

NETFLIX INC

FORM SC 13D (Statement of Beneficial Ownership)

Filed 5/29/2002

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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE 13D
(RULE 13d-101)

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO RULE 13d-1(a)
AND AMENDMENTS THERETO FILED PURSUANT TO RULE 13d-2(a)**

(AMENDMENT NO. __)

NETFLIX, INC.

(Name of Issuer)

Common Stock, par value \$0.001 per share

(Title of Class of Securities)

64110L106
(CUSIP Number)

Carla S. Newell
c/o Technology Crossover Ventures
528 Ramona Street
Palo Alto, California 94301
(650) 614-8200

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

COPY TO:

Eleanor Cornish, Esq.
C/o Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
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May 23, 2002
(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this statement because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box [].

(Continued on following pages)

(1) Name of Reporting Person

TCV IV, L.P.
See item 2 for identification of the General Partner

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e) []		

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		-6,501,008- SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		-6,501,008- SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

-6,501,008- SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	31.48%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 3,471,289 shares of Common Stock.

(1) Name of Reporting Person

TCV IV Strategic Partners, L.P.
See item 2 for identification of the General Partner

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		242,413 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		242,413 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

242,413 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	1.17%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 129,439 shares of Common Stock.

(1) Name of Reporting Person

Technology Crossover Management IV, L.L.C. See item 2 for identification of the Managing Members

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		6,743,421 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		6,743,421 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

6,743,421 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[]

(13)	Percent of Class Represented by Amount in Row (11)	
	32.66%	

(14)	Type of Reporting Person	
	00	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 3,600,728 shares of Common Stock.

(1) Name of Reporting Person

Technology Crossover Ventures II, L.P.
See item 2 for identification of the General Partner

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		951,845 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		951,845 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

951,845 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	4.61%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 435,790 shares of Common Stock.

(1) Name of Reporting Person

TCV II (Q) L.P.
See item 2 for identification of the General Partner

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		[]

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		731,792 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		731,792 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

731,792 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	3.54%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 335,041 shares of Common Stock.

(1) Name of Reporting Person

TCV II, V.O.F.
See item 2 for identification of the Investment General Partner

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		[]

(6)	Citizenship or Place of Organization		
	NETHERLANDS ANTILLES		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		30,920 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		30,920 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

30,920 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	LESS THAN 1%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 14,156 shares of Common Stock.

(1) Name of Reporting Person

TCV II STRATEGIC PARTNERS, L.P.
See item 2 for identification of the General Partner

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		[]

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		129,867 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		129,867 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

129,867 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	LESS THAN 1%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 59,458 shares of Common Stock.

(1) Name of Reporting Person

Technology Crossover Ventures II, C.V.
See item 2 for identification of the Investment General Partner

(2)

Check the Appropriate Box if a Member of a Group

(a) []
(b) [X]

(3)

SEC Use Only

(4)

Source of Funds

AF, 00

(5)

Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)

[]

(6)

Citizenship or Place of Organization

NETHERLANDS ANTILLES

Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With

(7)

Sole Voting Power
145,327 SHARES OF COMMON STOCK (A)

(8)

Shared Voting Power
-0- SHARES OF COMMON STOCK

(9)

Sole Dispositive Power
145,327 SHARES OF COMMON STOCK (A)

(10)

Shared Dispositive Power
-0- SHARES OF COMMON STOCK

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

145,327 SHARES OF COMMON STOCK (A)

(12)

Check Box if Aggregate Amount in Row (11) Excludes Certain Shares

[X]

(13)

Percent of Class Represented by Amount in Row (11)

LESS THAN 1%

(14)

Type of Reporting Person

PN

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 66,536 shares of Common Stock.

(1) Name of Reporting Person

Technology Crossover Management II, L.L.C. See item 2 for identification of the Managing Members

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		1,989,751 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		1,989,751 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

1,989,751 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[]

(13)	Percent of Class Represented by Amount in Row (11)	
	9.64%	

(14)	Type of Reporting Person	
	00	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 910,981 shares of Common Stock.

(1) Name of Reporting Person

TCV Franchise Fund, L.P.
See item 2 for identification of the General Partner
I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (ENTITIES ONLY)

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		[]

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		174,965 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		174,965 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

174,965 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[X]

(13)	Percent of Class Represented by Amount in Row (11)	
	LESS THAN 1%	

(14)	Type of Reporting Person	
	PN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 93,425 shares of Common Stock.

(1) Name of Reporting Person

TCVF Management, L.L.C.
See item 2 for identification of the Mananging Members

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		

(6)	Citizenship or Place of Organization		
	DELAWARE		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		174,965 SHARES OF COMMON STOCK (A)	

	(8)	Shared Voting Power	
		-0- SHARES OF COMMON STOCK	

	(9)	Sole Dispositive Power	
		174,965 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

174,965 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[]

(13)	Percent of Class Represented by Amount in Row (11)	
	LESS THAN 1%	

(14)	Type of Reporting Person	
	00	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 93,425 shares of Common Stock.

(1) Name of Reporting Person

JAY C. HOAG

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		[]

(6)	Citizenship or Place of Organization		
	UNITED STATES CITIZEN		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		-0- SHARES OF COMMON STOCK	

	(8)	Shared Voting Power	
		8,908,137 SHARES OF COMMON STOCK (A)	

	(9)	Sole Dispositive Power	
		8,908,137 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

8,908,137 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[]

(13)	Percent of Class Represented by Amount in Row (11)	
	43.14%	

(14)	Type of Reporting Person	
	IN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 4,605,134 shares of Common Stock.

(1) Name of Reporting Person

RICHARD H. KIMBALL

(2)	Check the Appropriate Box if a Member of a Group	(a)	[]
		(b)	[X]

(3)	SEC Use Only		

(4)	Source of Funds		
	AF, 00		

(5)	Check Box if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		[]

(6)	Citizenship or Place of Organization		
	UNITED STATES CITIZEN		

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
		-0- SHARES OF COMMON STOCK	

	(8)	Shared Voting Power	
		8,908,137 SHARES OF COMMON STOCK (A)	

	(9)	Sole Dispositive Power	
		8,908,137 SHARES OF COMMON STOCK (A)	

	(10)	Shared Dispositive Power	
		-0- SHARES OF COMMON STOCK	

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

8,908,137 SHARES OF COMMON STOCK (A)

(12)	Check Box if Aggregate Amount in Row (11) Excludes Certain Shares	[]

(13)	Percent of Class Represented by Amount in Row (11)	
	43.14%	

(14)	Type of Reporting Person	
	IN	

(A) Please see Item 5. Includes warrants which can be immediately exercised for a total of 4,605,134 shares of Common Stock.

ITEM 1. SECURITY AND ISSUER.

This statement relates to shares of common stock, par value \$0.001 per share (the "Common Stock"), of Netflix, Inc., a Delaware corporation ("Netflix" or the "Company"). The Company's principal executive offices are located at 970 University Ave., Los Gatos, CA 95032.

ITEM 2. IDENTITY AND BACKGROUND.

