
Netscape Commerce Server
Netscape News Server
Netscape Proxy Server
Netscape Merchant System
Netscape Community System
Netscape Publishing System
Netscape IStore



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ATTACHMENT D
NETSCAPE END USER LICENSE AGREEMENTS



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BY OPENING THE PACKAGE OR CLICKING ON THE "ACCEPT" BUTTON, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DO NOT ACCEPT" BUTTON OR RETURN THIS PRODUCT TO THE PLACE OF PURCHASE FOR A FULL REFUND.

NETSCAPE NAVIGATOR END USER LICENSE AGREEMENT

GRANT. Netscape Communications Corporation ("Netscape") hereby grants to you a non-exclusive license to use its accompanying software product ("Software") and accompanying documentation ("Documentation") on the following terms:

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use the Software on a second computer so long as the first and second computers are not used simultaneously; or
copy the Software for archival purposes, provided any copy must contain all of the original Software's proprietary notices.

You may not:

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modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the Software or Documentation;
copy the Software or Documentation (except for back-up purposes);
rent, lease, transfer or otherwise transfer rights to the Software or Documentation; or
remove any proprietary notices or labels on the Software or Documentation.

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LIMITED WARRANTY. Netscape warrants that for a period of ninety (90) days from the date of acquisition, the Software, if operated as directed, will substantially achieve the functionality described in the Documentation. Netscape does not warrant, however, that your use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. In addition, the



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security mechanism implemented by the Software has inherent limitations, and you must determine that the Software sufficiently meets your requirements. Netscape also warrants that the media containing the Software, if provided by Netscape, is free from defects in material and workmanship and will so remain for ninety (90) days from the date you acquired the Software. Netscape's sole liability for any breach of this warranty shall be, in Netscape's sole discretion: (i) to replace your defective media; or (ii) to advise you how to achieve substantially the same functionality with the Software as described in the Documentation through a procedure different from that set forth in the Documentation; or (iii) if the above remedies are impracticable, to refund the license fee you paid for the Software. Repaired, corrected, or replaced Software and Documentation shall be covered by this limited warranty for the period remaining under the warranty that covered the original Software, or if longer, for thirty (30) days after the date (a) of shipment to you of the repaired or replaced Software, or (b) Netscape advised you how to operate the Software so as to achieve the functionality described in the Documentation. Only if you inform Netscape of your problem with the Software during the applicable warranty period and provide evidence of the date you acquired the Software will Netscape be obligated to honor this warranty. Netscape will use reasonable commercial efforts to repair, replace, advise or refund pursuant to the foregoing warranty within 30 days of being so notified.

THIS IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY NETSCAPE. NETSCAPE MAKES NO OTHER EXPRESS WARRANTY AND NO WARRANTY OF NONINFRINGEMENT OF THIRD PARTIES' RIGHTS. THE DURATION OF IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, IS LIMITED TO THE ABOVE LIMITED WARRANTY PERIOD; SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO LIMITATIONS MAY NOT APPLY TO YOU. NO NETSCAPE DEALER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY. If any modifications are made to the Software by you during the warranty period; if the media is subjected to accident, abuse, or improper use; or if you violate the terms of this Agreement, then this warranty shall immediately be terminated. This warranty shall not apply if the Software is used on or in conjunction with hardware or Software other than the unmodified version of hardware and Software with which the Software was designed to be used as described in the Documentation.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION.

LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL NETSCAPE OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, OR FOR ANY DAMAGES IN EXCESS OF NETSCAPE'S LIST PRICE FOR A LICENSE TO THE SOFTWARE AND DOCUMENTATION, EVEN IF NETSCAPE SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME STATES DO



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ATTACHMENT D-2

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# ATTACHMENT E
# OEM MAINTENANCE AND SUPPORT

1 Maintenance/2.0 and Minor Updates In consideration of payment of the applicable maintenance and support fees, Netscape will provide to BellSouth version 2.0 of the Netscape NN Navigator Product and any Minor Updates made generally available during the term of this Agreement. BellSouth and not Netscape will be responsible for providing Major and Minor Updates to its Distributors and End Users. The expenses of any such distribution will be paid by BellSouth. BellSouth and Netscape will favorably consider electronic or alternative dissemination methods of such Major and Minor Updates to the extent consistent with both companies' policies. BellSouth and Netscape agree to discuss monthly support issues and processes. Major Updates, other than for versions 1.x to 2.0 will be addressed in accordance with Section 4 of Attachment B.

