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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549-----  
FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933  
-----NETWORK APPLIANCE, INC.  
(Exact name of issuer as specified in its charter)CALIFORNIA  
(State or other jurisdiction  
of incorporation or organization)77-0307520  
(IRS Employer Identification No.)2770 SAN TOMAS EXPRESSWAY, SANTA CLARA, CALIFORNIA 95051  
(Address of principal executive offices) (Zip Code)-----  
INTERNET MIDDLEWARE CORPORATION  
1996 LONG TERM EQUITY INCENTIVE PLAN  
SPECIAL OPTION GRANTS PURSUANT TO WRITTEN COMPENSATION AGREEMENTS  
(Full title of the plan)-----  
DANIEL J. WARMENHOVEN  
PRESIDENT  
NETWORK APPLIANCE, INC.  
2770 SAN TOMAS EXPRESSWAY, SANTA CLARA, CALIFORNIA 95051  
(Name and address of agent for service)  
(408) 367-3000  
(Telephone number, including area code, of agent for service)-----  
CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Proposed Maximum Amount of Registration Fee
1996 Long Term Equity Incentive Plan				
Options to Purchase Common Stock	14,647	N/A	N/A	N/A
Common Stock	14,647 shares	\$2.90	\$42,476.30	\$12.87
Special Options				
Options to Purchase Common Stock	114,501	N/A	N/A	N/A
Common Stock	114,501 shares	\$11.79	\$1,349,966.79	409.08
Aggregate Filing Fee				----- \$421.95

(1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the Internet MiddleWare Corporation 1996 Long Term Equity Incentive Plan or special option

grants by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of Common Stock.

- (2) Calculated solely for purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended, on the basis of the weighted average exercise price of the outstanding options.

2

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Certain Documents by Reference

Network Appliance, Inc. (the "Registrant") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "Commission"):

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended April 26, 1996, as amended on October 29, 1996, filed with the Commission on July 25, 1996, pursuant to Section 13 of the Securities Exchange Act of 1934 (the "1934 Act").
- (b) The Registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended July 26, 1996, October 25, 1996 and January 24, 1997 filed with the Commission on September 9, 1996, December 9, 1996 and March 7, 1997, respectively.
- (c) The Registrant's reports on Form 8-K, filed with the Commission on September 9, 1996 and March 28, 1997, respectively, and any amendments thereto.
- (d) The Registrant's Registration Statement No. 00-27130 on Form 8-A filed with the Commission on November 1, 1995 in which there is described the terms, rights and provisions applicable to the Registrant's outstanding Common Stock.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 4. Description of Securities

Not Applicable.

#### Item 5. Interests of Named Experts and Counsel

Not Applicable.

3

#### Item 6. Indemnification of Directors and Officers

Section 317 of the California Corporations Code authorizes a court to award, or a corporation's Board of Directors to grant, indemnity to directors and officers in terms sufficiently broad to permit indemnification (including reimbursement of expenses incurred) under certain circumstances for liabilities arising under the Securities Act of 1933, as amended, (the "1933 Act"). The Registrant's Restated Articles of Incorporation, as amended, and Amended and Restated Bylaws provide for indemnification of its directors, officers,

employees and other agents to the maximum extent permitted by the California Corporations Code. In addition, the Registrant has entered into Indemnification Agreements with each of its directors and officers.

Item 7. Exemption from Registration Claimed

Not Applicable.

Item 8. Exhibits

Exhibit Number	Exhibit
4.0	Instruments Defining Rights of Shareholders. Reference is made to Registrant's Registration Statement No. 00-27130 on Form 8-A which is incorporated herein by reference pursuant to Item 3(d).
5.0	Opinion of Brobeck, Phleger & Harrison LLP.
23.1	Independent Auditors - Consent.
23.2	Consent of Brobeck, Phleger & Harrison LLP is contained in Exhibit 5.
24.0	Power of Attorney. Reference is made to page II-4 of this Registration Statement.
99.1	Netspeed, Inc. (Internet MiddleWare Corporation) 1996 Long Term Equity Incentive Plan.
99.2	Form of Stock Option Agreement.
99.3	Form of Stock Option Assumption Agreement.
99.4	Memorandum re Assumption of Stock Options under the Internet MiddleWare Corporation 1996 Long Term Equity Incentive Plan.
99.5	Form of Notice of Grant (Special Option).
99.6	Form of Stock Option Agreement (Special Option).

Item 9. Undertakings

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act, (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement, and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference into the Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the Internet MiddleWare Corporation 1996 Long Term Equity Incentive Plan or upon the expiration of the special option grants.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the

II-2.

4  
1934 Act that is incorporated by reference into the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnity provisions summarized in Item 6 or

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

II-3.

5

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Santa Clara, State of California, on this 14th day of April, 1997.

NETWORK APPLIANCE, INC.

By /s/ Daniel J. Warmenhoven

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Daniel J. Warmenhoven  
President and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Daniel J. Warmenhoven and Jeffrey R. Allen and each of them acting individually, as such person's true and lawful attorneys-in-fact and agents, each with full power of substitution, for such person, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes, may do or cause to be done by virtue thereof.

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

Signatures -----	Title -----	Date ----
/s/ Daniel J. Warmenhoven ----- Daniel J. Warmenhoven	President and Chief Executive Officer (Principal Executive Director)	April 14, 1997

II-4.

6

Signatures -----	Title -----	Date ----
/s/ Jeffrey R. Allen ----- Jeffrey R. Allen	Vice President Finance and Operations and Chief Financial Officer (Principal Financial and	April 14, 1997

Accounting Officer)

Chairman of the Board of Directors

-----  
Donald T. Valentine

/s/ Carol A. Bartz                      Director                      April 14, 1997  
-----  
Carol A. Bartz

/s/ Michael R. Hallman                  Director                      April 14, 1997  
-----  
Michael R. Hallman

/s/ Kurt R. Jagers                      Director                      April 14, 1997  
-----  
Kurt R. Jagers

/s/ Robert T. Wall                      Director                      April 14, 1997  
-----  
Robert T. Wall

II-5.

7

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

EXHIBITS

TO

FORM S-8

UNDER

SECURITIES ACT OF 1933

NETWORK APPLIANCE, INC.

8

EXHIBIT INDEX

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April 15, 1997

Network Appliance, Inc.  
2770 San Tomas Expressway  
Santa Clara, CA 95051

Re: Network Appliance, Inc. Registration Statement for  
Offering of an aggregate of 129,148 shares of Common Stock

Ladies and Gentlemen:

We refer to your registration on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, of (i) 14,647 shares of the common stock ("Common Stock") of Network Appliance, Inc. (the "Company") issuable under the Internet MiddleWare Corporation 1996 Long Term Equity Incentive Plan (the "Plan") as assumed by the Company and (ii) 114,501 shares of Common Stock issuable under a series of special option grants (the "Options"). We advise you that, in our opinion, when such shares have been issued and sold pursuant to the applicable provisions of the Plan or the Options and in accordance with the Registration Statement, such shares will be validly issued, fully paid and nonassessable shares of Common Stock.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Brobeck, Phleger & Harrison LLP

BROBECK, PHLEGER & HARRISON LLP

## INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration of Network Appliance, Inc. on Form S-8 of our reports dated May 10, 1996 (August 16, 1996 as to Note 10) and May 10, 1996, included and incorporated by reference in the Annual Report on Form 10-K/A and Form 10-K, respectively, of Network Appliance, Inc. for the year ended April 30, 1996.

/s/ Deloitte & Touche LLP

- -----  
DELOITTE & TOUCHE LLP

San Jose, California  
April 14, 1997

NETSPEED INC.  
1996 LONG TERM EQUITY INCENTIVE PLAN

SECTION 1. PURPOSE; DEFINITIONS.

(a) Purpose. The purpose of the Plan is to provide selected eligible employees of, and consultants to, Netspeed Inc. (the "Company") or any Subsidiary or Affiliate of the Company, an opportunity to participate in the Company's future by offering them long-term performance-based and other incentives and equity interests in the Company so as to retain, attract and motivate management personnel.

(b) Definitions. For purposes of the Plan, the following terms have the following meanings:

(i) "Affiliate" means a parent or subsidiary corporation, as defined in the applicable provisions (currently Section 424) of the Code.

(ii) "Award" means any award under the Plan, including any Option, Stock Appreciation Right, Restricted Stock, Stock Purchase Right, or Performance Share Award.

(iii) "Award Agreement" means, with respect to each Award, the signed written agreement between the Company and the Plan participant setting forth the terms and conditions of the Award.

(iv) "Award Limit" means 10,000 shares of Stock.

(v) "Board" means the Board of Directors of the Company.

(vi) "Change in Control" has the meaning set forth in Section 10(a).

(vii) "Change in Control Price" has the meaning set forth in Section 10(c).

(viii) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor law.

(ix) "Commission" means the Securities and Exchange Commission and any successor agency.

2

(x) "Committee" means the Committee referred to in Section 2.

(xi) "Company" means Netspeed Inc.

(xii) "Disability" means permanent and total disability as determined by the Committee for purposes of the Plan.

(xiii) "Disinterested Person" has the meaning set forth in Rule 16b-3(c) and any successor definition adopted by the Commission.

(xiv) "Exchange Act" means the Securities and Exchange Act of 1934, as amended from time to time, and any successor law.

(xv) "Fair Market Value" means as of any given date:

(A) If the Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market, the closing sales price for the Stock or the closing bid if no sales were reported, as quoted on such system or exchange (or the largest such exchange) for the date the value is to be determined (or if there are no sales for such date, then for the last preceding business day on which there were sales), as reported in the Wall Street Journal or similar publication.

(B) If the Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the mean between the high bid and low asked prices for the Stock on the date the value is to be determined (or if there are no quoted prices for the date of grant, then for the last preceding business day on which there were quoted prices).

(C) In the absence of an established market for the Stock, as determined in good faith by the Committee, with reference to the Company's net worth, prospective earning power, dividend-paying capacity, and other relevant factors, including the goodwill of the Company, the economic outlook in the Company's industry, the Company's position in the industry and its management, and the values of stock of other corporations in the same or a similar line of business.

(xvi) "Incentive Stock Option" means any Option intended to be and designated as an "incentive stock option" within the meaning of Section 422 of the Code.

(xvii) "Non-Qualified Stock Option" means any Option that is not an Incentive Stock Option.

2.

3

(xviii) "Option" means an option granted under Section 5.

(xix) "Performance Share" means the equivalent, as of any time such assessment is made, of the Fair Market Value of one share of Stock.

(xx) "Performance Share Award" means an Award under Section 9.

(xxi) "Plan" means this Netspeed Inc. 1996 Long Term Equity Incentive Plan, as amended from time to time.

(xxii) "Restricted Stock" means an Award of Stock subject to restrictions, as more fully described in Section 7.

(xxiii) "Rule 16b-3" means Rule 16b-3 under Section 16(b) of the Exchange Act, as amended from time to time, and any successor rule.