(a)-(c), (f). This statement is being filed by (1) TCV IV, L.P., a Delaware limited partnership ("TCV IV"), (2) TCV IV Strategic Partners, L.P., a Delaware limited partnership ("Strategic Partners IV"), (3) Technology Crossover Management IV, L.L.C., a Delaware limited liability company ("Management IV"), (4) TCV II, V.O.F., a Netherlands Antilles general partnership ("TCV II, V.O.F."), (5) Technology Crossover Ventures II, L.P., a Delaware limited partnership ("TCV II, L.P."), (6) TCV II (Q), L.P., a Delaware limited partnership ("TCV II (Q)"), (7) TCV II Strategic Partners, L.P., a Delaware limited partnership ("Strategic Partners II"), (8) Technology Crossover Ventures II, C.V., a Netherlands Antilles general partnership ("TCV II, C.V."), (9) Technology Crossover Management II, L.L.C., a Delaware limited liability company ("Management II"), (10) TCV Franchise Fund, L.P., a Delaware limited Partnership ("TCVF"), (11) TCVF Management, L.L.C., a Delaware limited liability company ("Management F"), (12) Jay C. Hoag ("Mr. Hoag") and (13) Richard H. Kimball ("Mr. Kimball"). TCV IV, Strategic Partners IV, Management IV, TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V., Management II, TCVF, Management F, Mr. Hoag and Mr. Kimball are sometimes collectively referred to herein as the "Reporting Persons." The agreement among the Reporting Persons relating to the joint filing of this statement is attached as Exhibit 1 hereto.

TCV IV, Strategic Partners IV, Management IV, TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V., Management II, TCVF and Management F are each principally engaged in the business of investing in securities of privately and publicly held companies. Management IV is the sole general partner of TCV IV and Strategic Partners IV. Management II is the sole general partner of TCV II, L.P., TCV II (Q) and Strategic Partners II and the sole investment general partner of TCV II, V.O.F. and TCV II, C.V. Management F is the sole general partner of TCVF. The address of the principal business and office of each of TCV IV, Strategic Partners IV, Management IV, TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V., Management II, TCVF and Management F is 528 Ramona Street, Palo Alto, California 94301.

Mr. Hoag and Mr. Kimball are the managing members of Management IV, Management II and Management F. Mr. Hoag and Mr. Kimball are each United States citizens, and the present principal occupation of each is as a venture capital investor. The business address of each of Mr. Hoag and Mr. Kimball is 528 Ramona Street, Palo Alto, California 94301.

(d), (e). During the last five years, none of TCV IV, Strategic Partners IV, Management IV, TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V., Management II, TCVF and Management F, Mr. Hoag or Mr. Kimball has (1) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (2) been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

On May 23, 2002 TCV IV, Strategic Partners IV and TCVF purchased the following shares from the underwriters of Company's initial public offering (the "Offering") at \$15.00 per share (the "IPO Shares"):

Name of Investor -----	Shares Acquired -----
TCV IV	331,704
Strategic Partners IV	12,369
TCVF	8,927

The source of funds for the acquisition of the IPO Shares by TCV IV, Strategic Partners IV and TCVF was capital contributions from their respective partners.

Pursuant to the terms of a Series E Non-Voting Preferred Stock and Warrant Purchase Agreement dated April 13, 2000 (the "E Purchase Agreement") by and among the Company on the one hand, and TCV IV, Strategic Partners IV, TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V., TCVF (the "TCV Investors") and other investors, on the other hand, the Company agreed to sell and the TCV Investors agreed to purchase 4,359,876 shares of Series E Preferred Stock, at a purchase price of \$9.38 per share. In consideration of the E Shares the TCV Investors paid the Company an aggregate of \$40,895,637. Each share of Series E Preferred Stock converted into approximately .68 shares of Common Stock upon closing of the Offering, such that the TCV Investors hold an aggregate of 2,969,906 shares of Common Stock as a result of such conversion (the "E Shares").

The source of the funds for the acquisition of the E Shares by the TCV Investors was capital contributions from their respective partners.

A copy of the E Purchase Agreement is attached hereto as Exhibit 2.

Pursuant to the terms of a Note and Warrant Purchase Agreement dated July 10, 2001 (the "Warrant Purchase Agreement") by and among the Company on the one hand, and the TCV Investors and other investors, on the other hand, the Company agreed to sell and the TCV Investors agreed to purchase 4,605,134 warrants to acquire Common Stock (the "Warrants") at a purchase price of \$.003 per share per underlying share of Common Stock (the "Warrant Shares") and at an exercise price of \$3.00 per share. In consideration of the Warrants the TCV Investors paid the Company an aggregate of \$13,815.

The source of funds for the acquisition of Warrants by the TCV Investors was capital contributions from their respective partners.

A copy of the Warrant Purchase Agreement is attached hereto as Exhibit 3.

Pursuant to the terms of a Series D Preferred Stock Purchase Agreement dated June 22, 1999 (the "D Purchase Agreement") by and among the Company on the one hand, and TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V. (the "TCV II Investors") and other investors, on the other hand, the Company agreed to sell and the TCV II Investors agreed to purchase 366,735 shares of Series D Preferred Stock, at a purchase price of \$6.52 per share. In consideration of the D Shares the TCV II Investors paid the Company an aggregate of \$2,391,112. Each share of Series D Preferred Stock converted into approximately .47 shares of Common Stock upon closing of the Offering, such that the TCV II Investors hold an aggregate of 173,646 shares of Common Stock as a result of such conversion (the "D Shares").

The source of the funds for the acquisition of the D Shares by the TCV II Investors was capital contributions from their respective partners.

A copy of the D Purchase Agreement is attached hereto as Exhibit 4.

Pursuant to the terms of a Series C Preferred Stock Purchase Agreement dated February 17, 1999 (the "C Purchase Agreement") by and among the Company on the one hand, and the TCV II Investors and other investors, on the other hand, the Company agreed to sell and the TCV II Investors agreed to purchase 1,834,862 shares of Series C Preferred Stock, at a purchase price of \$3.27 per share. In consideration of the C Shares the TCV II Investors paid the Company an aggregate of \$5,999,999. Each share of Series C Preferred Stock converted into approximately .44 shares of Common Stock upon closing of the Offering, such that the TCV II Investors hold an aggregate of 806,451 shares of Common Stock as a result of such conversion (the "C Shares").

The source of the funds for the acquisition of the C Shares by the TCV II Investors was capital contributions from their respective partners.

A copy of the C Purchase Agreement is attached hereto as Exhibit 5.

ITEM 4. PURPOSE OF TRANSACTION.

REGISTRATION RIGHTS AGREEMENT

Pursuant to the Amended and Restated Stockholders' Rights Agreement dated July 10, 2001 (the "Rights Agreement") by and among the Company on the one hand, and TCV Investors and other investors on the other hand, the Company agreed to register the E Shares, D Shares, C Shares and the Warrant Shares, subject to certain exceptions. The Company is obligated to pay all expenses incurred in connection with such registrations. The Company has agreed to indemnify the Investors and related persons against certain liabilities under the securities laws in connection with the sale of securities under such registrations.

A copy of the Rights Agreement is attached hereto as Exhibit 6.

WARRANTS

Pursuant to Warrants dated July 10, 2001, TCV Investors have the right to purchase shares of the Company's Common Stock at an exercise price of \$3.00 per share. Payment of the exercise price may be made in cash, or through the surrender of Common Stock underlying the Warrants with a fair market value equal to the exercise price of the Warrants being exercised (otherwise known as net exercise). The exercise price and the number of shares issuable upon exercise of the Warrants are subject to certain adjustments under certain circumstances as set forth in the Warrants.

A copy of the form of Warrant issued to the TCV Investors, along with a schedule of the number of shares of Common Stock underlying the Warrants issued to the TCV Investors, is attached hereto as Exhibit 7.