2 Technical Support. Also, in consideration of payment of the applicable maintenance and support fees, Netscape will provide BellSouth with Netscape's backend technical support services, as further described herein.

a. Back-end Support. Netscape will provide back-end support to BellSouth for Program Errors not resolved by BellSouth pursuant to BellSouth's support policies and in accordance with subsection b below. This support includes efforts to identify defective source code and to provide corrections, workarounds and/or patches to correct Program Errors. Netscape will provide BellSouth with a telephone number and an e-mail address which BellSouth may use to report Program Errors during Netscape's business hours (5:00AM - 5:00PM Pacific time). For priority 1 or 2 failures, BellSouth agrees to notify Netscape via both telephone and e-mail. BellSouth will identify one (1) member of its customer support staff and an alternate to act as the primary technical liaisons responsible for all communications with Netscape's technical support representatives. Such liaisons will have sufficient technical expertise, training and/or experience, for BellSouth to perform its obligations hereunder. BellSouth will designate, in writing and/or e-mail to Netscape, its liaison(s) within one (1) week after the Effective Date, and may substitute contacts at any time by providing one (1) week's prior written and/or electronic notice thereof to Netscape.

Netscape will use its best commercial efforts ( which for Priority 1 and 2 Program Errors, shall be efforts no less than commensurate with the fees paid by BellSouth) to correct significant Program Errors that BellSouth identifies, classifies and reports to Netscape and that Netscape substantiates. Netscape may reclassify Program Errors if it reasonably believes that BellSouth's classification is incorrect. BellSouth will provide sufficient information for Netscape to enable Netscape to duplicate the Program Error before Netscape's response obligations will commence. Netscape will not be required to correct any Program Error caused by (a) BellSouth's incorporation, attachment of a feature, program, or device to the Netscape Products, or any part thereof; (b) any nonconformance caused by accident, transportation, neglect, misuse, alteration, modification, or enhancement of the Netscape NN Products; (c) the failure to provide a suitable installation environment; (d) use of the Netscape NN Products for other than the specific purpose for which the Netscape NN Products are designed; (e) use of the Netscape Products on any systems other than the operating system specified in the



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Documentation for such Netscape NN Products, (f) BellSouth's use of defective media or defective duplication of the Netscape Products; or (g) BellSouth's failure to incorporate any Minor Update previously released by Netscape which corrects such Program Error.

Provided Program Error reports are received by Netscape during Netscape's business hours, Netscape will use reasonable commercial efforts to communicate with BellSouth about the Program Error, via telephone or e-mail, within the following targeted response times.

| Priority | Failure Description | Response Time |
|---|---|---|
| 1 | Fatal (no useful work can be done) | 10 hours |
| 2 | Severe Impact (Functionality disabled). Errors which result in a lack of application functionality or cause intermittent system failure. | 1 working day |
| 3 | Degraded Operations: Errors causing malfunction of non-critical functions. | 3 working days |
| 4 | Minimal Impact : attributes and/or options to utility programs do not operate as stated. | Future release, on a business justifiable basis |
| 5 | Enhancement Request. | When applicable |

Netscape will use its best commercial efforts to resolve each significant Program Error by providing either a reasonable workaround, an object code patch or a specific action plan for how Netscape will address the problem and an estimate of how long it will take to rectify the defect. Netscape reserves the right to charge BellSouth additional fees at its then standard rates for services performed in connection with reported Program Errors which are later determined to have been due to hardware or software not supplied by Netscape. Notwithstanding the foregoing, Netscape has no obligation to perform services in connection with (i) Program Errors resulting from hardware or software not supplied by Netscape; or (ii) which occur in the Netscape NN Product release which is not the then current release.

b Front-line Support. BellSouth, and not Netscape, will provide front-line, or first and second level, technical support to its End Users. Such support includes call receipt, entitlement verification, call screening, installation assistance, problem identification and diagnosis, product defect determination, efforts to create a repeatable demonstration of the Program Error and, if applicable, the distribution of any defective media or Minor Updates. BellSouth agrees that any documentation distributed by BellSouth will clearly and conspicuously state that End Users should call BellSouth for technical support for the Netscape NN Products. Netscape will have no obligation to furnish any assistance, information or documentation with respect to the Netscape NN Products, to any Distributor or End User. If Netscape customer support representatives are being contacted by a significant number of BellSouth's Distributors or End Users then, upon Netscape's request, BellSouth and Netscape will cooperate to minimize such contact.