(xxiv) "Stock" means the Common Stock, \$0.01 par value, of the Company, and any successor security.

(xxv) "Stock Appreciation Right" means an Award granted under Section 6.

(xxvi) "Stock Purchase Right" means an Award granted under Section 8.

(xxvii) "Subsidiary" has the meaning set forth in Section 424 of the Code.

(xxviii) "Termination" means, for purposes of the Plan, with respect to a participant, that the participant has ceased to be, for any reason, an employee of, or a consultant to, the Company, a Subsidiary or an Affiliate.

## SECTION 2. ADMINISTRATION.

(a) Committee. The Plan shall be administered by a committee of the Board (the "Committee"), composed of not less than two directors of the Company appointed by and holding office at the pleasure of the Board, each of whom is both a disinterested person as defined in Rule 16b-3 ("Disinterested Person") (unless the Committee determines that Rule 16b-3 is not applicable to the Plan) and an "outside director" for purposes of Section 162(m) of the Code ("Outside Director"). Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in

the Committee shall be filled by the Board. The Committee may act only by a majority of its members, except that the Committee (i) may authorize any one or more of its members or any officer of the Company to execute and deliver documents on behalf of the Committee and (ii) so long as not otherwise required for the Plan to comply with Rule 16b-3 (unless the Committee determines that Rule 16b-3 is not applicable to the Plan), may delegate to one or more officers or directors of the Company authority to grant Awards to persons who are not subject to Section 16 of the Exchange Act with respect to Stock. The Board shall have no right to exercise any of the rights or duties of the Committee under the Plan unless (i) each member of the Board is both a Disinterested Person and an Outside Director or (ii) such right is with respect to matters which, under Rule 16b-3 or Section 162(m) of the Code, or any regulations or rules issued thereunder, are not required to be determined in the sole discretion of the Committee.

(b) Authority. The Committee shall grant Awards to eligible employees and consultants. In particular and without limitation, the Committee, subject to the terms of the Plan, shall:

(i) select the officers, other employees and consultants to whom Awards may be granted;

(ii) determine whether and to what extent Awards are to be granted under the Plan;

(iii) subject to the Award Limit, determine the number of shares to be covered by each Award granted under the Plan;

(iv) determine the terms and conditions of any Award granted consistent with this Plan and any related loans to be made by the Company, based upon factors determined by the Committee; provided, however, that the terms and conditions of any Awards intended to qualify as performance-based compensation as described in Section 162(m) of the Code shall include, but not be limited to, such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code; and

(v) determine to what extent and under what circumstances any Award payments may be deferred by a participant.

(c) Committee Determinations Binding. The Committee may adopt, alter and repeal administrative rules, guidelines and practices governing the Plan as it from time to time shall deem advisable, interpret the terms and provisions of the Plan, any Award and any Award Agreement, and otherwise supervise the administration of the Plan. Any determination made by the Committee pursuant to the provisions of the Plan with respect to any Award shall be made in its sole discretion at the time of the grant of

the Award or, unless in contravention of any express term of the Plan or Award, at any later time. All decisions made by the Committee under the Plan shall be binding on all persons, including the Company and Plan participants.

#### SECTION 3. SHARES SUBJECT TO PLAN.

(a) Number of Shares. The total number of shares of Stock reserved and available for issuance pursuant to Awards under the Plan shall be 10,000 shares. Such shares may consist, in whole or in part, of authorized and unissued shares or shares reacquired in private transactions or open market purchases, but all shares issued under the Plan regardless of source shall be counted against the 10,000 share limitation. If any Option terminates or expires without being exercised in full or if any shares of Stock subject to an Award are forfeited, or if an Award otherwise terminates without a payment being made to the participant in the form of Stock, the shares issuable under such Option or Award shall again be available for issuance in connection with Awards. If any shares of Stock subject to an Award are repurchased by the Company, the shares issuable under such Award shall again be available for issuance in connection with Awards other than Options and Stock Appreciation Rights. To the extent an Award is paid in cash, the number of shares of Stock representing, at Fair

Market Value on the date of the payment, the value of the cash payment shall not be available for later grant under the Plan.

(b) Compliance with the Award Limit and Section 162(m) of the Code. The maximum number of shares which may be subject to options, rights or other awards granted under the Plan to any individual in any calendar year shall not exceed the Award Limit. To the extent required by Section 162(m) of the Code, shares subject to Options which are canceled continue to be counted against the Award Limit and if, after grant of an Option, the price of shares subject to such Option is reduced, the transaction is treated as a cancellation of the Option and a grant of a new Option and both the Option deemed to be canceled and the Option deemed to be granted are counted against the Award Limit. Furthermore, to the extent required by Section 162(m) of the Code, if, after grant of a Stock Appreciation Right, the base amount on which stock appreciation is calculated is reduced to reflect a reduction in the Fair Market Value of the Stock, the transaction is treated as a cancellation of the Stock Appreciation Right and a grant of a new Stock Appreciation Right and both the Stock Appreciation Right deemed to be canceled and the Stock Appreciation Right deemed to be granted are counted against the Award Limit.

(c) Adjustments. In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split, spin-off, sale of substantial assets, or other change in corporate structure affecting the Stock, such substitution or adjustments shall be made in the aggregate number of shares of Stock reserved for issuance under the Plan, in the Award Limit, in the number and exercise price of shares

5.

6  
subject to outstanding Options, in the number and purchase price of shares subject to outstanding Stock Purchase Rights and in the number of shares subject to other outstanding Awards, as may be determined to be appropriate by the Committee, in its sole discretion; provided, that the number of shares subject to any Award shall always be rounded down to the nearest whole number. Such adjusted exercise price shall also be used to determine the amount payable by the Company upon the exercise of any Stock Appreciation Right associated with any Option. With respect to Options and Stock Appreciation Rights intended to qualify as performance-based compensation under Section 162(m), no adjustments shall be authorized pursuant to this Section 3(c) or any other provision of the Plan to the extent that such adjustment would cause the Plan to violate Section 422 of the Code or would cause such option or stock appreciation right to fail to so qualify under Section 162(m), as the case may be, or any successor provisions thereto. Furthermore, no such adjustment or action shall be authorized to the extent such adjustment or action would violate Section 16 of the Exchange Act or Rule 16b-3.

#### SECTION 4. ELIGIBILITY.

Awards may be granted to officers and other employees of, and consultants to, the Company or any Subsidiary or Affiliate of the Company (excluding any person who serves only as a director).

#### SECTION 5. STOCK OPTION.

(a) Types. Subject to the Award Limit, any Option granted under the Plan shall be in such form as the Committee may from time to time approve. The Committee shall have the authority to grant to any participant Incentive Stock Options, Non-Qualified Stock Options or any type of Option (in each case with or without Stock Appreciation Rights). Incentive Stock Options may be granted only to employees of the Company, its parent (within the meaning of Section 424 of the Code) or Subsidiaries. Any portion of an Option that does not qualify as an Incentive Stock Option shall constitute a Non-Qualified Stock Option.

(b) Terms and Conditions. Options granted under the Plan shall be subject to the following terms and conditions:

(i) Applicable Award Agreements. Award Agreements evidencing Options intended to qualify as performance-based compensation as described in Section 162(m) of the Code shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the

Code. Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code. The grant shall automatically terminate without any action by the Company in the event that

6.

7

an Award Agreement is not executed by the participant within 30 days after delivery of the Option to the participant.

(ii) Option Term. The term of each Option shall be fixed by the Committee, but no Incentive Stock Option shall be exercisable more than 10 years after the date the Option is granted and no Non-Qualified Stock Option shall be exercisable more than 11 years after the date the Option is granted. If, at the time the Company grants an Incentive Stock Option the optionee owns directly or by attribution stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, or any Affiliate of the Company, the Incentive Stock Option shall not be exercisable more than five years after the date of grant.

(iii) Grant Date. The Company may grant Options under the Plan at any time and from time to time before the Plan terminates. The Committee shall specify the date of grant or, if it fails to, the date of grant shall be the date of action taken by the Committee to grant the Option; provided, that no Option may be exercised prior to execution of the applicable Award Agreement. However, if an Option is approved in anticipation of employment, the date of grant shall be the date the intended optionee is first treated as an employee for payroll purposes.

(iv) Exercise Price. The exercise price per share of Stock purchasable under a Non-Qualified Stock Option shall be equal to at least 10% (or such other minimum price as may be established by the Internal Revenue Service as a "safe harbor" against constructive receipt of income upon grant of the Option by the recipient of the Option), and not more than 100%, of the Fair Market Value on the date of grant. The exercise price per share of Stock purchasable under an Incentive Stock Option or a Non-Qualified Stock Option which is to qualify as performance-based compensation as described in Section 162(m) of the Code shall be equal to at least the Fair Market Value on the date of grant; provided, that if at the time the Company grants an Incentive Stock Option, the optionee owns directly or by attribution stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, or any Affiliate of the Company, the exercise price shall be not less than 110% of the Fair Market Value on the date the Incentive Stock Option is granted.

(v) Exercisability. Subject to the other provisions of the Plan, an Option shall be exercisable in its entirety at grant or at such times and in such amounts as are specified in the Award Agreement evidencing the Option. The Committee, in its absolute discretion, at any time may waive any limitations respecting the time at which an Option first becomes exercisable in whole or in part.

(vi) Method of Exercise; Payment. To the extent the right to purchase shares has accrued, Options may be exercised, in whole or in part, from time to time, by written notice from the optionee to the Company stating the number of shares being purchased, accompanied by payment of the exercise price for the shares.

7.

8

The Committee, in its discretion, may elect at the time of Option exercise that any Non-Qualified Stock Option be settled in cash rather than Stock.

(vii) No Disqualification. Notwithstanding any other provision in the Plan, no term of the Plan relating to Incentive Stock Options shall be interpreted, amended or altered nor shall any discretion or authority granted under the Plan be exercised so as to disqualify the Plan under Section 422 of the Code or, without the consent of the optionee affected, to disqualify any Incentive Stock Option under such Section 422 of the Code.

(a) Relationship to Options; No Payment by Participant. A Stock Appreciation Right may be awarded either (i) with respect to Stock subject to an Option held by a participant, or (ii) without reference to an Option. Subject to the Award Limit, the Committee, in its discretion, may determine whether a Stock Appreciation Right is to qualify as performance-based compensation as described in Section 162(m) of the Code and the Award Agreements evidencing Stock Appreciation Rights intended to so qualify shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code. If an Option is an Incentive Stock Option, a Stock Appreciation Right granted with respect to such Option may be granted only at the time of grant of the related Incentive Stock Option, but if the Option is a Non-Qualified Stock Option, the Stock Appreciation Right may be granted either simultaneously with the grant of the related Non-Qualified Stock Option or at any time during the term of such related Non-Qualified Stock Option. No consideration shall be paid by a participant with respect to a Stock Appreciation Right.