The Reporting Persons acquired the IPO Shares, E Shares, Warrants, D Shares and C Shares for investment purposes. Depending on the factors discussed herein, the Reporting Persons may, from time to time, exercise all or a portion of the Warrants and may acquire additional shares of Common Stock and/or retain and/or sell all or a portion of the IPO Shares, E Shares, D Shares, C Shares and/or Common Stock issued upon exercise of the Warrants in the open market or in privately negotiated transactions. Any actions the Reporting Persons might undertake will be dependent upon the Reporting Persons' review of numerous factors, including, among other things, the price levels of the Common Stock; general market and economic conditions; ongoing evaluation of the Company's business, financial condition, operations and prospects; the relative attractiveness of alternative business and investment opportunities; and other future developments.

Except as set forth above, the Reporting Persons have no present plans or intentions which would result in or relate to any of the transactions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

(a), (b). As of the close of business on May 23, 2002, TCV IV, Strategic Partners IV, TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II, TCV II, C.V. and TCVF owned directly 8,908,137 shares of Common Stock as follows:

Name of Investor	Number of Total Shares	Percentage of Outstanding Shares (a)
TCV IV	6,501,008	31.48%
Strategic Partners IV	242,413	1.17%
TCV II, V.O.F.	30,920	Less than 1%
TCV II, L.P.	951,845	4.61%
TCV II (Q)	731,792	3.54%
Strategic Partners II	129,867	Less than 1%
TCV II, C.V.	145,327	Less than 1%
TCVF	174,965	Less than 1%
Mr. Hoag	8,908,137	43.14%
Mr. Kimball	8,908,137	43.14%

(a) all percentages in this table are based on the 20,648,074 shares of Common Stock of the Company outstanding, as reported on the Company's 424(b)(4) filed with the Securities and Exchange Commission on May 23, 2002.

Each of TCV IV and Strategic Partners IV (together the "TCV IV Funds") has the sole power to dispose or direct the disposition of the IPO Shares, E Shares, and Warrants which it holds directly and the Warrant Shares acquirable upon exercise of its Warrants. Each of the TCV IV Funds has the sole power to direct the vote of its respective IPO Shares and E Shares and will have the power to vote or direct the vote of its respective Warrant Shares upon exercise of its Warrants. Management IV as the sole general partner of TCV IV and Strategic Partners IV may also be deemed to have the sole power to dispose or direct the disposition of the IPO Shares, E Shares, and Warrants which it holds directly and the Warrant Shares acquirable upon exercise of its Warrants and direct the vote of the IPO Shares, E Shares, and Warrant Shares acquirable upon exercise of its Warrants. Management IV disclaims beneficial ownership of such securities except to the extent of its pecuniary interest therein.

Each of TCV II, V.O.F., TCV II, L.P., TCV II (Q), Strategic Partners II and TCV II, C.V. (together the "TCV II Funds") has the sole power to dispose or direct the disposition of the E Shares, D Shares, C Shares, and Warrants which it holds directly and the Warrant Shares acquirable

upon exercise of its Warrants. Each of the TCV II Funds has the sole power to direct the vote of its respective E Shares, D Shares and C Shares and will have the power to vote or direct the vote of its respective Warrant Shares upon exercise of its Warrants. Management II as the sole general partner of TCV II, L.P., TCV II (Q) and Strategic Partners II and as the sole investment general partner of TCV II, V.O.F. and TCV II, C.V. may also be deemed to have the sole power to dispose or direct the disposition of the E Shares, D Shares, C Shares, and Warrants which it holds directly and the Warrant Shares acquirable upon exercise of its Warrants and direct the vote of the E Shares, D Shares, C Shares and Warrant Shares upon exercise of its Warrants. Management II disclaims beneficial ownership of such securities except to the extent of its pecuniary interest therein.

TCVF has the sole power to dispose or direct the disposition of the IPO Shares, E Shares, and Warrants which it holds directly and the Warrant Shares acquirable upon exercise of its Warrants. TCVF has the sole power to direct the vote of its respective IPO Shares and E Shares and will have the power to vote or direct the vote of its respective Warrant Shares upon exercise of its Warrants. Management F as the sole general partner of TCVF may also be deemed to have the sole power to dispose or direct the disposition of the IPO Shares, E Shares, and Warrants which it holds directly and the Warrant Shares acquirable upon exercise of its Warrants and direct the vote of the IPO Shares, E Shares, and Warrant Shares acquirable upon exercise of its Warrants. Management F disclaims beneficial ownership of such securities except to the extent of its pecuniary interest therein.

Messrs. Hoag and Kimball are the managing members of Management IV, Management II and Management F. Under the operating agreements of Management IV, Management II and Management F, each of Messrs. Hoag and Kimball have the independent power to cause the funds managed by Management IV, Management II and Management F to buy and sell securities of publicly traded portfolio companies; however, in general, they must act by unanimous consent with respect to all other matters, including directing the voting of such securities. As a result, each of Messrs. Hoag and Kimball may be deemed to each have the sole power to dispose or direct the disposition of the IPO Shares, E Shares, D Shares, C Shares and Warrants which it holds directly and the Warrant Shares acquirable upon exercise of the Warrants held by TCV IV Funds, TCV II Funds and TCVF and the shared power to direct the vote of the IPO Shares, E Shares, D Shares, C Shares and Warrant Shares acquirable upon exercise of the Warrants held by TCV IV Funds, TCV II Funds and TCVF. Messrs. Hoag and Kimball disclaim beneficial ownership of the securities owned by TCV IV Funds, TCV II Funds and TCVF except to the extent of their pecuniary interest therein.

The Reporting Persons may be deemed to be acting as a group in relation to their respective holdings in the Company but do not affirm the existence of any such group.

Except as set forth in this Item 5(a) - (b), each of the Reporting Persons disclaims beneficial ownership of any Common Stock owned beneficially or of record by any other Reporting Person.

(c). Except as set forth herein, none of the Reporting Persons has effected any transaction in the Common Stock during the past 60 days.

(d). Not applicable.

(e). Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

Item 4 above summarizes certain provisions of the E Purchase Agreement, the

Warrant Purchase Agreement, the D Purchase Agreement, the C Purchase Agreement, the Rights Agreement and the form of Warrant. A copy of the E Purchase Agreement is attached hereto as Exhibit 2 and is incorporated by reference herein. A copy of the Warrant Purchase Agreement is attached hereto as Exhibit 3 and is incorporated by reference herein. A copy of the D Purchase Agreement is attached hereto as Exhibit 4 and is incorporated by reference herein. A copy of the C Purchase Agreement is attached hereto as Exhibit 5 and is incorporated by reference herein. A copy of the Rights Agreement is attached hereto as Exhibit 6 and is incorporated by reference herein. A copy of the form of Warrant is attached hereto as Exhibit 7 and is incorporated by reference herein.

Except as set forth herein, none of the Reporting Persons has any contracts, arrangements, understandings or relationships (legal or otherwise) with any person with respect to any securities of Company, including but not limited to any contracts, arrangements, understandings or relationships concerning the transfer or voting of such securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.