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# ATTACHMENT F
# NAVIGATOR CUSTOM PROGRAM REQUEST FORM

**Netscape Navigator Custom Program**
**Request Form**

This document is intended to provide a template of what can be customized in Netscape Navigator 1.x

Please electronically complete this template and return to Shani Parrott for acceptance and scheduling shani@netscape.com

For additional Custom Program questions please contact Tom Dicker and/or Dave Rothschild. For additional Custom Program technical questions, please contact Tom Maurano

**This document is not a formal contract between the customer and Netscape Communications Corporation. Netscape Communications Corp. is under no obligation to complete the request changes until a contract has been signed by the customer and Netscape Communications.**

**Date Form Completed:**_____

**Customer Name:**_____

**Customer Address:**_____

_____

**Customer Phone number and e-mail address:** _____

**Requested Completion Date:** _____

**Netscape Employee Representing Customer:**_____

**Status of Customer Contract:**_____

**Netscape Navigator Version(s) to be customized:** _____

❑ **Domestic (US and Canada only)** or ❑ **Export**

❑ **Win16 bit** or ❑ **Win32 bit** or ❑ **Mac**



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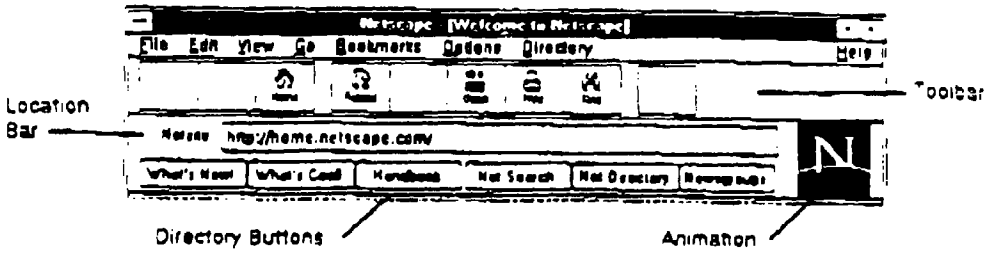


Miscellaneous

Should there be a license clicker?

- ☐ The first time the application is run
- ☐ Everytime the application is run
- ☐ Never

Homepage

- ☐ Leave pointing to Netscape
- ☐ Customize
  - URL: _____
  - Can user change the homepage?
  - ☐ Yes (default) ☐ No

INI File Options (leave alone for default behavior):

Show Location bar:

- ☐ Yes ☐ No

Show Directory Buttons:

- ☐ Yes ☐ No

Show Toolbar

- ☐ Yes ☐ No

Toolbar configuration

- ☐ Pictures ☐ Text ☐ Pictures and Text

Links are underlined:

- ☐ Yes ☐ No

Followed Links:

- ☐ Never expire
- ☐ Expire after _____ days (30 is default)

Memory Cache Size: _____

Disk Cache Size: _____



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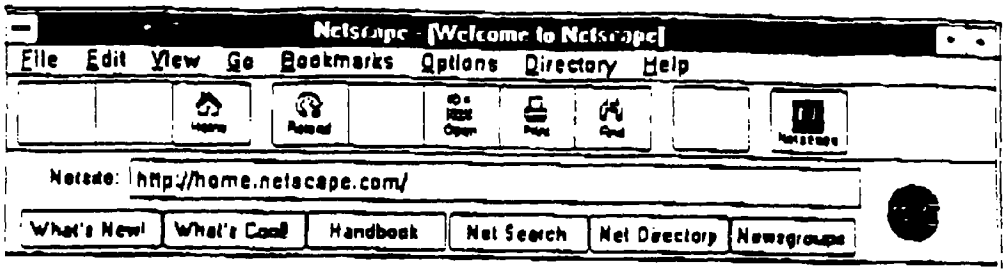


Animation:

- ❒ Leave Netscape's animation
- ❒ Customize (Netscape logo moves to toolbar for co-branding)
  - Need to provide 2 windows BMP files
  - Small version is 30x30
  - Large version is 48x48
  - Needs to use standard windows 16 color palette
  - Frames stored continuously
    (e.g. 20 frame small = 600x30 pixel BMP file)
  - Number of Frames (default is 20). _____



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Directory Buttons:

Button1:
- ❑ Leave pointing to Netscape
- ❑ Customize
  - Label: _____
  - URL: _____

Button2
- ❑ Leave pointing to Netscape
- ❑ Customize
  - Label: _____
  - URL: _____

Button3
- ❑ Leave pointing to Netscape
- ❑ Customize
  - Label: _____
  - URL: _____

Button4
- ❑ Leave pointing to Netscape
- ❑ Customize
  - Label: _____
  - URL: _____

Button5
- ❑ Leave pointing to Netscape
- ❑ Customize
  - Label: _____
  - URL: _____

Button6
- ❑ Leave pointing to Netscape
- ❑ Customize
  - Label: _____
  - URL: _____



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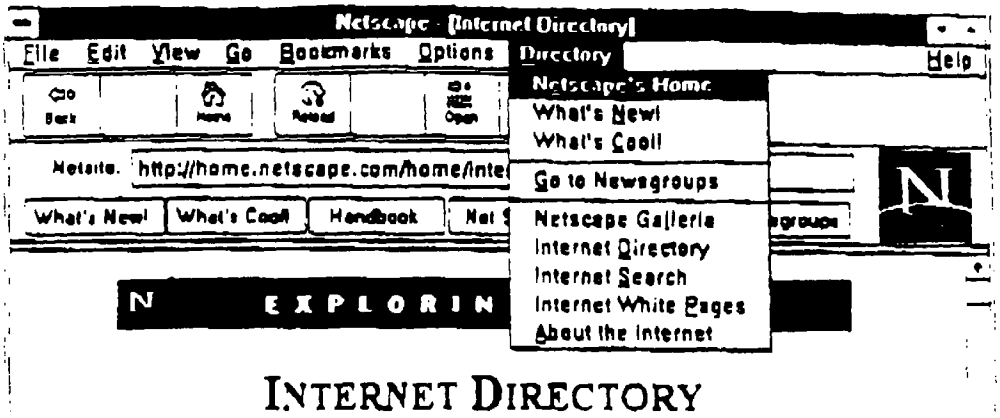


# INTERNET DIRECTORY

Directory Menu:

Item1

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item2

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item3

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item4

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____



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Item5

- ☐ Same as Netscape item _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: ____
  - URL: _____
  - Status Bar Text: _____

Item6

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: ____
  - URL: _____
  - Status Bar Text: _____

Item7

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: ____
  - URL: _____
  - Status Bar Text: _____

Item8

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: ____
  - URL: _____
  - Status Bar Text: _____

Item9

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: ____
  - URL: _____
  - Status Bar Text: _____

Item10

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: ____
  - URL: _____
  - Status Bar Text: _____



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Item11

- ❒ Same as Netscape item _____
- ❒ Separator
- ❒ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item12

- ❒ Same as Netscape item: _____
- ❒ Separator
- ❒ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item13

- ❒ Same as Netscape item: _____
- ❒ Separator
- ❒ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item14

- ❒ Same as Netscape item: _____
- ❒ Separator
- ❒ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item15

- ❒ Same as Netscape item: _____
- ❒ Separator
- ❒ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____



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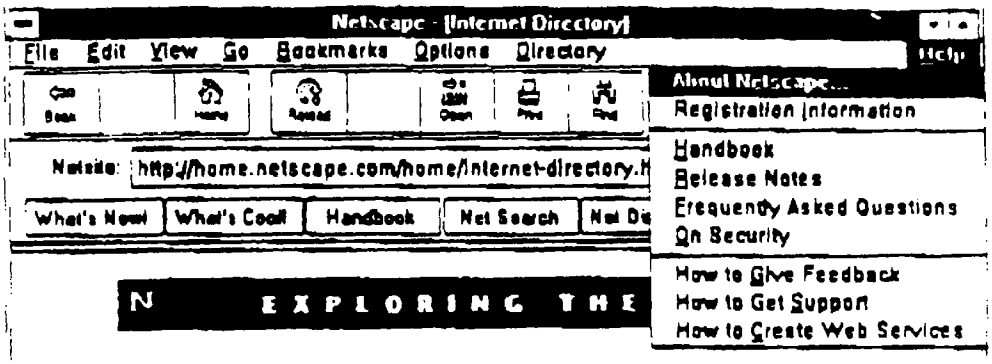


Help Menu:

Item1: About Netscape...