(b) When Exercisable. A Stock Appreciation Right shall be exercisable at such times and in whole or in part, each as determined by the Committee, subject, with respect to participants subject to Section 16(b) of the Exchange Act, to Rule 16b-3. Unless the Committee determines that Rule 16b-3 is not applicable to the Plan, any exercise by the participant of a Stock Appreciation Right for cash shall be made only (i) during the window period specified in Rule 16b-3(e)(3) and any successor rule (the "Window Period") or (ii) pursuant to an irrevocable written election by the participant to receive cash, in whole or in part, upon exercise of his Stock Appreciation Right (subject to the approval of the Committee) made at least 6 months prior to the exercise of the Stock Appreciation Right. If a Stock Appreciation Right is granted with respect to an Option, unless the Award Agreement otherwise provides, the Stock Appreciation Right may be exercised only to the extent to which shares covered by the Option are not at the time of exercise subject to repurchase by the Company.

(c) Effect on Related Right; Termination of Stock Appreciation Right. If a Stock Appreciation Right granted with respect to an Option is exercised, the Option

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9

shall cease to be exercisable and shall be cancelled to the extent of the number of shares with respect to which the Stock Appreciation Right was exercised. Upon the exercise or termination of an Option, related Stock Appreciation Rights shall terminate to the extent of the number of shares as to which the Option was exercised or terminated, except that, unless otherwise determined by the Committee at the time of grant, a Stock Appreciation Right granted with respect to less than the full number of shares covered by a related Option shall not be reduced until the number of shares covered by exercise or termination of the related Option exceeds the number of shares not covered by the Stock Appreciation Right. A Stock Appreciation Right granted independently from an Option shall terminate and shall be no longer exercisable at the time determined by the Committee at the time of grant, but not later than 10 years from the date of grant. Upon the Termination of the participant, a Stock Appreciation Right granted with respect to an Option shall be exercisable only to the extent to which the Option is then exercisable.

(d) Form of Payment Upon Exercise. Despite any attempt by a participant to elect payment in a particular form upon exercise of a Stock Appreciation Right, the Committee, in its discretion, may elect to cause the Company to pay cash, Stock, or a combination of cash and Stock upon exercise of the Stock Appreciation Right.

(e) Amount of Payment Upon Exercise. Upon the exercise of a Stock Appreciation Right, the participant shall be entitled to receive one of the following payments, as determined by the Committee under Section 6(d):

(i) Stock. That number of whole shares of Stock equal to the number computed by dividing (A) an amount (the "Stock Appreciation Right Spread"), rounded to the nearest whole dollar, equal to the product computed by multiplying (x) the excess of (1) if the Stock Appreciation Right may only be exercised during the Window Period, the highest Fair Market Value on any day during the Window Period, and otherwise, the Fair Market Value on the date the Stock Appreciation Right is exercised, over (2) the exercise price per share of

Stock of the related Option, or in the case of a Stock Appreciation Right granted without reference to an Option, such other price as the Committee establishes at the time the Stock Appreciation Right is granted, by (y) the number of shares of Stock with respect to which a Stock Appreciation Right is being exercised by (B) (1) if the Stock Appreciation Right may only be exercised during the Window Period, the highest Fair Market Value during the Window Period in which the Stock Appreciation Right was exercised, and (2) otherwise, the Fair Market Value on the date the Stock Appreciation Right is exercised; plus, if the foregoing calculation yields a fractional share, an amount of cash equal to the applicable Fair Market Value multiplied by such fraction (such payment to be the difference of the fractional share); or

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(ii) Cash. An amount in cash equal to the Stock Appreciation Right Spread; or

(iii) Cash and Stock. A combination of cash and Stock, the combined value of which shall equal the Stock Appreciation Right Spread.

#### SECTION 7. RESTRICTED STOCK.

Shares of Restricted Stock shall be subject to the following terms and conditions:

(a) Price. Participants awarded Restricted Stock, within 45 days of receipt of the applicable Award Agreement, which in no event shall be later than 10 days after the Award grant date, shall pay to the Company, if required by applicable law, an amount at least equal to the par value of the Stock subject to the Award. If such payment is not made and received by the Company by such date, the Award of Restricted Stock shall lapse.

(b) Restrictions. Subject to the provisions of the Plan and the Award Agreement, during a period set by the Committee, commencing with, and not exceeding 10 years from, the date of such award (the "Restriction Period"), the participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock. Within these limits, the Committee may in its discretion provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions, in whole or in part, based on service, performance or such other factors or criteria as the Committee may determine.

(c) Dividends. Unless otherwise determined by the Committee, cash dividends with respect to shares of Restricted Stock shall be automatically reinvested in additional Restricted Stock, and dividends payable in Stock shall be paid in the form of Restricted Stock.

(d) Termination. Except to the extent otherwise provided in the Award Agreement and pursuant to Section 7(b), upon termination of a participant's employment for any reason during the Restriction Period, all shares still subject to restriction shall be forfeited by the participant.

#### SECTION 8. STOCK PURCHASE RIGHTS.

(a) Price. The Committee may grant Stock Purchase Rights which shall enable the recipients to purchase Stock at a price equal to not less than 50%, and not more than 100%, of its Fair Market Value on the date of grant.

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11

(b) Exercisability. Stock Purchase Rights shall be exercisable for a period determined by the Committee not exceeding 30 days from the date of grant.

#### SECTION 9. PERFORMANCE SHARES.

(a) Awards. The Committee shall determine the nature, length (which shall in no event exceed 10 years) and starting date of the performance

period (the "Performance Period") for each Performance Share Award. The consideration payable by a participant with respect to a Performance Share Award shall be an amount determined by the Committee in the exercise of the Committee's discretion at the time of the Award; provided, that the amount of consideration may be zero and may in no event exceed 50% of the Fair Market Value at the time of grant. The Committee shall determine the performance objectives to be used in awarding Performance Shares and the extent to which such Performance Shares have been earned. Performance Periods may overlap and participants may participate simultaneously with respect to Performance Share Awards that are subject to different Performance Periods and different performance factors and criteria. At the beginning of each Performance Period, the Committee shall determine for each Performance Share Award subject to such Performance Period the number of shares of Stock (which may constitute Restricted Stock) to be awarded to the participant at the end of the Performance Period if and to the extent that the relevant measures of performance for such Performance Share Award are met. Such number of shares of Stock may be fixed or may vary in accordance with such performance or other criteria as may be determined by the Committee. The Committee may provide that amounts equivalent to interest at such rates as the Committee may determine or amounts equivalent to dividends paid shall be payable with respect to Performance Share Awards. In addition to the provisions set forth in Section 11(j), the Committee, in its discretion, may modify the terms of any Performance Share Award, including the specification and measurement of performance goals.

(b) Termination of Employment. Except as otherwise provided in the Award Agreement or determined by the Committee, in the event of Termination, then the participant shall not be entitled to any payment with respect to the Performance Shares subject to the Performance Period.

(c) Form of Payment. Payment shall be made in the form of cash or whole shares of Stock, as the Committee, in its discretion, shall determine.

#### SECTION 10. CHANGE IN CONTROL.

(a) Definition of "Change in Control". For purposes of Section 10(b), a "Change in Control" means the occurrence of either of the following:

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12

(i) any "person", as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, a Subsidiary, an Affiliate, or a Company employee benefit plan, including any trustee of such plan acting as trustee), is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company (or a successor to the Company) representing 20% or more of the combined voting power of the then outstanding securities of the Company or such successor;

(ii) at any time that the Company has registered shares under the Exchange Act, at least 40% of the directors of the Company constitute persons who were not at the time of their first election to the Board, candidates proposed by a majority of the Board in office prior to the time of such first election; or

(iii) (A) the dissolution of the Company or liquidation of more than 50% in value of the Company or a sale of assets involving 50% or more in value of the assets of the Company, (B) any merger or reorganization of the Company whether or not another entity is the survivor, (C) a transaction pursuant to which the holders, as a group, of all of the shares of the Company outstanding prior to the transaction hold, as a group, less than 50% of the combined voting power of the Company or any successor company outstanding after the transaction, or (D) any other event which the Board determines, in its discretion, would materially alter the structure of the Company or its ownership.

(b) Impact of Event. In the event of a "Change in Control" as defined in Section 10(a), the following provisions shall apply:

(i) any Stock Appreciation Rights and Options outstanding as of the date such Change in Control is determined to have occurred and not then exercisable and vested shall become fully exercisable and vested; provided, that in the case of the holder of Stock Appreciation Rights who is

actually subject to Section 16(b) of the Exchange Act, such Stock Appreciation Rights shall have been outstanding for at least six months at the date such Change in Control is determined to have occurred;

(ii) the restrictions and limitations applicable to any Restricted Stock and Stock Purchase Rights shall lapse, and such Restricted Stock shall become fully vested;

(iii) the value (net of any exercise price and required tax withholdings) of all outstanding Options, Stock Appreciation Rights, Restricted Stock, and Stock Purchase Rights, unless otherwise determined by the Committee at or after grant and subject to Rule 16b-3, shall be cashed out on the basis of the "Change in Control Price," as defined in Section 10(c), as of the date such Change in Control is

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13

determined to have occurred or such other date as the Board may determine prior to the Change in Control; and

(iv) any outstanding Performance Share Awards shall be vested and paid in full as if all performance criteria had been met;

provided, however, that the foregoing provisions shall only apply, with respect to the events described Section 10(a) (i), 10(a) (iii) (B), and 10(a) (iii) (D), if and to the extent so specifically determined by the Board in the exercise of the Board's discretion, which determination may be amended or reversed only by the affirmative vote of a majority of the persons who were directors at the time such determination was made.

(c) Change in Control Price. For purposes of this Section 10, "Change in Control Price" means the highest price per share paid in any transaction reported on any established stock exchange, national market system or other established market for the Stock, or paid or offered in any bona fide transaction related to a potential or actual Change in Control of the Company at any time during the preceding 60-day period as determined by the Board, except that, in the case of Incentive Stock Options and Stock Appreciation Rights relating to Incentive Stock Options, such price shall be based only on transactions reported for the date on which the Board decides to cash out such Options.

#### SECTION 11. GENERAL PROVISIONS.

(a) Award Grants. Any Award may be granted either alone or in addition to other Awards granted under the Plan. Subject to the terms and restrictions set forth elsewhere in the Plan, the Committee shall determine the consideration, if any, payable by the participant for any Award and, in addition to those set forth in the Plan, any other terms and conditions of the Awards. The Committee may condition the grant or payment of any Award upon the attainment of specified performance goals or such other factors or criteria, including vesting based on continued employment or consulting, as the Committee shall determine. Performance objectives may vary from participant to participant and among groups of participants and shall be based upon such Company, Subsidiary, group or division factors or criteria as the Committee may deem appropriate, including, but not limited to, earnings per share or return on equity. The other provisions of Awards also need not be the same with respect to each recipient. Unless specified otherwise in the Plan or by the Committee, the date of grant of an Award shall be the date of action by the Committee to grant the Award. The Committee may also substitute new Options for previously granted Options, including previously granted Options having higher exercise prices.