Exhibit 1	Joint Filing Agreement
Exhibit 2	Series E Non-Voting Preferred Stock and Warrant Purchase Agreement dated April 13, 2000
Exhibit 3	Note and Warrant Purchase Agreement dated July 10, 2002
Exhibit 4	Series D Preferred Stock Purchase Agreement dated June 22, 1999
Exhibit 5	Series C Preferred Stock Purchase Agreement dated February 17,

- Exhibit 6 Amended and Restated Stockholders' Rights Agreement dated July 10, 2001 (incorporated by reference from Exhibit 10.5 of the Company's Form S-1 dated March 6, 2002)
- Exhibit 7 Form of Warrant dated July 10, 2001 (including a schedule of the number of shares of Common Stock underlying the Warrants issued to the Reporting Persons)
- Exhibit 8 Statement Appointing Designated Filer and Authorized Signatories dated November 5, 2001 (incorporated by reference from Exhibit A to the Schedule 13D/A relating to the common stock of Digital Generation Systems, Inc. filed on March 21, 2002).

SIGNATURE

After reasonable inquiry and to the best of each of the undersigned's knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: May 23, 2002

TCV IV, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV IV STRATEGIC PARTNERS, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER MANAGEMENT IV, L.L.C.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV II, V.O.F.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER VENTURES II, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV II (Q), L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV II STRATEGIC PARTNERS, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER VENTURES II, C.V.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER MANAGEMENT II, L.L.C.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV FRANCHISE FUND, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCVF MANAGEMENT, L.L.C.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

JAY C. HOAG

/s/ Carla S. Newell

By: Carla S. Newell, Authorized Signatory

RICHARD H. KIMBALL

/s/ Carla S. Newell

By: Carla S. Newell, Authorized Signatory

EXHIBIT INDEX

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EXHIBIT 1

JOINT FILING AGREEMENT

In accordance with Rule 13d-1(k) promulgated under the Securities Exchange Act of 1934, as amended, the undersigned hereby agree to the joint filing with all other Reporting Persons (as such term is defined in the Schedule 13D referred to below) on behalf of each of them of a statement on Schedule 13D (including amendments thereto) with respect to the common stock, par value \$0.001 per share, of Netflix, Inc., a Delaware corporation, and that this Agreement may be included as an Exhibit to such joint filing. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement as of the 23th day of May, 2002.

TCV IV, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV IV STRATEGIC PARTNERS, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER MANAGEMENT IV, L.L.C.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV II, V.O.F.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER VENTURES II, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV II (Q), L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV II STRATEGIC PARTNERS, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER VENTURES II, C.V.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TECHNOLOGY CROSSOVER MANAGEMENT II, L.L.C.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCV FRANCHISE FUND, L.P.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

TCVF MANAGEMENT, L.L.C.

By: /s/ Carla S. Newell

Name: Carla S. Newell

Its: Authorized Signatory

JAY C. HOAG

/s/ Carla S. Newell

By: Carla S. Newell, Authorized Signatory

RICHARD H. KIMBALL

/s/ Carla S. Newell

By: Carla S. Newell, Authorized Signatory

EXHIBIT 2

NETFLIX.COM, INC.

SERIES E NON-VOTING PREFERRED STOCK AND WARRANT PURCHASE AGREEMENT

This Agreement is made as of April 13, 2000 among NetFlix.com, Inc., a Delaware corporation (the "COMPANY") and the persons and entities listed on the Schedule of Investors attached hereto as Exhibit A (the "INVESTORS").

SECTION I

AUTHORIZATION AND SALE OF PREFERRED STOCK AND WARRANTS

1.1 AUTHORIZATION. The Company will authorize the sale and issuance of up to 5,330,490 shares of its Series E Non-Voting Preferred Stock, (the "SHARES"), having the rights, privileges and preferences as set forth in the Amended and Restated Certificate of Incorporation (the "CERTIFICATE") in the form attached to this Agreement as Exhibit B and warrants (the "WARRANTS") to purchase up to 533,049 shares of its Series E Non-Voting Preferred Stock (the "WARRANT SHARES").

1.2 SALE OF PREFERRED STOCK AND WARRANTS. Subject to the terms and conditions hereof, at the Closing (as defined below) the Company will severally issue and sell to each of the Investors and the Investors will severally buy from the Company (i) the total number of Shares set forth opposite such Investor's name in column 2 of the Schedule of Investors attached hereto as Exhibit A (the "SCHEDULE OF INVESTORS") for the aggregate purchase price, calculated on a per share purchase price of \$9.38, set forth in column 3 opposite the Investor's name in the Schedule of Investors and (ii) Warrants to purchase that total number of Warrant Shares set forth opposite such Investor's name in column 4 of the Schedule of Investors for the aggregate purchase price, calculated on a per Warrant Share purchase price of \$0.01, set forth in column 5 opposite the Investor's name in the Schedule of Investors. The Company's agreements with each of the Investors are separate agreements, and the sales to each of the Investors are separate sales. The Company and each of the Investors agree that as of the date hereof the fair market value of the Warrants is \$0.01 per Warrant Share.

SECTION II

CLOSING DATE; DELIVERY

2.1 CLOSING. The purchase and sale of the Shares shall take place in a closing (the "CLOSING") at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304-1050 on or about April 13, 2000 or at such other time as the Company and the Investors mutually agree upon.

2.2 DELIVERY. At the Closing, the Company will deliver to each Investor (i) a certificate, registered in such Investor's name, representing the number of Shares to be purchased by such Investor as specified in the Schedule of Investors and (ii) a Warrant, registered in such

Investor's name, to purchase such number of Warrant Shares as set forth opposite such Investor's name in the Schedule of Investors, against payment of the total purchase price therefor by check payable to the Company, by wire transfer in accordance with the Company's wiring instructions, or by a combination thereof. Upon completion of the Closing, all purchasers of Shares shall be considered "Investors" within the meaning of this Agreement.

SECTION III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth on the Schedule of Exceptions attached hereto as Exhibit C attached hereto (the "SCHEDULE OF EXCEPTIONS") attached hereto, the Company represents and warrants to the Investors as follows:

3.1 ORGANIZATION AND STANDING; CERTIFICATE AND BYLAWS. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of Delaware and is in good standing under such laws. The Company has requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as presently conducted, and is in good standing in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or properties.

3.2 CORPORATE POWER. The Company will have at the Closing all requisite legal and corporate power and authority to execute and deliver this Agreement and any agreements set forth as exhibits hereto (collectively, the "AGREEMENTS"), to sell and issue the Shares and Warrants hereunder, to issue the Common Stock issuable upon conversion of the Shares and the Warrant Shares and to carry out and perform its obligations under the terms of the Agreements.