Item2

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item3

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item4

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item5

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____



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Item6

- ❑ Same as Netscape item: _____
- ❑ Separator
- ❑ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item7

- ❑ Same as Netscape item: _____
- ❑ Separator
- ❑ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item8

- ❑ Same as Netscape item: _____
- ❑ Separator
- ❑ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item9

- ❑ Same as Netscape item: _____
- ❑ Separator
- ❑ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item10

- ❑ Same as Netscape item: _____
- ❑ Separator
- ❑ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item11

- ❑ Same as Netscape item: _____
- ❑ Separator
- ❑ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____



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Status Bar Text: _____

Item12

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item13

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item14

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____

Item15

- ☐ Same as Netscape item: _____
- ☐ Separator
- ☐ Custom
  - Label: _____ Mnemonic: _____
  - URL: _____
  - Status Bar Text: _____



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# ATTACHMENT G
# OEM PRICE MATRIX*

| Quantity | LAN | Direct & Personal Edition |
|---|---|---|
| 100,000 - 249,999 | $7.50 | $10.00 |
| 250,000 - 499,999 | $6.25 | $8.75 |
| 500,000 - 999,999 | $5.00 | $7.50 |
| 1,000,000 - 1,499,999 | $3.75 | $6.25 |
| 1,500,000 - or more | $2.50 | $5.00 |

* - Other NN Products that BellSouth licenses under this Agreement will be added to this Attachment G as the Netscape OEM Price Matrix is provided and updated by Netscape. For example, the OEM Price Matrix for Netscape NN Server products will be added to this Attachment G.



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Attachment H

~~Appendix A~~

## Netscape Registration Wizard Changes

The following modifications should be added to the Netscape Navigator Personal Edition registration wizard. This should be included in future versions of the registration wizard and not as a stand-alone development for BellSouth.

### 1. Remove Credit Card Requirement

Either remove the prompts that request credit card information from the customer registration program or allow it to be optional. If needed, we will request this after the user has connected to our registration server.

### 2. Add the following parameters to the ISP information file

These parameters should be added to the data file for transmission to the client. In addition the client should be initialized appropriately.

**Table 1: ISP Information Additions**

| Data Element | Data Element Name | Type | Description |
|---|---|---|---|
| HTTP Proxy | http_proxy | string | This is the HTTP proxy the user will access |
| FTP Proxy | ftp_proxy | string | This is the HTTP proxy the user will access |
| Gopher Proxy | gopher_proxy | string | This is the HTTP proxy the user will access |
| Default URL | default_URL | string | This is the URL that the Navigator goes to when first brought up. |

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DRAFT: [illegible] File Name: [illegible]

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Agreement No. PR - [illegible]

Attachment E

## NonDiscrimination Compliance Agreement

Contractor shall comply with the applicable provisions of the following

Exec Order No [illegible] P.L. 95-507 Exec Order No [illegible]246 Exec Order No [illegible]925 Section 8(a) of the Small Business Act as amended Railroad Revitalization and Regulatory Reform Act of 1976 Exec Order No [illegible] Exec Order No [illegible]758 Exec Order No [illegible]138 Section 503 of the Rehabilitation Act of 1973 as amended by PL93-516 Vietnam Era Veteran's Readjustment Assistance Act of 1974 and the rules regulations and relevant Orders of the Secretary of Labor pertaining to the Executive Orders and Statutes listed above

For contracts of or which aggregate to $2,500 or more annually the following clauses which are included in the contract

1. Inclusion of the Equal Employment clause in all contracts and orders

2. Certification of non-segregated facilities

3. Certification that an affirmative action program has been developed and is being filed

4. Certification that an annual Employers Information Report EEO-1 Standard Form 100 is being filed

5. Inclusion of the Utilization of Minority and Women's Business Enterprises clause in all contracts and orders

6. Inclusion of the Minority and Women's Business Enterprise Subcontracting Program clause in all contracts and orders

7. Inclusion of the Listing of Employment Openings clause in all contracts and orders

8. Inclusion of the Employment of the Handicapped clause in all contracts and orders

| Contract Value | Clause(s) Required |
|---|---|
| $2,500 to $10,000 | 8 |
| $10,000 to $50,000 | 1 2 5 6 7 8 |
| $50,000 or more | 1 2 3* 4* 5 6 7 8 |