(b) Types of Shares. The Committee, in its discretion, may determine at the time of an Award that in lieu of Stock there shall be issuable under, or applicable

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14

to the measurement of, any Award of any (i) Restricted Stock, (ii) shares of any series of common stock of the Company, other than Stock, and shares of any series of common stock of any Subsidiary or Affiliate of the Company ("Common

Shares"), or (iii) shares of any series of preferred stock of the Company ("Preferred Shares"); provided, that (A) with respect to shares issuable upon exercise of Incentive Stock Options, Common Shares and Preferred Shares shall be limited to shares of any Subsidiary authorized as of the date the Plan is approved by the Board, and (B) with respect to shares issuable upon exercise of Non-Qualified Stock Options and Stock Appreciation Rights, Common Shares and Preferred Shares shall be limited to shares of any Subsidiary or Affiliate of the Company. In such event the Committee shall determine the number of shares of Stock equivalent to such Restricted Stock, Common Shares or Preferred Shares for the purpose of calculating the shares of Stock issued under the Plan; provided, that a Common Share or a Preferred Share in no event shall be deemed equal to less than one share of Stock.

(c) Award Agreement. As soon as practicable after the date of an Award grant, the Company and the participant shall enter into a written Award Agreement specifying the date of grant, the terms and conditions of the Award.

(d) Certificates. All certificates for shares of Stock or other securities delivered under the Plan shall be subject to such stock transfer orders, legends and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Commission, any stock exchange upon which the Stock is then listed and any applicable federal, state or foreign securities law.

(e) Termination. In the event of Termination for any reason other than death or Disability, Awards held at the date of Termination (and only to the extent then exercisable or payable, as the case may be) may be exercised in whole or in part at any time within three months after the date of Termination, or such lesser period specified in the Award Agreement (but in no event after the expiration date of the Award), but not thereafter. If Termination is due to death or Disability, or a participant dies or becomes disabled within the period that the Award remains exercisable or payable, as the case may be, after Termination, only Awards held at the date of death or Disability (and only to the extent then exercisable or payable, as the case may be) may be exercised in whole or in part by the participant in the case of Disability, by the participant's personal representative or by the person to whom the Award is transferred by will or the laws of descent and distribution, at any time within 18 months after the death or one year after the Disability, as the case may be, of the participant or any lesser period specified in the Award Agreement (but in no event after the expiration of the Award). In the event of Termination by reason of the participant's retirement (as determined in the exercise of the Committee's sole discretion), Awards may be exercised in whole or in part at any time within two years after the date of Termination, or such lesser period specified in the Award Agreement; provided, however, that in no event shall an Award be exercisable after the expiration date of the Award.

14.

15

(f) Delivery of Purchase Price. Participants shall make all or any portion of any payment due to the Company with respect to the consideration payable for, upon exercise of, or for federal, state, local or foreign tax payable in connection with, an Award by delivery of cash; and if and only to the extent authorized by the Committee, all or any portion of such payment may be made by delivery of any property (including, without limitation, a promissory note of the participant or shares of Stock or other securities and, in the case of an option, surrender of shares issuable upon exercise of that option) other than cash, so long as, if applicable, such property constitutes valid consideration for the Stock under applicable law. To the extent participants may make payments due to the Company upon grant or exercise of Awards by the delivery of shares of Stock or other securities, the Committee, in its discretion, may permit participants constructively to deliver for any such payment (A) securities of the Company held by the participant for at least 6 months or (B) subject to the timing requirements of Section 11(z), securities of the Company issuable to the participant upon exercise of the Award. Constructive delivery shall be effected by (i) identification by the participant of shares intended to be delivered constructively, (ii) confirmation by the Company of participant's ownership of such shares (for example, by reference to the Company's stock records, or by some other means of verification), and (iii) if applicable, upon exercise, delivery to the participant of a certificate for that number of shares equal to the number of shares for which the Award is exercised less the number of shares constructively delivered.

(g) Tax Withholding. If and to the extent authorized by the

Committee in its discretion, a person who has received an Award or payment under an Award may, to pay the amount of tax that the Committee in its discretion determines to be required to be withheld by the Company, make an election to deliver to the Company or have withheld either (i) a promissory note of the participant on the terms set forth in Section 11(f) or (ii) (A) securities of the Company held by the participant for at least 6 months or (B) subject to the timing requirements of Section 11(z), securities of the Company issuable to the participant upon exercise of the Award. Any shares or other securities so withheld or tendered shall be valued by the Committee as of the date they are withheld or tendered; provided, that Stock shall be valued at the Fair Market Value on such date. The value of the shares withheld or tendered may not exceed the required federal, state, local and foreign withholding tax obligations as computed by the Company. Unless the Committee permits otherwise, the participant shall pay to the Company in cash, promptly when the amount of such obligations becomes determinable, all applicable federal, state, local and foreign withholding taxes that the Committee in its discretion determines to result from the lapse of restrictions imposed upon an Award or upon exercise of an Award or from a transfer or other disposition of shares acquired upon exercise or payment of an Award or otherwise related to the Award or the shares acquired in connection with an Award.

(h) No Transfer Ability. No Award shall be assignable or otherwise transferable by the participant other than by will or by the laws of descent and

15.

16

distribution, and during the life of a participant, an Award shall be exercisable, and any elections with respect to an Award may be made, only by the participant or participant's guardian or legal representative. Unless otherwise approved in writing by the Committee, no shares acquired upon exercise of any Award by any officer of the Company, as defined in Rule 16a-1(f) under the Exchange Act, may be sold, assigned, pledged, encumbered or otherwise transferred until at least 6 months have elapsed from (but excluding) the date that such Award was granted. The Committee may require the participant to give the Company prompt notice of any disposition of shares of Stock, acquired by exercise of an Incentive Stock Option within two years from the date of granting such option or one year after the transfer of such shares to such participant. The Committee may direct that the certificates evidencing shares acquired by exercise of an option refer to such requirement to give prompt notice of disposition.

(i) Right of First Refusal. At the time of grant, the Committee may provide in connection with any Award that the shares of Stock received as a result of such Award shall be subject to a right of first refusal pursuant to which the participant shall be required to offer to the Company any shares that the participant wishes to sell at the then Fair Market Value of the Stock or at such other price as may be set forth in the applicable Award Agreement, subject to such other terms and conditions as the Committee may specify at the time of grant.

(j) Adjustment of Awards; Waivers. The Committee may adjust the performance goals and measurements applicable to Awards (i) to take into account changes in law and accounting and tax rules, (ii) to make such adjustments as the Committee deems necessary or appropriate to reflect the inclusion or exclusion of the impact of extraordinary or unusual items, events or circumstances in order to avoid windfalls or hardships, (iii) to make such adjustments as the Committee deems necessary or appropriate to reflect any material changes in business conditions, and (iv) in any other manner determined in the Committee's discretion. In the event of hardship or other special circumstances of a participant and otherwise in its discretion, the Committee may waive in whole or in part any or all restrictions, conditions, vesting, or forfeiture with respect to any Award granted to such participant.

(k) Election to Defer Payment. To the extent, if any, permitted by the Committee, a participant may elect, at such time as the Committee may in its discretion specify, to defer payment of all or a portion of an Award.

(l) Non-Competition. The Committee may condition the Committee's discretionary-waiver of a forfeiture or vesting acceleration at the time of Termination of a participant holding any unexercised or unearned Award or the waiver of restrictions upon any Award upon a requirement that such

participant agree to and actually (i) not engage in any business or activity competitive with any business or activity conducted by the Company and (ii) be available, unless such participant shall have died, for consultations at the request of the Company's management, all on such terms and

16.

17

conditions (including conditions in addition to (i) and (ii)) as the Committee may determine.

(m) Dividends. The reinvestment of dividends in additional Stock or Restricted Stock at the time of any dividend payment shall only be permissible if sufficient shares of Stock are available under Section 3 for such reinvestment (taking into account then outstanding Awards).

(n) Regulatory Compliance. Each Award under the Plan shall be subject to the condition that, if at any time the Committee shall determine that (i) the listing, registration or qualification of the shares of Stock, Common Shares or Preferred Shares upon any securities exchange or under any state or federal law, (ii) the consent or approval of any government or regulatory body or (iii) an agreement or representations by the participant with respect thereto, is necessary or desirable, then such Award shall not be consummated in whole or in part unless such listing, registration, qualification, consent, approval, agreement or representations shall have been effected or obtained free of any conditions not acceptable to the Committee.

(o) Rights as Shareholder. Unless the Plan or the Committee expressly specifies otherwise, a participant shall have no rights as a shareholder with respect to any shares covered by an Award until the participant is entitled, under the terms of the Award, to receive such shares. Subject to Sections 3(c) and 7(c), no adjustment shall be made for dividends or other rights for which the record date is prior to the date the certificates are delivered.

(p) Beneficiary Designation. The Committee, in its discretion, may establish procedures for a participant to designate a beneficiary to whom any amounts payable in the event of the participant's death are to be paid.

(q) Additional Plans. Nothing contained in the Plan shall prevent the Company, a Subsidiary or Affiliate from adopting other or additional compensation arrangements for its employees.

(r) No Employment Rights. The adoption of the Plan shall not confer upon any employee any right to continued employment nor shall it interfere in any way with the right of the Company, a Subsidiary or Affiliate to terminate the employment of any employee at any time.

(s) Rule 16b-3. Notwithstanding any provision of the Plan, the Plan shall always be administered, and Awards shall always be granted and exercised, in such a manner as to conform to the provisions of Rule 16b-3, unless the Committee determines that Rule 16b-3 is not applicable to the Plan.

17.

18

(t) Limitations Applicable to Section 16 Persons and Performance-Based Compensation. Notwithstanding any other provision of this Plan, and any Option, Performance Share Award, Stock Appreciation Right or Stock Purchase Right granted, or Restricted Stock awarded, to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. Any such additional limitation shall be set forth in an annex to this Plan, such annex to be incorporated herein by this reference and made part of this Plan. To the extent permitted by applicable law, the Plan, Options, Performance Share Awards, Stock Appreciation Rights, Stock Purchase Rights and Restricted Stock granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule. Furthermore, notwithstanding any other provision of this Plan, any Option or Stock Appreciation Right intended to qualify as performance-based compensation as described in Section 162(m) of the Code shall be subject to any additional limitations set forth in Section 162(m) of the Code

(including any amendment to Section 162(m) of the Code) or any regulations or rulings issued thereunder that are requirements for qualification as performance-based compensation as described in Section 162(m) of the Code, and this Plan shall be deemed amended to the extent necessary to conform to such requirements.

(u) Governing Law. The Plan and all Awards shall be governed by and construed in accordance with the laws of the State of California.

(v) Use of Proceeds. All cash proceeds to the Company under the Plan shall constitute general funds of the Company.

(w) Unfunded Status of Plan. The Plan shall constitute an "unfunded" plan for incentive and deferred compensation. The Committee may authorize the creation of trusts or arrangements to meet the obligations created under the Plan to deliver Stock or make payments; provided, that unless the Committee otherwise determines, the existence of such trusts or other arrangements shall be consistent with the "unfunded" status of the Plan.