3.3 CAPITALIZATION. The authorized capital stock of the Company will, upon the filing of the Certificate, consist of 48,650,000 shares of Common Stock (the "COMMON STOCK") and 26,040,155 shares of Preferred Stock (the "PREFERRED STOCK"), 5,000,000 of which are designated Series A Preferred Stock, 5,776,616 of which are designated Series B Preferred Stock, 4,750,000 of which are designated Series C Preferred Stock, 4,650,000 of which are designated Series D Preferred Stock, and 5,863,539 of which are designated Series E Non-Voting Preferred Stock. As of April 12, 2000, immediately prior to the Closing, 6,346,663 shares of Common Stock will be outstanding, 4,444,545 shares of Series A Preferred Stock will be outstanding, 26,040,155 shares of Series B Preferred Stock will be outstanding. The Company has reserved 6,952,250 shares of Common Stock for issuance upon conversion of the Preferred Stock. The Company has reserved 1,526,108 shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its 1997 Stock Plan duly adopted by the Board of Directors and approved by the Company's stockholders (the "1997 Stock Plan"). Of such reserved shares of Common Stock, options to purchase 2,543,097 shares have been granted and are currently outstanding and 887,979 shares of Common Stock remain available for issuance pursuant to the 1997 Stock Plan. All of the outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock are duly authorized, validly issued, fully paid and nonassessable, and were issued in compliance with applicable federal and state securities laws. The Shares when issued pursuant to the terms of this Agreement and the Warrant Shares, when issued upon exercise of

the Warrants, will be duly authorized, validly issued, fully paid and nonassessable and will be free of restrictions on transfer except for such restrictions as are imposed by law and the Agreements and free of any preemptive or similar rights other than those arising under the Stockholders' Rights Agreement between the Company and certain of its investors which rights will have been waived with respect to the issuance of the Shares. Except those purchase rights, options and warrants as set forth in Schedule 3.3 of the Schedule of Exceptions, there are no other options, warrants or other rights (including conversion or preemptive rights) or agreements outstanding to purchase any of the Company's authorized and unissued capital stock. To the Company's knowledge and except as provided in the Certificate, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company.

3.4 AUTHORIZATION. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution, delivery and performance of the Agreements by the Company, the authorization, sale, issuance and delivery of the Shares and Warrants (and the Series E Non-Voting Preferred Stock issuable upon the exercise of the Warrants and Common Stock issuable upon conversion of the Shares and Warrant Shares) and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms. The Shares, when issued in compliance with the provisions of this Agreement will be validly issued, will be fully paid and nonassessable, and will have the rights, preferences and privileges described in the Certificate; the Series E Non-Voting Preferred Stock issuable upon the exercise of the Warrants and Common Stock issuable upon conversion of the Shares and Warrant Shares has been duly and validly reserved and, when issued in compliance with the provisions of this Agreement and the Certificate, will be validly issued, and will be fully paid and nonassessable and such Series E Non-Voting Preferred Stock will be free of any liens or encumbrances, assuming the Investors take the shares with no notice thereof, other than any liens or encumbrances created by or imposed upon the holders through no action of the Company; provided, however, that the Shares, Warrants and Warrant Shares (and the Common Stock issuable upon conversion thereof) may be subject to restrictions on transfer under state and/or federal securities laws as set forth herein.

3.5 COMPLIANCE WITH OTHER INSTRUMENTS. The Company is not in violation or default of any term of its Certificate or Bylaws, or in any material respect of any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment, order or decree, and to its knowledge is not in violation of any statute, rule or regulation applicable to the Company where such violation would have a material adverse effect on the Company. The execution, delivery and performance of and compliance with the Agreements, and the issuance of the Shares and the Common Stock issuable upon conversion of the Shares, have not resulted in and will not result in any material violation of, or conflict with, or constitute with or without the passage of time and the giving of notice a material violation or default under, the Company's Certificate or Bylaws.

3.6 GOVERNMENTAL CONSENT, ETC. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale

or issuance of the Shares and the Warrants (and the Warrant Shares issuable upon the exercise of the Warrants and Common Stock issuable upon conversion of the Shares and Warrant Shares), or the consummation of any other transaction contemplated hereby, except (a) filing of the Certificate in the office of the Delaware Secretary of State and (b) qualification (or taking such action as may be necessary to secure an exemption from qualification, if available) of the offer and sale of the Warrants (and the Common Stock issuable upon the exercise of the Warrants and Common Stock issuable upon conversion of the Shares and Warrant Shares) under applicable Blue Sky laws.

3.7 OFFERING. Subject to the accuracy of the Investors' representations in Section 4 hereof, the offer, sale and issuance of the Shares and the Warrants to be issued in conformity with the terms of this Agreement, and the issuance of the Warrant Shares upon exercise of the Warrants and Common Stock to be issued upon conversion of the Shares and Warrant Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "SECURITIES ACT") and in compliance with applicable state securities laws.

3.8 BROKERS OR FINDERS; OTHER OFFERS. The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

3.9 INTELLECTUAL PROPERTY. The Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information and proprietary rights and processes necessary for its business as currently conducted without any conflict with, or infringement of, the rights of others. There are no outstanding options, licenses, or agreements of any kind relating to the foregoing, nor is the Company bound by or a party to any options, licenses or arrangements of any kind with respect to the patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information, proprietary rights and process of any other person or entity, except, in either case, for standard end-use, object code, internal use software licenses and support maintenance agreements. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets or other proprietary rights or processes of any other person or entity. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interest of the Company or that would conflict with the Company's business. Neither the execution or delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as currently conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any such employee is now obligated. The Company does not believe it is or will be necessary to use any inventions of any of its employees (or persons it currently intends to hire) made prior to their employment by the Company. Set forth in Section 3.9 of the Schedule of Exceptions is a listing of all patents, trademarks and licenses of the Company.

3.10 SUBSIDIARIES. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture or partnership.

3.11 LITIGATION. There is no action, suit, proceeding or, to the Company's knowledge, investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of this Agreement, the Amended and Restated Stockholders' Rights Agreement, attached hereto as Exhibit D (the "STOCKHOLDERS' RIGHTS AGREEMENT") and of even date herewith, or the right of the Company to enter into each such agreement, or to consummate the transactions contemplated hereby or thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality which prohibits the transactions contemplated by this Agreement. There is no action, suit or proceeding by the Company currently pending or which the Company currently intends to initiate. The foregoing includes, without limitation, actions, suits, proceedings or investigations pending or threatened (or any basis therefor) known to the Company involving the prior employment of any of the Company's employees, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employees, or their obligations under any agreements with prior employers.

3.12 RIGHTS OF REGISTRATION. Except as contemplated in the Stockholders' Rights Agreement, the Company has not granted or agreed to grant any registration rights, including piggyback rights, to any person or entity.

3.13 CORPORATE DOCUMENTS. The Certificate and Bylaws of the Company are in substantially the forms attached hereto as Exhibit B and Exhibit E, respectively.

3.14 EMPLOYEE BENEFIT PLANS. The Company does not have any "employee benefit" plan as defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). The Company is not, nor was it at any time, obligated to contribute to any employee pension benefit plan which is or was a multi-employer plan as defined in ERISA.

3.15 TAX RETURNS AND PAYMENTS. The Company has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due. Except as would not have a material adverse effect on the Company, since the date of the Financial Statements, the Company has not incurred any taxes, assessments or governmental charges other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all taxes, assessments and governmental charges with respect to its business, properties and operations for such period. Except as would not have a material adverse effect on the Company, the Company has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

3.16 COMPLIANCE WITH LAWS. The Company has complied with and is not in violation of any foreign, federal, state or local statute, law or regulation, the violation of which would have a material adverse effect on the Company.

3.17 TITLE TO PROPERTY AND ASSETS. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens which arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. With respect to the property and assets it leases, the Company is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

3.18 NO CONFLICT OF INTEREST. Except as set forth on Schedule 3.18, the Company is not indebted to any of its officers or directors or to their respective spouses or children, in any amount whatsoever other than in connection with expenses or advances of expenses incurred in the ordinary course of business. None of the Company's officers or directors, or any members of their immediate families, are indebted to or have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated (other than the Company itself) or with which the Company has a business relationship, or any firm or corporation which competes with the Company except that officers, directors and/or stockholders of the Company may own stock in (but not to exceed two (2) percent of the outstanding capital stock thereof) publicly traded companies that may compete with the Company. No officer or director or any member of their immediate families is interested in any material contract with the Company.