*Applies only for businesses with 50 or more employees

1. Equal Employment Opportunity Provisions

In accordance with Exec Order No [illegible]246 dated September 24 1965 and Part 60-1 of Title 41 of the Code of Federal Regulations (Public Contracts and Property Management Office of Federal Contract Compliance Obligations of Contractors and Subcontractors) as may be amended from time to time the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts

2. Certification of Non-segregated Facilities

The contractor certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner or permits its employees to perform their services at any location under its control where segregated facilities are maintained and that it will obtain a similar certification prior to the award of any nonexempt subcontract

3. Certification of Affirmative Action Program

The contractor affirms that it has developed and is maintaining an affirmative action plan as required by Part 60-2 of Title 41 of the Code of Federal Regulations

4. Certification of Filing of Employers Information Reports

The contractor agrees to file annually on or before the 31st day of March complete and accurate reports on Standard Form 100 EEO-1 or such forms as may be promulgated in its place

5. Utilization of Minority and Women's Business Enterprises

a. It is the policy of the Government and BellSouth Corporation and its affiliates as a Government contractor that minority and women's business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts

b. The contractor agrees to use its or their best efforts during the term of the award of this or other subcontracts in the future to carry out the efficient performance of this contract. As used in this contract the term "minority or women's business enterprise" means a business at least fifty-one percent of which is owned by minority or women group members or in the case of publicly owned businesses at least fifty-one percent of the stock is owned by minority or women group members. For purposes of this definition minority group members are Blacks Hispanics Asians Indians Aleuts Eskimos American Indians and Alaskan Natives. Contractors may rely on written representation by subcontractors regarding their status as minority or women's business enterprises in lieu of an independent investigation

6. Minority and Women's Business Enterprise Subcontracting Program

a. The contractor agrees to establish and conduct a program which will enable minority and women's business enterprises as defined in paragraph 5 above to be considered fairly as subcontractors and suppliers under this contract. In this connection the Contractor shall

(1) Designate a liaison officer who will administer the contractor's minority and women's business enterprises program

(2) Provide adequate and timely consideration of the potentialities of known minority and women's business enterprises in all "make-or-buy" decisions

(3) Assure that known minority and women's business enterprises will have an equitable opportunity to compete for subcontracts particularly by arranging solicitations time for the preparation of bids quantities specifications and delivery schedules so as to facilitate the participation of minority and women's business enterprises

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause including the establishment of a source list of minority and women's business enterprises awarded minority and women's business enterprises on the source list and (ii) specific efforts to identify and award contracts to minority and women's business enterprises

(5) Include the Utilization of Minority and Women's Business Enterprises clause in subcontracts which offer substantial minority and women's business enterprises subcontracting opportunities

(6) Cooperate with the Government's Contracting Officer or BellSouth Corporation or its affiliates in any studies and surveys of the contractor's minority and women's business enterprises procedures and practices that the Government's Contracting Officer may from time to time conduct

(7) Submit periodic reports of subcontracting to known minority and women's business enterprises with respect to the records referred to in paragraph 6(4) above in such form and manner and at such time (not more often than quarterly) as the Government's Contracting Officer or BellSouth Corporation or its affiliates may prescribe

b. The contractor further agrees to insert in any subcontract hereunder which may exceed $500,000 or in the case of MBE $[illegible] in the case of contracts for the construction of any public facility and in the case of subcontract subcontracting possibilities provisions which shall be substantially to the language of this Agreement including this paragraph 6 and to notify the Contracting Officer of the names of such subcontractors

7. List of Employment Openings for Veterans

In accordance with Exec Order 11701 dated January 24 [illegible] of the Code of Federal Regulations as may be amended from time to time the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts

8. Employment of the Handicapped

In accordance with Exec Order 11758 dated January [illegible] of Title 41 of the Code of Federal Regulations as may be amended from time to time the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts

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