(x) Assumption by Successor. The obligations of the Company under the Plan and under any outstanding Award may be assumed by any successor corporation, which for purposes of the Plan shall be included within the meaning of "Company."

(y) Plan Designation and Status. Notwithstanding the designation of this document as a plan for ease of reference and to standardize certain provisions applicable to all types of Awards, each type of Award shall be deemed to be a separate "plan" for purposes of Section 16 of the Exchange Act and any applicable state securities laws.

18.

19

(z) Certain Timing Requirements. Securities of the Company issuable to the participant upon exercise of an Award may be used to satisfy the exercise price or the tax withholding consequences of such exercise only (i) during the period beginning on the third business day following the date of release of the quarterly or annual summary statement of sales and earnings of the Company and ending on the twelfth business day following such date or (ii) pursuant to an irrevocable written election by the participant to use securities of the Company issuable to the participant upon exercise of the Award to pay all or part of the exercise price or the withholding taxes (subject to the approval of the Committee) made at least 6 months prior to the payment of such exercise price or withholding taxes.

## SECTION 12. AMENDMENTS AND TERMINATION.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuance shall be made which would impair the rights of a participant under an outstanding Award without the participant's consent. In addition, to the extent required for the Plan to comply with Rule 16b-3 or, with respect to provisions solely as they relate to Incentive Stock Options, to the extent required for the Plan to comply with Section 422 of the Code, the Board may not amend or alter the Plan without the approval of a majority of the votes cast at a duly held meeting of shareholders at which a quorum of the voting power of the Company is represented in person or by proxy, where such amendment or alteration would:

(a) except as expressly provided in the Plan, increase the total number of shares reserved for issuance pursuant to Awards under the Plan or modify the Award Limit;

(b) except as expressly provided in the Plan, change the minimum price terms of Sections 5(b)(iv), 7(a) or 8(a);

(c) change the class of employees and consultants eligible to participate in the Plan;

(d) extend the maximum Option term under Section 5(b) or the maximum exercise period under Section 8(b); or

(e) materially increase the benefits accruing to participants under the Plan.

The Board of Directors may, at any time without shareholder approval, amend the Plan and the terms of any Award outstanding under the Plan, provided that such amendment is designed to maximize federal income tax benefits accorded to Awards or, if the Committee determines that Rule 16b-3 is applicable to the Plan, to

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comply with Rule 16b-3 and provided further, that with respect to outstanding Awards, the participant consents to such amendment.

SECTION 13. EFFECTIVE DATE OF PLAN.

The Plan shall be effective on the date it is adopted by the Board, but all Awards shall be conditioned upon approval of the Plan at a duly held meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of the shares of the Company represented in person or by proxy and entitled to vote at the meeting.

SECTION 14. TERM OF PLAN.

No Award shall be granted on or after May 6, 2006, but Awards granted prior to May 6, 2006 (including, without limitation, Performance Share Awards for Performance Periods commencing prior to May 6, 2006) may extend beyond that date.

20.

## FORM OF STOCK OPTION AGREEMENT

THIS AGREEMENT, dated as of \_\_\_\_\_ (the "Effective Date") is made by and between Internet MiddleWare Corporation, a California corporation (the "Company"), and \_\_\_\_\_, an employee of the Company or a Parent Corporation or Subsidiary of the Company (the "Optionee").

WHEREAS, the Company wishes to afford the Optionee the opportunity to purchase shares of its no par value Common Stock; and

WHEREAS, the Company wishes to carry out the Plan (the terms of which are hereby incorporated by reference and made a part of this Agreement); and

WHEREAS, the Committee has determined that it would be to the advantage and best interest of the Company and its shareholders to grant the Non-Qualified Stock Option provided for herein to the Optionee as an inducement to enter into or remain in the service of the Company, its Parent Corporations or its Subsidiaries and as an incentive for increased efforts during such service, and has advised the Company thereof and instructed the undersigned officers to issue said Option;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## ARTICLE I

## DEFINITIONS

Whenever the following terms are used in this Agreement, they shall have the meaning specified below unless the context clearly indicates to the contrary. The masculine pronoun shall include the feminine and neuter, and the singular the plural, where the context so indicates.

Section 1.1 "Board" shall mean the Board of Directors of the Company.

Section 1.2 "Code" shall mean the Internal Revenue Code of 1986, as amended.

Section 1.3 "Committee" shall mean the Committee of the Board appointed to administer the Plan as provided in the Plan.

Section 1.4 "Company" shall mean Internet MiddleWare Corporation.

Section 1.5 "Director" shall mean a member of the Board.

2  
Section 1.6 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

Section 1.7 "Officer" shall mean an officer of the Company, as defined in Rule 16a-1(f) under the Exchange Act, as such Rule may be amended in the future.

Section 1.8 "Option" shall mean the non-qualified stock option to purchase Common Stock of the Company granted under this Agreement.

Section 1.9 "Parent Corporation" shall mean any corporation in an unbroken chain of corporations ending with the Company if each of the corporations other than the Company then owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one (1) of the other corporations in such chain.

Section 1.10 "Plan" shall mean the Internet MiddleWare Corporation 1996 Long Term Equity Incentive Plan.

Section 1.11 "Rule 16b-3" shall mean that certain Rule 16b-3 under the

Exchange Act, as such Rule may be amended in the future.

Section 1.12 "Secretary" shall mean the Secretary of the Company.

Section 1.13 "Securities Act" shall mean the Securities Act of 1933, as amended.

Section 1.14 "Subsidiary" shall mean any corporation in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain then owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one (1) of the other corporations in such chain.

Section 1.15 "Termination of Employment" shall mean the time when the employee-employer relationship between the Optionee and the Company, a Parent Corporation or a Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, a termination by resignation, discharge, death or retirement, but excluding any termination where there is a simultaneous reemployment by the Company, a Parent Corporation or a Subsidiary. The Committee, in its absolute discretion, shall determine the effect of all other matters and questions relating to Termination of Employment, including, but not by way of limitation, the question of whether a Termination of Employment resulted from a discharge for good cause, and all questions of whether particular leaves of absence constitute Terminations of Employment.

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3

## ARTICLE II

### GRANT OF OPTION

Section 2.1 Grant of Option. In consideration of the Optionee's agreement to remain in the employ of the Company, its Parent Corporations or its Subsidiaries and for other good and valuable consideration, on the date hereof the Company irrevocably grants to the Optionee the option to purchase any part or all of an aggregate of \_\_\_\_\_ shares of its no par value Common Stock upon the terms and conditions set forth in this Agreement.

Section 2.2 Purchase Price. The purchase price of the shares of stock covered by the Option shall be \$\_\_\_\_\_ per share without commission or other charge.

Section 2.3 Consideration to Company. In consideration of the granting of this Option by the Company, the Optionee agrees to render faithful and efficient services to the Company, a Parent Corporation or a Subsidiary, with such duties and responsibilities as the Company shall from time to time prescribe, for a period of at least one (1) year from the date this Option is granted. Nothing in this Agreement or in the Plan shall confer upon the Optionee any right to continue in the employ of the Company, any Parent Corporation or any Subsidiary or shall interfere with or restrict in any way the rights of the Company, its Parent Corporations and its Subsidiaries, which are hereby expressly reserved, to discharge the Optionee at any time for any reason whatsoever, with or without cause.

Section 2.4 Adjustments in Option. In the event that the outstanding shares of the stock subject to the Option are changed into or exchanged for a different number or kind of shares of the Company or other securities of the Company by reason of merger, consolidation, recapitalization, reclassification, stock split up, stock dividend or combination of shares, the Committee shall make an appropriate and equitable adjustment in the number and kind of shares as to which the Option, or portions thereof then unexercised, shall be exercisable, to the end that after such event the Optionee's proportionate interest shall be maintained as before the occurrence of such event. Such adjustment in the Option shall be made without change in the total price applicable to the unexercised portion of the Option (except for any change in the aggregate price resulting from rounding-off of share quantities or prices) and with any necessary corresponding adjustment in the Option price per share. Any such adjustment made by the Committee shall be final and binding upon the Optionee, the Company and all other interested persons.

3.

## ARTICLE III

## PERIOD OF EXERCISABILITY

## Section 3.1 Commencement of Exercisability.

(a) The Option shall become exercisable with respect to 25% percent of the total number of shares covered by the Option on the first anniversary of the Effective Date and an additional 2.083% of the total number of shares covered by the Option at the end of each month thereafter.

(b) No portion of the Option which is unexercisable at Termination of Employment shall thereafter become exercisable.

Section 3.2 Duration of Exercisability. The installments provided for in Section 3.1 are cumulative. Each such installment which becomes exercisable pursuant to Section 3.1 shall remain exercisable until it becomes unexercisable under Section 3.3.

Section 3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration of ten (10) years from the date the Option was granted; or

(b) The time of the Optionee's Termination of Employment unless such Termination of Employment results from his death, his retirement, his disability or his being discharged not for good cause; or

(c) The expiration of three (3) months from the date of the Optionee's Termination of Employment by reason of his retirement or his being discharged not for good cause, unless the Optionee dies within said three-month period; or

(d) The expiration of one (1) year from the date of the Optionee's Termination of Employment by reason of his disability; or

(e) The expiration of one (1) year from the date of the Optionee's death.

Section 3.4 Acceleration of Exercisability. Upon the effective date of a (i) the merger or consolidation of the Company with or into another corporation, or (ii) the acquisition by another corporation or person of all or substantially all of the Company's assets or eighty percent (80%) or more of the Company's then outstanding voting stock of the Company (each, a "Sale"), this Option shall be exercisable as to all the shares

4.

5

covered hereby, notwithstanding that this Option may not yet have become fully exercisable under Section 3.1(a) if, and only if, the Optionee's employment with the Company is terminated as of the effective date of the Sale; provided, however, that this acceleration of exercisability shall not take place if:

(a) This Option becomes unexercisable under Section 3.3 prior to said effective date; or

(b) In connection with such an event, provision is made for an assumption of this Option or a substitution therefor of a new option by an employer corporation or a parent or subsidiary of such corporation.

The Committee may make such determinations and adopt such rules and conditions as it, in its absolute discretion, deems appropriate in connection with such acceleration of exercisability, including, but not by way of limitation, provisions to ensure that any such acceleration and resulting exercise shall be conditioned upon the consummation of the contemplated corporate transaction.

## ARTICLE IV

## EXERCISE OF OPTION

Section 4.1 Person Eligible to Exercise. During the lifetime of the Optionee, only he may exercise the Option or any portion thereof. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by his personal representative or by any person empowered to do so under the Optionee's will or under the then applicable laws of descent and distribution.

Section 4.2 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3; provided, however, that each partial exercise shall be for whole shares only.

Section 4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Chief Executive Officer or his office of all of the following prior to the time when the Option or such portion becomes unexercisable under Section 3.3:

(a) Notice in writing signed by the Optionee or the other person then entitled to exercise the Option or a portion thereof, stating that the Option or a portion thereof is thereby exercised, such notice complying with all applicable rules established by the Committee; and

5.