3.19 BOOKS AND RECORDS. The Company has made available to the Investors all corporate and financial books and records of the Company which are current in all material respects.

3.20 VOTING AGREEMENTS. To the knowledge of the Company, other than the Stockholders' Rights Agreement, there is no stockholder agreement or voting agreement or agreement or understanding between any stockholders or any other persons that grants special rights with respect to any shares of the Company's capital stock.

3.21 MATERIAL AGREEMENTS. Except as set forth in the Schedule 3.22, the Company does not have any contract, agreement, lease or commitment, written or oral, absolute or contingent, other than (i) contracts for the purchase of supplies or services entered into in the ordinary course of business and that do not involve more than \$15,000 and do not extend for more than one year beyond the date hereof, (ii) equipment leases entered into in the ordinary course of business and that do not individually provide for rental payments of more than \$20,000 annually, (iii) contracts terminable by the Company on no more than sixty days' notice without materially adverse cost or liability to the Company and (iv) contracts expressly contemplated hereby. The Company has not engaged in the past three (3) months in any substantive and material discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%)

of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

3.22 FINANCIAL STATEMENTS. The Company has delivered to each Investor its unaudited balance sheet as of February 29, 2000 and unaudited statement of income for the [_____] -month period ending on February 29, 2000 (collectively, the "Financial Statements"), copies of which are attached hereto as Exhibit F. The Financial Statements are in accordance with the books and records of the Company and present fairly the financial condition and position of the Company as of the statement date, and other dates therein specified; provided, however, that the unaudited interim financial statements are subject to normal recurring year-end audit adjustments. The Company has made a good faith effort to prepare the Financial Statements in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, and the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to February 29, 2000 and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company will make a good faith effort to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

3.23 CHANGES. Except as would not have a material adverse effect on the Company, since February 29, 2000 there has not been:

- a. any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;
- b. any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted);
- c. any waiver by the Company of a material debt owed to it;
- d. any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted);
- e. any material change to the Company in any compensation arrangement or agreement with any employee;
- f. any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

- g. any resignation or termination of employment of any key officer of the Company; and the Company does not know of the impending resignation or termination of employment of any such officer;
- h. receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;
- i. any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;
- j. any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;
- k. any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;
- l. to the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or
- m. any agreement or commitment by the Company to do any of the things described in this Section 3.23.

3.24 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. Each employee, officer and consultant of the Company has executed a Proprietary Information and Inventions Agreement substantially in the form previously reviewed by counsel to the Investors. The Company is not aware that any of its employees or consultants is in violation thereof and the Company will use its reasonable efforts to prevent any such violation.

3.25 SECTION 83(b) ELECTIONS. To the Company's knowledge, all election notices permitted by Section 83(b) of the Internal Revenue Code and any analogous provisions of applicable state tax laws have been timely filed by all employees who have purchased shares of the Company's common stock under agreements that provide for the vesting of such shares.

3.26 DISCLOSURE. The Company has provided the Investors with the information which the Investors have requested for deciding whether to acquire the Shares. To the Company's knowledge, no representation or warranty of the Company contained in this Agreement and the exhibits attached hereto or any certificate furnished or to be furnished to the Investors at the Closing (when read together) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

3.27 INSURANCE. The Company has in full force and effect fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed.

3.28 DIVIDENDS. The Company has not declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock.

3.29 LABOR AGREEMENTS. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the knowledge of the Company, has sought to represent any of the employees, representatives or agents of the Company. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment. The Company is not aware that any executive officer or key employee intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement.

3.30 PERMITS. The Company has all franchises, permits, license and any similar authority necessary for the conduct of its business, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company. The Company is not in default under any of such franchises, permits, licenses or other similar authority.

SECTION IV

REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor hereby severally represents and warrants to the Company with respect to the purchase of the Shares as follows:

4.1 EXPERIENCE. It has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

4.2 INVESTMENT. It is acquiring the Shares and Warrants and the Common Stock underlying the Shares and Warrant Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof; provided, however, that TCV IV, L.P. intends to transfer certain of its Shares and Warrants, and all rights therewith to TCV IV Strategic Partners, L.P., an affiliate of TCV IV, L.P. It understands that the Shares and Warrants to be purchased and the Common Stock underlying the Shares have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which

depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Investor's representations as expressed herein.

4.3 ACCREDITED INVESTORS. The Investor is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

4.4 RULE 144. It acknowledges that the Shares and Warrants and the underlying Warrant Shares and Common Stock must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of Shares and Warrants purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the Shares and Warrants, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations.

4.5 NO PUBLIC MARKET. It understands that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.6 ACCESS TO DATA. It has had an opportunity to discuss the Company's business, management and financial affairs with its management. It has also had an opportunity to ask questions of officers of the Company, which questions were answered to its satisfaction. It understands that such discussions, as well as any written information issued by the Company, were intended to describe certain aspects of the Company's business but were not a thorough or exhaustive description. The foregoing does not, however, limit or modify the representations and warranties of the Company in Section III hereof, or the right of the Investors to rely thereon.

4.7 AUTHORIZATION. This Agreement when executed and delivered by such Investor will constitute a valid and legally binding obligation of the Investor, enforceable in accordance with its terms.

4.8 BROKERS OR FINDERS. Each Investor has not, and will not, incur, directly or indirectly, as a result of any action taken by such Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

4.9 TAX CONSEQUENCES; LEGAL REPRESENTATION. Each Investor has reviewed with the Investor's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement (including any tax consequences that may result under recently enacted tax legislation). Each Investor is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Each Investor understands that the Investor (and not the Company) shall be responsible for the Investor's own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement. Each Investor understands that the law firm of

Wilson Sonsini Goodrich & Rosati is acting as counsel to the Company in connection with the transactions contemplated by this Agreement, and is not acting as counsel for the Investors.

SECTION V

CONDITIONS TO CLOSING OF INVESTORS

Each Investors' obligation to purchase Shares at the Closing is, at the option of such Investor, subject to the fulfillment of the following conditions on or before the Closing:

5.1 REPRESENTATIONS AND WARRANTIES CORRECT. The representations and warranties made by the Company in Section III hereof shall be true and correct in all material respects as of the Closing.

5.2 QUALIFICATIONS. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall be obtained and effective as of the Closing.

5.3 OPINION OF COMPANY COUNSEL. The Investors shall have received from Wilson Sonsini Goodrich & Rosati, counsel for the Company, an opinion, dated as of the Closing, in substantially the form of Exhibit G.

5.4 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. The Company and each of its employees shall have entered into the Company's standard form Proprietary Information and Inventions Agreement, in substantially the form provided to the Investors.

5.5 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing shall have been performed or complied with.

5.6 BLUE SKY. With respect to the purchase of Shares and Warrants by such Investor, the Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and Warrants and the Warrant Shares issuable upon the exercise of the Warrants and Common Stock issuable upon conversion of the Shares and Warrant Shares as contemplated herein.

5.7 AMENDED AND RESTATED CERTIFICATE. The Certificate shall have been filed with the Delaware Secretary of State.

5.8 STOCKHOLDERS' RIGHTS AGREEMENT. The Company shall have delivered an executed copy of the Stockholders' Rights Agreement and shall be bound thereby.

5.9 COMPLIANCE CERTIFICATE. The Company shall have delivered to the Investors a certificate executed by the President of the Company, dated as of the Closing, and certifying to the fulfillment of the conditions specified in Sections 5.1 and 5.5 of this Agreement.