6

(b) (i) Full payment (in cash or by check) for the shares with respect to which such Option or a portion thereof is exercised; or and

(ii) With the consent of the Committee, (A) shares of the Company's Common Stock owned by the Optionee duly endorsed for transfer to the Company or (B) subject to the timing requirements of Section 4.4, shares of the Company's Common Stock issuable to the Optionee upon exercise of the Option, with a Fair Market Value (as defined in the Plan) on the date of Option exercise equal to the aggregate purchase price of the shares with respect to which such Option or a portion thereof is exercised; or

(iii) With the consent of the Committee, a full recourse promissory note bearing interest (at no less than such rate as shall then preclude the imputation of interest under the Code or successor provision) and payable upon such terms as may be prescribed by the Committee. The Committee may also prescribe the form of such note and the security to be given for such note. The Option may not be exercised, however, by delivery of a promissory note or by a loan from the Company when or where such loan or other extension of credit is prohibited by law; or

(iv) With the consent of the Committee, any combination of the consideration provided in the foregoing subparagraphs (i), (ii) and (iii); and

(c) A bona fide written representation and agreement, in a form satisfactory to the Committee, signed by the Optionee or other person then entitled to exercise such Option or portion, stating that the shares of stock are being acquired for his own account, for investment and without any present intention of distributing or reselling said shares or any of them except as may be permitted under the Securities Act and then applicable rules and regulations thereunder, and that the Optionee or other person then entitled to exercise such Option or a portion thereof will indemnify the Company against and hold it free and harmless from any loss, damage, expense or liability resulting to the Company if any sale or distribution of the shares by such person is contrary to the representation and agreement referred to above. The Committee may, in its absolute discretion, take whatever additional actions it deems appropriate to insure the observance and performance of such representation and agreement and to effect compliance with the Securities Act and any other federal or state securities laws or regulations. Without limiting the generality of the foregoing, the Committee may require an opinion of counsel acceptable to it to the effect that any subsequent transfer of shares acquired on an Option exercise does not violate the Securities Act, and may issue stop-transfer orders covering such shares. Share certificates evidencing stock issued on exercise of this Option shall bear an appropriate legend referring to the provisions of this subsection (c) and the agreements herein. The written representation and agreement referred to in the first sentence of this subsection (c) shall, however, not be required if the shares to be issued pursuant to such exercise

have been registered under the Securities Act, and such registration is then effective in respect of such shares; and

6.

7

(d) Full payment to the Company (or other employer corporation) of all amounts which, under federal, state or local tax law, it is required to withhold upon exercise of the Option; with the consent of the Committee, (i) shares of the Company's Common Stock owned by the Optionee duly endorsed for transfer, or (ii) subject to the timing requirements of Section 4.4, shares of the Company's Common Stock issuable to the Optionee upon exercise of the Option, valued at the Fair Market Value on the date the Option is exercised, may be used to make all or part of such payment; and

(e) In the event the Option or a portion thereof shall be exercised pursuant to Section 4.1 by any person or persons other than the Optionee, appropriate proof of the right of such person or persons to exercise the Option.

Section 4.4 Certain Timing Requirements. Shares of the Company's Common Stock issuable to the Optionee upon exercise of the Option may be used to satisfy the Option price or the tax withholding consequences of such exercise only (i) during the period beginning on the third (3rd) business day following the date of release of the quarterly or annual summary statement of sales and earnings of the Company and ending on the twelfth (12th) business day following such date or (ii) pursuant to an irrevocable written election by the Optionee to use shares of the Company's Common Stock issuable to the Optionee upon exercise of the Option to pay all or part of the Option price or the withholding taxes (subject to the approval of the Committee) made at least six (6) months prior to the payment of such Option price or withholding taxes.

Section 4.5 Conditions to Issuance of Stock Certificates. The shares of stock deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued shares or issued shares which have then been reacquired by the Company. Such shares shall be fully paid and nonassessable. The Company shall not be required to issue or deliver any certificate or certificates for shares of stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such class of stock is then listed; and

(b) The completion of any registration or other qualification of such shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable; and

(c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Committee shall, in its absolute discretion, determine to be necessary or advisable; and

7.

8

(d) The payment to the Company (or other employer corporation) of all amounts which, under federal, state or local tax law, it is required to withhold upon exercise of the Option; and

(e) The lapse of such reasonable period of time following the exercise of the Option as the Committee may from time to time establish for reasons of administrative convenience.

Section 4.6 Rights as Shareholder. The holder of the Option shall not be, nor have any of the rights or privileges of, a shareholder of the Company in respect of any shares purchasable upon the exercise of any part of the Option unless and until certificates representing such shares shall have been issued by the Company to such holder.

## OTHER PROVISIONS

Section 5.1 Administration. The Committee shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon the Optionee, the Company and all other interested persons. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or the Option.

Section 5.2 Option Not Transferable. Neither the Option nor any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Optionee or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect; provided, however, that this Section 5.2 shall not prevent transfers by will or by the applicable laws of descent and distribution.

Section 5.3 Shares to Be Reserved. The Company shall at all times during the term of the Option reserve and keep available such number of shares of stock as will be sufficient to satisfy the requirements of this Agreement.

Section 5.4 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of its Chief Executive

8.

9

Officer, and any notice to be given to the Optionee shall be addressed to him at the address given beneath his signature hereto. By a notice given pursuant to this Section 5.4, either party may hereafter designate a different address for notices to be given to him. Any notice which is required to be given to the Optionee shall, if the Optionee is then deceased, be given to the Optionee's personal representative if such representative has previously informed the Company of his status and address by written notice under this Section 5.4. Any notice shall be deemed duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service. Notices and communications shall be mailed by registered mail, return receipt requested, postage prepaid. All mailings and deliveries related to this Agreement shall be deemed received only when actually received.

Section 5.5 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 5.6 [Intentionally left blank]

Section 5.7 Construction. This Agreement shall be administered, interpreted and enforced under the laws of the State of California.

Section 5.8 Conformity to Securities Laws. The Optionee acknowledges that the Plan is intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, including, without limitation, Rule 16b-3. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

Section 5.9 Company's Right to Repurchase Shares.

(a) Upon Termination of Employment, the Company shall have the option to repurchase (the "Right of Repurchase") all or a portion of the shares of stock which have been purchased by the Optionee pursuant to exercise of the Option and which the Optionee then holds; provided however, upon the

effective date of a Sale at any time, all of the Company's Right of Repurchase with respect to shares of stock purchased upon exercise of the Option shall expire automatically if, and only if, the Optionee's employment with the Company is terminated as of the effective date of the Sale. The repurchase price payable by the Company if it exercises its Right of Repurchase shall be \$\_\_\_\_\_.

9.

10

(b) The Company's Right of Repurchase shall be exercisable by giving written notice (accompanied by payment for the shares) to the Optionee within thirty (30) calendar days after the Termination of Employment which gives rise to the Company's Right of Repurchase.

(c) Notwithstanding anything to the contrary in this Section 5.09, the Company's Right of Repurchase shall expire automatically after the earlier of (i) the Company's initial public offering, or (ii) the fourth anniversary of the date of this Agreement.

#### Section 5.10 Right of First Refusal.

(a) There can be no valid "transfer" (as defined below) of any shares of stock purchased upon exercise of the Option, or any interest in such shares, by any holder of such shares or interests unless such transfer is solely for cash consideration and is made in compliance with the following provisions:

(1) Before there can be a valid transfer of any shares or any interest therein, the record holder of the shares to be transferred (the "Offered Shares") shall give written notice (by registered or certified mail) to the Company. Such notice shall specify the identity of the proposed transferee, the cash price offered for the Offered Shares by the proposed transferee and the other terms and conditions of the proposed transferee. The date such notice is mailed shall be hereinafter referred to as the "notice date" and the record holder of the Offered Shares shall be hereinafter referred to as the "Offeror."

(2) For a period of thirty (30) calendar days after the notice date, the Company shall have the option to purchase (the "Right of First Refusal") all (but not less than all) of the Offered Shares at the purchase price and on the terms set forth in subsection (a)(3) of this Section 5.10. The Right of First Refusal shall be exercisable by the Company by mailing (by registered or certified mail) written notice of exercise to the Offeror prior to the end of said thirty (30) days.

(3) The price at which the Company may purchase the Offered Shares pursuant to the Right of First Refusal shall be the cash price offered for the Offered Shares by the proposed transferee (as set forth in the notice required under subsection (a)(1) of this Section 5.10). The Company's notice of exercise of the Right of First Refusal shall be accompanied by full payment for the Offered Shares and, upon such payment by the Company, the Company shall acquire full right, title and interest to all of the Offered Shares.

(4) If, and only if, the Right of First Refusal of this Section 5.10 is not exercised, the transfer proposed in the notice given pursuant to

10.

11

subsection (a)(1) of this Section 5.10 may take place; provided, however, that such transfer must, in all respects, be exactly as proposed in said notice except that such transfer may not take place either before the tenth (10th) calendar day after the expiration of said thirty-day Right of First Refusal exercise period or after the ninetieth (90th) calendar day after the expiration of said thirty-day Right of First Refusal exercise period, and if such transfer has not taken place prior to said ninetieth (90th) day, such transfer may not take place without once again complying with subsection (a) of this Section 5.10.

(b) As used in this Section 5.10, "transfer" shall mean any sale, encumbrance, pledge, gift or other form of disposition or transfer of shares of the Company's stock or any legal or equitable interest therein; provided, however, that the term "transfer" does not include a transfer of such shares or interests by will or by the applicable laws of descent and distribution or a gift of such shares if the donee agrees to be bound by the provisions of this Section 5.10.

(c) None of the shares of the Company's stock purchased upon exercise of the Option shall be transferred on the Company's books nor shall the Company recognize any such transfer of any such shares or any interest therein unless and until all applicable provisions of this Section 5.10 have been complied with in all respects. The certificates of stock evidencing shares of stock purchased upon exercise of the Option shall bear an appropriate legend referring to the transfer restrictions imposed by this Section 5.10 and to the repurchase option provided for in Section 5.9.

(d) Notwithstanding anything to the contrary in this Section 5.10, the Company shall have no Right of First Refusal, and the Optionee shall have no obligation to comply with the procedures in this Section 5.10 after the earlier of (i) the Company's initial public offering, or (ii) the tenth anniversary of the date of this Agreement.

Section 5.11 Restrictive Legends. Stock certificates evidencing any shares of stock purchased upon exercise of the Option may bear such restrictive legends as the Company and the Company's counsel deem necessary or advisable under applicable law or pursuant to this Agreement, including without limitation, the following legends:

"The offering and sale of the securities represented hereby have not been registered under the Securities Act of 1933, as amended (the "Securities Act"). Any transfer of such securities will be invalid unless a Registration Statement under the Securities Act is in effect as to such transfer or in the opinion of counsel for the Company such registration is unnecessary in order for such transfer to comply with the Securities Act."

"The securities represented hereby may be subject to a right of repurchase (the "Right of Repurchase") by the Company pursuant to an agreement relating to

11.

12

the acquisition of such securities should certain persons cease to be employed by the Company or any affiliate thereof, and such securities may not be sold or otherwise transferred if such securities are subject to such Right of Repurchase."

"The securities represented hereby are subject to a right of first refusal (the "Right of First Refusal") by the Company pursuant to the provisions of an agreement relating to the acquisition of such securities, and may not be sold or otherwise transferred except in compliance with the terms of such Right of First Refusal."

Section 5.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties hereto as of the day and year first above written.

Internet MiddleWare Corporation

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

Name:  
Title:

-----  
(Optionee)

Optionee's Taxpayer  
Identification Number:

12.

NETWORK APPLIANCE, INC.  
STOCK OPTION ASSUMPTION AGREEMENT

OPTIONEE: 1~  
NUMBER OF INTERNET MIDDLEWARE SHARES: 2~  
GRANT DATE: 3~  
ORIGINAL EXERCISE PRICE: \$4~

OPTION ASSUMPTION AGREEMENT issued as of the 17th day of March 1997 by Network Appliance, Inc., a California corporation ("Network Appliance").

WHEREAS, the undersigned Optionee is the holder of one or more outstanding options to purchase shares of the common stock of Internet MiddleWare Corporation, a California corporation ("Internet MiddleWare"), which were granted to Optionee pursuant to the Internet MiddleWare Corporation 1996 Long Term Equity Incentive Plan (the "Option Plan") and are evidenced by a Non-Qualified Stock Option Agreement (the "Option Agreement") between Internet MiddleWare and Optionee.

WHEREAS, Internet MiddleWare has this day been acquired by Network Appliance through merger of Internet MiddleWare with Network Appliance (the "Merger") pursuant to the Agreement and Plan of Merger dated March 17, 1997 (the "Merger Agreement").

WHEREAS, the provisions of the Merger Agreement require Network Appliance to assume the obligations of Internet MiddleWare under the options outstanding under the Option Plan at the time of the Merger and to issue an agreement evidencing the assumption of each such option (the "Assumption Agreement").

WHEREAS, pursuant to the provisions of the Merger Agreement, the exchange ratio (the "Exchange Ratio") in effect for the Merger is 0.0345267 shares of Network Appliance common stock ("Network Appliance Stock") for each outstanding share of Internet MiddleWare common stock ("Internet MiddleWare Stock").

WHEREAS, this Agreement is to be effective immediately upon the consummation of the Merger (the "Effective Time") and shall reflect certain adjustments to Optionee's outstanding options under the Option Plan which have become necessary by reason of the assumption of those options by Network Appliance in connection with the Merger.

NOW, THEREFORE, it is hereby agreed as follows:

1. The number of shares of Internet MiddleWare Stock subject to the stock options held by Optionee under the Option Plan immediately prior to the Effective Time (the "Internet MiddleWare Options") and the exercise price payable per share are set forth below. Network Appliance hereby assumes, as of the Effective Time, all the duties and obligations of Internet MiddleWare under each of the Internet MiddleWare Options and hereby agrees to issue up to the number of shares of Network Appliance Stock indicated below for each such assumed option upon (i) exercise of that option in accordance with the provisions of the Option Agreement applicable thereto (as supplemented hereby) and (ii) payment of the adjusted exercise price per share set forth below.

INTERNET MIDDLEWARE STOCK OPTIONS		NETWORK APPLIANCE ASSUMED OPTIONS	
-----		-----	
# of Shares Common Stock	Exercise Price/Share	# of Shares Common Stock Network Appliance	Adjusted Exercise Price/Share
-----	-----	-----	-----
Internet MiddleWare		Network Appliance	

2. The number of shares of Network Appliance Stock purchasable under each Internet MiddleWare Option hereby assumed and the exercise price payable thereunder reflect the Exchange Ratio at which shares of Internet MiddleWare Stock were converted into shares of Network Appliance Stock in consummation of the Merger. The intent of such adjustments is to assure that the spread between the aggregate fair market value of the shares of Network Appliance Stock purchasable under each assumed Internet MiddleWare Option and the aggregate exercise price as adjusted hereunder will, immediately after the consummation of the Merger, approximate the spread which existed, immediately prior to the Merger, between the then aggregate fair market value of the Internet MiddleWare Stock subject to the Internet MiddleWare Option and the aggregate exercise price in effect at such time under the Option Agreement. Such adjustments are also designed to preserve, on a per-share basis immediately after the Merger, the same ratio of exercise price per option share to fair market value per share which existed under the Internet MiddleWare Option immediately prior to the Merger.

3. The following provisions shall govern each Internet MiddleWare Option hereby assumed by Network Appliance:

- Unless the context otherwise requires, all references to the "Company" in each Option Agreement shall mean Network Appliance, all references to "Option", "Common Stock", "Stock" or "Non-Qualified Option" shall mean stock or options of Network Appliance Stock, all references to "Board" or "Committee" shall

2.

3

mean the Compensation Committee of the Network Appliance Board of Directors, or a committee of Board members.

- The grant date and the expiration date of each assumed Internet MiddleWare Option and all other provisions which govern the termination of each such assumed Internet MiddleWare Option shall remain the same as set forth in the Option Agreement applicable to such option and shall accordingly govern and control the Optionee's rights under this Assumption Agreement to purchase Network Appliance Stock.

- Each assumed Internet MiddleWare Option shall vest in accordance with the same installment vesting schedule in effect under the applicable Option Agreement immediately prior to the Effective Time, with the number of shares of Network Appliance Stock subject to each such installment adjusted to reflect the Exchange Ratio. Accordingly, no acceleration of vesting of the Internet MiddleWare Options shall be deemed to occur by reason of the Merger, and the vesting dates under each applicable Option Agreement shall remain the same.

- The adjusted exercise price payable for the Network Appliance Stock subject to each assumed Internet MiddleWare Option shall be payable in any of the forms authorized under the Option Agreement applicable to that option and the provisions of the Option Plan incorporated by reference into that Option Agreement. For purposes of determining the applicable holding period for any shares of Network Appliance Stock delivered in payment of the exercise price of each assumed Internet MiddleWare Option, the period for which such shares were held as Internet MiddleWare Stock prior to the Merger shall be taken into account.

- In order to exercise each assumed Internet MiddleWare Option, the Optionee must deliver to Network Appliance a written notice of exercise in which the number of shares of Network Appliance Stock to be purchased thereunder must be indicated. The exercise notice must be accompanied by payment of the adjusted exercise price payable for the purchased shares of Network Appliance Stock and should be delivered to Network Appliance at the following address:

Network Appliance, Inc.  
2770 San Tomas Expressway  
Santa Clara, CA 95051  
Attention: Plan Administrator

- For purposes of applying the termination of employment provisions of the Option Agreement, the Optionee shall be deemed to continue in employment and remain an employee for so long as the Optionee remains employed by Network Appliance or any present or future parent or subsidiary of Network Appliance, including (without limitation) Internet MiddleWare.

3.

4

4. Except to the extent specifically modified by this Assumption Agreement, all of the terms and conditions of each Option Agreement as in effect immediately prior to the Merger shall continue in full force and effect and shall not in any way be amended, revised or otherwise affected by this Assumption Agreement.

IN WITNESS WHEREOF, Network Appliance, Inc. has caused this Assumption Agreement to be executed on its behalf by its duly-authorized officer as of the 17th day of March, 1997.

NETWORK APPLIANCE, INC.

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

ACKNOWLEDGMENT

The undersigned acknowledges receipt of the foregoing Stock Option Assumption Agreement and understands that all rights and liabilities with respect to each of his or her Internet MiddleWare Options hereby assumed by Network Appliance, Inc. are as set forth in the Option Agreement, the Option Plan and such Stock Option Assumption Agreement.

\_\_\_\_\_  
I~, OPTIONEE

DATED: \_\_\_\_\_, 1997

4.

## MEMORANDUM

TO: Holder of Internet MiddleWare Corporation Non-Qualified Stock Options

FROM: Network Appliance, Inc.

DATE: March 17, 1997

RE: Assumption of Stock Options

As you know, Internet MiddleWare Corporation ("Internet MiddleWare") was recently acquired by Network Appliance, Inc. ("Network Appliance") through a merger effected on March 17, 1997 (the "Merger").

In connection with this transaction, Network Appliance has assumed all of your outstanding Internet MiddleWare stock options so that those options now cover shares of Network Appliance common stock. Several additional changes to your options were also made as part of the assumption process. These changes are set forth in the Stock Option Assumption Agreement attached hereto and may be summarized as follows:

5.13 The number of shares of Network Appliance common stock subject to your option reflects the ratio at which shares of Internet MiddleWare common stock were exchanged for shares of Network Appliance common stock in the Merger. That ratio was 0.0345267 of a share of Network Appliance common stock for each share of Internet MiddleWare common stock (the "Exchange Ratio"). Accordingly, the number of Network Appliance shares now subject to your option is equal to the number of shares of Internet MiddleWare common stock which were subject to your option immediately before the Merger, multiplied by the Exchange Ratio and rounded down to the next whole share.

5.14 The aggregate exercise price payable for the shares of Network Appliance common stock now subject to your option is the same as the price that was in effect for the shares of Internet MiddleWare common stock purchasable under your option immediately prior to the Merger. However, the exercise price per share has been adjusted to reflect the Exchange Ratio. Accordingly, the exercise price per share in effect under your option immediately before the Merger has been divided by 0.0345267 to establish the price per share payable for the Network Appliance common stock.

2

3. No change has been made to the vesting schedule in effect for your option. Your Network Appliance option will continue to vest in accordance with the same installment vesting schedule in effect under your Internet MiddleWare option, with the number of Network Appliance shares subject to each such installment adjusted to reflect the Exchange Ratio. However, you will now earn vesting credit not only for the period you continue in employment or service with Internet MiddleWare after the Merger but also for any period of service you may complete as an employee of Network Appliance or any other Network Appliance subsidiary should you subsequently transfer within the Network Appliance organization.

Attached are two copies of the Stock Option Assumption Agreement pursuant to which Network Appliance has assumed your Internet MiddleWare options with the adjustments discussed above. Please review the agreement carefully so that you understand your rights to acquire Network Appliance shares. You should contact Jenny Wampler at Network Appliance at (408) 367-3764 if you have any questions. After you have reviewed the agreement, please sign one copy and return it to Ms. Wampler in the pre-addressed envelope enclosed.

The other copy of the Stock Option Assumption Agreement should be attached to your existing option documentation so that you will have a

complete record of all the terms and provisions applicable to your option as now assumed by Network Appliance.

2.

NETWORK APPLIANCE, INC.  
NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock of Network Appliance, Inc. (the "Corporation"):

OPTIONEE: 1~  
GRANT DATE: 2~  
EXERCISE PRICE: \$3~ per share  
NUMBER OF OPTION SHARES: 4~ shares  
EXPIRATION DATE: 5~  
TYPE OF OPTION: Non-Statutory Stock Option

NORMAL EXERCISE/VESTING SCHEDULE: All the Option Shares are immediately vested, and the Option shall become exercisable for those Option Shares upon the expiration of the six (6)-year period measured from the Grant Date, whether or not Optionee continues in Service throughout that period.