5.10 DELIVERY OF SHARE CERTIFICATES. The Company shall deliver, and the Investors shall have received, (i) the share certificate representing each such Investor's purchase of the Series E Non-Voting Preferred Stock under this Agreement and (ii) a Warrant representing each such Investor's right to purchase Warrant Shares to which such Investor is entitled under this Agreement.

5.11 MANAGEMENT RIGHTS AGREEMENTS. The Company shall have delivered an executed copy of the Management Rights letter in the form of Exhibit H and shall be bound thereby.

SECTION VI

CONDITIONS TO CLOSING OF COMPANY

The Company's obligation to sell and issue any Shares and Warrants at the Closing is, at the option of the Company, subject to the fulfillment as of the Closing of the following conditions:

6.1 REPRESENTATIONS AND WARRANTIES CORRECT. The representations and warranties made by each Investor in Section IV hereof shall be true and correct when made, and shall be true and correct on the date of the Closing.

6.2 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by each Investor on or prior to the Closing shall have been performed or complied with in all material respects.

6.3 BLUE SKY. The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and Warrants and the Warrant Shares issuable upon the exercise of the Warrants and Common Stock issuable upon conversion of the Shares and Warrant Shares as contemplated herein.

6.4 AMENDED AND RESTATED CERTIFICATE. The Certificate shall have been filed with the Delaware Secretary of State.

6.5 STOCKHOLDERS' RIGHTS AGREEMENT. Each Investor shall have delivered an executed copy of the Stockholders' Rights Agreement and shall be bound thereby.

SECTION VII

AFFIRMATIVE COVENANTS OF THE COMPANY

7.1 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. The Company hereby agrees to enter into the Company's standard form Proprietary Information and Inventions Agreement with each employee and consultant it hires hereafter.

7.2 1997 STOCK PLAN.

a. Except as otherwise determined by the Board of Directors:

(i) twenty-five percent (25%) of such shares issued under the 1997 Stock Plan shall vest on the first anniversary of the vesting commencement date and the remainder shall vest at one forty-eighth (1/48) per month thereafter;

(ii) such shares issued under the Stock Plan may not be transferred prior to vesting;

(iii) in the event that an employee is terminated by the Company, the Company shall have a right to repurchase at cost any unvested shares of Common Stock issued under the 1997 Stock Plan held by such employee;

(iv) such shares issued under the 1997 Stock Plan shall not be transferable for one hundred and eighty (180) days following the effective date of an Initial Public Offering; and

(v) in the event of a Change of Control as defined in the Certificate of the Company and the termination of an employee without cause, the vesting on those shares issued under the 1997 Stock Plan held by such employee shall accelerate by twelve (12) months.

SECTION VIII

MISCELLANEOUS

8.1 SURVIVAL OF WARRANTIES. The representations and warranties of the Company and the Investors contained in and made pursuant to this Agreement shall survive for a period of two (2) years after the execution and delivery of this Agreement.

8.2 GOVERNING LAW. This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California. The parties hereto hereby submit to the exclusive jurisdiction and venue of the United States District Court for the Northern District of California.

8.3 SUCCESSORS AND ASSIGNS. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto, provided, however, that the rights of an Investor to purchase Shares shall not be assignable without the consent of the Company.

8.4 ENTIRE AGREEMENT; AMENDMENT. The Agreements and the other documents delivered pursuant hereto at the Closing constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought; provided, however, that holders of 75% of the Common Stock issued or issuable upon conversion of the Shares may, with the

Company's prior written consent, waive, modify or amend on behalf of all Investors, any provision hereof.

8.5 NOTICES, ETC. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, overnight courier or by facsimile upon proper confirmation of receipt, addressed

(a) if to an Investor, at such Investor's address or addresses set forth in Exhibit A, or at such other address as such Investor shall have furnished to the Company in writing, or (b) if to any other holder of any Shares, at such address as such holder shall have furnished the Company in writing, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Shares who has so furnished an address to the Company, or

(c) if to the Company, one copy should be sent to such address as the Company shall have furnished to the Investors.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or seventy-two (72) hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

8.6 EXPENSES. If the Closing is effected, the Company agrees to pay an amount not to exceed \$15,000 for fees of outside legal counsel to the Investors arising in connection with the negotiation, execution and consummation of the transactions contemplated by this Agreement. The Company shall not be responsible for any other fees and expenses of the Investors, whether incurred pursuant to the negotiation, execution and consummation of the transactions contemplated by this Agreement or otherwise. In the event that the financing does not close, the Company and each Investor shall bear its own legal and other expenses incurred to date with respect to the transactions contemplated by this Agreement.

8.7 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the Investors, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one and the same instrument.

8.8 SEVERABILITY. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

8.9 DELAYS OR OMISSIONS. No delay or omission to exercise any right, power or remedy accruing to any party to this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing

and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party shall be cumulative and not alternative.

8.10 FURTHER ASSURANCES. Each party hereto agrees to take such further actions including the execution of such documents as may be necessary or desirable, or reasonably requested by the other, in order to carry out the purposes of this Agreement.

8.11 FINDER'S FEE. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. The Company agrees to indemnify and hold harmless each Investor for any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

8.12 LEGAL FEES. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of the Agreements, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Series E Preferred Stock Purchase Agreement on the day and year first set forth above.

"COMPANY"

NETFLIX.COM, INC.
a Delaware corporation

By: /s/

Reed Hastings
Chief Executive Officer

"INVESTORS"

FOUNDATION CAPITAL II, L.P.

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

FOUNDATION CAPITAL II ENTREPRENEURS FUND, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

FOUNDATION CAPITAL II PRINCIPALS FUND, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

TCV II, V.O.F.
a Netherlands Antilles General Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TECHNOLOGY CROSSOVER VENTURES II, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TCV II (Q), L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

[Signature Page to NetFlix.com, Inc. Series E Non-Voting Stock Purchase Agreement]

TCV II STRATEGIC PARTNERS, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TECHNOLOGY CROSSOVER VENTURES II, C.V.
a Netherlands Antilles Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

INSTITUTIONAL VENTURE PARTNERS VIII, L.P.

By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/

Name:
Title: Managing Director

IVM INVESTMENT FUND VIII, LLC

By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/

Name:
Title: Managing Director

REED HASTING

[Signature Page to NetFlix.com, Inc.

Series E Non-Voting Stock Purchase Agreement]

EXHIBIT 3

NETFLIX.COM, INC.

NOTE AND WARRANT PURCHASE AGREEMENT

This Note and Warrant Purchase Agreement (this "AGREEMENT") is made as of July 10, 2001, by and among NetFlix.com, Inc., a Delaware corporation (the "COMPANY") and the persons and entities listed on the Schedule of Investors attached hereto as Exhibit A (the "INVESTORS").

1. The Notes and the Warrants

1.1 Authorization. The Company has authorized the sale and issuance of: (i) subordinated promissory notes, in the form attached hereto as Exhibit B, in the aggregate amount of up to \$13 million (collectively the "NOTES" or individually a "NOTE"), and (ii) related warrants (collectively the "WARRANTS" or individually a "WARRANT") to purchase Common Stock of the Company as described in Section 1.5 below. The Notes, the Warrants, and the Common Stock issuable upon exercise of the Warrants (the "WARRANT STOCK") are hereinafter collectively referred to as the "SECURITIES."