ACCELERATED EXERCISE SCHEDULE: The Option shall become exercisable on an accelerated basis during Optionee's period of Service in accordance with the following schedule:

- Upon Optionee's completion of six (6) continuous months of Service at any time within the six (6)-year period measured from the Grant Date, the Option shall become exercisable for one-sixth of the Option Shares. Upon the Optionee's completion of each additional month of Service thereafter within that six (6)-year period, the Option shall become exercisable for an additional one-thirty-sixth of the Option Shares.

Optionee agrees to be bound by the terms of the Option as set forth in the Stock Option Agreement attached hereto as Exhibit A.

2

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

Definitions. All capitalized terms in this Notice shall have the meaning assigned to them in this Notice or in the attached Stock Option Agreement.

DATED: \_\_\_\_\_, 1997

NETWORK APPLIANCE, INC.

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

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

\_\_\_\_\_  
1~, OPTIONEE

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

\_\_\_\_\_

ATTACHMENTS

Exhibit A - Stock Option Agreement

2.

NETWORK APPLIANCE, INC.  
STOCK OPTION AGREEMENT

## RECITALS

A. The Board has approved a program to issue certain options for the purpose of retaining the services of selected Employees.

B. Optionee is to render valuable services to the Corporation (or a Parent or Subsidiary), and this Agreement is executed pursuant to, and is intended to carry out the purposes of, the program in connection with the Corporation's grant of an option to Optionee.

C. All capitalized terms in this Agreement shall have the meaning assigned to them in the attached Appendix.

NOW, THEREFORE, it is hereby agreed as follows:

1. GRANT OF OPTION. The Corporation hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

2. OPTION TERM. This option shall have a term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5 or 6.

3. LIMITED TRANSFERABILITY. This option shall be neither transferable nor assignable by Optionee other than by will or by the laws of descent and distribution following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee.

4. DATES OF EXERCISE. This option shall become exercisable for the Option Shares in one or more installments as specified in the Grant Notice. As the option becomes exercisable for such installments, those installments shall accumulate and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Paragraph 5 or 6.

2

5. CESSATION OF SERVICE. The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(i) Should Optionee cease to remain in Service for any reason (other than death or Permanent Disability) while this option is outstanding, then Optionee shall have only until the later of the following events in which to exercise this option: (i) the end of the six (6)-month period measured from the date of such cessation of Service or (ii) the end of the seventy eight (78)-month period measured from the Grant Date. Upon the occurrence of the later of such events, this option shall terminate and cease to be outstanding.

(ii) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or in accordance with the laws of descent and distribution shall have the right to exercise this option. Such right shall lapse, and this option shall cease to be outstanding, upon the later of the following events: (A) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (B) the end of the seventy eight (78)-month period measured from the Grant Date. Upon the occurrence of the later of such events, this option shall terminate and cease to be outstanding.

(iii) Should Optionee cease Service by reason of Permanent

Disability while this option is outstanding, then Optionee shall have only until the later of the following events in which to exercise this option: (i) the end of the twelve (12)-month period measured from the date of such cessation of Service or (ii) the end of the seventy eight (78)-month period measured from the Grant Date. Upon the occurrence of the later of such events, this option shall terminate and cease to be outstanding.

(iv) In no event shall this option be exercisable at any time after the Expiration Date.

(v) On each occasion during the applicable post-Service exercise period on which this option is exercised, the option may not be exercised for more than the number of Option Shares for which the option is at that time exercisable in accordance with the applicable exercise schedule set forth in the Grant Notice.

2.

3

#### 6. SPECIAL ACCELERATION OF OPTION.

(a) This option, to the extent outstanding at the time of a Corporate Transaction but not otherwise fully exercisable, shall automatically accelerate so that this option shall, immediately prior to the effective date of the Corporate Transaction, become exercisable for all of the Option Shares at the time subject to the option and may be exercised for any or all of those Option Shares as fully-vested shares of Common Stock. No such acceleration of this option, however, shall occur if and to the extent (i) this option is, in connection with the Corporate Transaction, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof) or (ii) this option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the Option Shares at the time of the Corporate Transaction (the excess of the Fair Market Value of those Option Shares over the aggregate Exercise Price payable for such shares) and provides for subsequent pay-out in accordance with the option exercise schedule set forth in the Grant Notice. The determination of option comparability under clause (i) shall be made by the Option Administrator, and such determination shall be final, binding and conclusive.

(b) Immediately following the Corporate Transaction, this option, to the extent not previously exercised, shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof) in connection with the Corporate Transaction.

(c) If this option is assumed in connection with a Corporate Transaction, then this option shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction, and appropriate adjustments shall also be made to the Exercise Price, provided the aggregate Exercise Price shall remain the same.

(d) This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. ADJUSTMENT IN OPTION SHARES. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

3.

4

8. STOCKHOLDER RIGHTS. The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become a holder of record

of the purchased shares.

9. MANNER OF EXERCISING OPTION.

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(i) Execute and deliver to the Corporation a Notice of Exercise for the Option Shares for which the option is exercised.

(ii) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(A) cash or check made payable to the Corporation;

(B) shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(C) through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable written instructions (I) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (II) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale transaction.

Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Notice of Exercise delivered to the Corporation in connection with such option exercise.

4.

5

(iii) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(iv) Make appropriate arrangements with the Corporation (or Parent or Subsidiary employing or retaining Optionee) for the satisfaction of all Federal, state and local income and employment tax withholding requirements applicable to the option exercise.

(b) As soon as practical after the Exercise Date, the Corporation shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto. The Corporation will use commercially reasonable efforts to file with the SEC a registration statement on Form S-8 covering all shares of Common Stock issuable pursuant to outstanding options under the Target Stock Option Plan, as defined in the Agreement and Plan of Reorganization between the Corporation and Internet Middleware Corporation, dated March 17, 1997 (the "Reorganization Agreement"), assumed by the Corporation pursuant to the Reorganization Agreement and all Option Shares pursuant to this Agreement. Acquiror shall use commercially reasonable efforts to cause such registration statement to become effective as promptly as practicable after filing and to keep such registration statement effective until all of the shares of Common Stock have been sold thereunder.

(c) In no event may this option be exercised for any fractional shares.

10. COMPLIANCE WITH LAWS AND REGULATIONS.

(a) The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange (or the Nasdaq National Market, if applicable) on which the Common Stock may be listed for trading at the time of such exercise and issuance.

(b) The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

11. SUCCESSORS AND ASSIGNS. Except to the extent otherwise provided in Paragraphs 3 and 6, the provisions of this Agreement shall inure to the benefit of, and be

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6  
binding upon, the Corporation and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

12. NOTICES. Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

13. CONSTRUCTION. All decisions of the Option Administrator with respect to any question or issue arising under this Agreement shall be conclusive and binding on all persons having an interest in this option.

14. GOVERNING LAW. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California without resort to that State's conflict-of-laws rules.

6.

7

#### EXHIBIT I

#### NOTICE OF EXERCISE

I hereby notify Network Appliance, Inc. (the "Corporation") that I elect to purchase shares of the Corporation's Common Stock (the "Purchased Shares") at the option exercise price of \$\_\_\_\_\_ per share (the "Exercise Price") pursuant to that certain option (the "Option") granted to me under the Corporation's 1995 Stock Incentive Plan on , 1997.

Concurrently with the delivery of this Exercise Notice to the Corporation, I shall hereby pay to the Corporation the Exercise Price for the Purchased Shares in accordance with the provisions of my agreement with the Corporation (or other documents) evidencing the Option and shall deliver whatever additional documents may be required by such agreement as a condition for exercise. Alternatively, I may utilize the special broker-dealer sale and remittance procedure specified in my agreement to effect payment of the Exercise Price.

\_\_\_\_\_, 199  
Date

\_\_\_\_\_  
Optionee

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

Print name in exact manner  
it is to appear on the  
stock certificate: \_\_\_\_\_

Address to which certificate  
is to be sent, if different  
from address above: \_\_\_\_\_  
\_\_\_\_\_

Social Security Number: \_\_\_\_\_

Employee Number: \_\_\_\_\_

8

APPENDIX

The following definitions shall be in effect under the Agreement:

- A. AGREEMENT shall mean this Stock Option Agreement.
- B. BOARD shall mean the Corporation's Board of Directors.
- C. CODE shall mean the Internal Revenue Code of 1986, as amended.
- D. COMMON STOCK shall mean the Corporation's common stock.
- E. CORPORATE TRANSACTION shall mean either of the following stockholder-approved transactions to which the Corporation is a party:
  - (i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or
  - (ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.
- F. CORPORATION shall mean Network Appliance, Inc., a California corporation.
- G. EMPLOYEE shall mean an individual who is in the employ of the Corporation (or any Parent or Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.
- H. EXERCISE DATE shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of the Agreement.
- I. EXERCISE PRICE shall mean the exercise price per share as specified in the Grant Notice.
- J. EXPIRATION DATE shall mean the date on which the option expires as specified in the Grant Notice.
- K. FAIR MARKET VALUE per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

A-1.

9

- (i) If the Common Stock is at the time traded on the Nasdaq National Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the National Association of Securities Dealers on the Nasdaq National Market. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling

price on the last preceding date for which such quotation exists.

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

L. GRANT DATE shall mean the date of grant of the option as specified in the Grant Notice.

M. GRANT NOTICE shall mean the Notice of Grant of Stock Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

N. MISCONDUCT shall mean the commission of any act of fraud, embezzlement or dishonesty by Optionee, any unauthorized use or disclosure by Optionee of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional misconduct by Optionee adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Corporation (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of Optionee or any other individual in the Service of the Corporation (or any Parent or Subsidiary) but shall be inclusive of all grounds that shall constitute Misconduct.

O. NON-STATUTORY OPTION shall mean an option not intended to satisfy the requirements of Code Section 422.

P. NOTICE OF EXERCISE shall mean the notice of exercise in the form attached hereto as Exhibit I.

Q. OPTION SHARES shall mean the number of shares of Common Stock subject to the option as specified in the Grant Notice.

A-2.

10

R. OPTIONEE shall mean the person to whom the option is granted as specified in the Grant Notice.

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

T. PERMANENT DISABILITY shall mean the inability of Optionee to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more.

U. OPTION ADMINISTRATOR shall mean either the Board or a committee of Board members, to the extent the committee is at the time responsible for the administration of the Option Agreements.

V. SERVICE shall mean the Optionee's performance of services for the Corporation (or any Parent or Subsidiary) in the capacity of an Employee, a non-employee member of the board of directors or a consultant or independent advisor.

W. STOCK EXCHANGE shall mean the American Stock Exchange or the New York Stock Exchange.

X. SUBSIDIARY shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the

time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

A-3.