1.2 Sale of Notes and Warrants. Subject to the terms and conditions hereof, the Company will issue and sell to the Investors, and the Investors will purchase from the Company, the Notes and Warrants in the respective amounts set forth opposite each such Investor's name on Exhibit A. The obligations of the Investors are several and not joint.

1.3 Closing

(a) The purchase, sale and issuance of the Notes and Warrants will take place at a closing (the "CLOSING") at 10:00 a.m. local time at the offices of Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304 on July 10, 2001, or such other date and location as the Company and the Investors participating in such Closing agree (the "CLOSING DATE").

1.4 Delivery. At the Closing, the Company will deliver to each Investor a Note in the principal amount set forth opposite such Investor's name on Exhibit A and a corresponding Warrant to purchase such number of shares of Common Stock as is determined pursuant to Section 1.5 below. At the Closing, each Investor will deliver to the Company the purchase price for its Notes and Warrant as set forth opposite such Investor's name in Exhibit A by check or wire transfer in accordance with the Company's wiring instructions.

1.5 Warrants. The Company agrees to issue to each Investor a Warrant, in the form attached as Exhibit C to this Agreement, as follows:

(a) (i) Each Investor that is not a preferred stockholder of the Company will receive a Warrant to purchase one (1) share of Company Common Stock for every dollar of principal amount of Notes purchased by such Investor.

(ii) Each Investor that is a preferred stockholder of the Company will receive a Warrant to purchase one (1) share of Company Common Stock for every dollar of principal amount of Notes purchased up to such Investor's

Preferred Pro Rata Amount (as defined below), 1.9 shares of Company Common Stock for every dollar of principal amount of Notes purchased over such Investor's Preferred Pro Rata Amount up to the Investor's Overage Pro Rata Amount (as defined below), and two (2) shares of Company Common Stock for every dollar of principal amount of Notes purchased over such Investor's Overage Pro Rata Amount. For purposes of this Agreement, "PREFERRED PRO RATA AMOUNT" shall equal an Investor's percentage ownership of outstanding Company Preferred Stock (including outstanding warrants to purchase Series E Preferred Stock, on an as-exercised basis, outstanding as of prior to the transactions contemplated by this Agreement) multiplied by \$10,000,000. For purposes of this Agreement, "OVERAGE PRO RATA AMOUNT" shall equal an Investor's Preferred Pro Rata Amount plus an amount equal to (X) such Investor's ownership of Company Preferred Stock (including outstanding warrants to purchase Series E Preferred Stock, on an as-exercised basis, outstanding as of prior to the transactions contemplated by this Agreement) as a percentage of all Company Preferred Stock held by all Investors that have purchased their full Preferred Pro Rata Amount multiplied by (Y) \$10,000,000 less the amount of Notes purchased by all Investors that are preferred stockholders up to the aggregate of their respective Preferred Pro Rata Amounts. For purposes of this Agreement, all shares of Company Preferred Stock held by an Investor and any affiliated entity thereof shall be aggregated together for the purposes of calculating the Preferred Pro Rata Amount and Overage Pro Rata Amount, and each such Investor shall be entitled to apportion ownership of the Notes and Warrants among any of its affiliate entities as it deems appropriate.

(b) The Company and the Investors, having adverse interests and as a result of arm's length bargaining, agree that (i) neither the Investors nor any of their affiliates have rendered or have agreed to render any services to the Company in connection with this Agreement or the issuance of the Notes and Warrants; and (ii) the Warrants are not being issued as compensation. The Company and the Investors agree that the fair market value of the Warrants purchased by each Investor is equal to \$.001 multiplied by the number of shares of Company Common Stock for which each such Warrant is initially exercisable, and to file all federal, state, local and foreign tax returns in a manner consistent with such valuation.

2. Representations and Warranties of the Company. Except as set forth on the Schedule of Exceptions attached as Exhibit D (the "SCHEDULE OF EXCEPTIONS") delivered to the Investors in connection with this Agreement, which exceptions shall be deemed to be made hereunder, the Company represents and warrants to the Investors as of the date of this Agreement as follows:

2.1 Organization and Standing; Certificate and Bylaws. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of Delaware and is in good standing under such laws. The Company has the requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as presently conducted, and is in good standing in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or properties.

2.2 Corporate Power. The Company will have at the Closing all requisite legal and corporate power and authority to execute and deliver this Agreement, the Stockholders' Rights Agreement (as defined in Section 4.1(d) below), the Voting Agreement (as defined in Section 4.1(e) below), the Notes, and the Warrants (collectively, the "AGREEMENTS"), to sell and

issue the Securities hereunder and to carry out and perform its obligations under the terms of the Agreements.

2.3 Capitalization. The authorized capital stock of the Company will, upon the filing of the Amended and Restated Certificate of Incorporation (the "CERTIFICATE") attached as Exhibit E hereto in connection with the sale and issuance of the Notes and Warrants, consist of 100,000,000 shares of Common Stock and 35,425,014 shares of Preferred Stock, 5,000,000 of which are designated Series A Preferred Stock, 5,776,616 of which are designated Series B Preferred Stock, 4,750,000 of which are designated Series C Preferred Stock, 4,650,000 of which are designated Series D Preferred Stock, 5,874,199 of which are designated Series E Preferred Stock, 5,874,199 of which are designated Series E-1 Preferred Stock, and 3,500,000 of which are designated Series F Non-Voting Preferred Stock. Immediately prior to the Closing, 6,456,430 shares of Common Stock will be outstanding, 4,444,545 shares of Series A Preferred Stock will be outstanding, 5,684,024 shares of Series B Preferred Stock will be outstanding, 4,650,269 shares of Series C Preferred Stock will be outstanding, 4,649,927 shares of Series D Preferred Stock will be outstanding, 5,332,689 shares of Series E Preferred Stock will be outstanding, no shares of Series E-1 Preferred Stock will be outstanding, and 2,370,610(1) shares of Series F Non-Voting Preferred Stock will be outstanding. The Company has reserved 45,038,775 shares of Common Stock for issuance upon conversion of the Preferred Stock. The Company has reserved 17,989,935 shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its 1997 Stock Plan duly adopted by the Board of Directors and approved by the Company's stockholders (the "1997 STOCK PLAN"). Of such reserved shares, options to purchase 3,605,116 shares of Common Stock have been granted and are currently outstanding and 10,776,655 shares of Common Stock remain available for issuance pursuant to the 1997 Stock Plan. Except as set forth in the Schedule of Exceptions, as of the time immediately following the Closing, all outstanding shares of Preferred Stock will be convertible into Common Stock on a one-for-one basis. All of the outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series E-1 Preferred Stock and Series F Non-Voting Preferred Stock are duly authorized, validly issued, fully paid and nonassessable, and were issued in compliance with applicable federal and state securities laws. The Common Stock issued upon exercise of the Warrants will be duly authorized, validly issued, fully paid and nonassessable and will be free of restrictions on transfer except for such restrictions as are imposed by law and the Agreements and free of any preemptive or similar rights other than those arising under the Stockholders' Rights Agreement, which rights will have been waived with respect to the issuance of the Securities. Except those purchase rights, options and warrants set forth on Section 2.3 of the Schedule of Exceptions, as of the time immediately prior to the Closing, there are no other options, warrants or other rights (including conversion or preemptive rights) or agreements outstanding to purchase or otherwise acquire any of the Company's authorized and unissued capital stock. To the Company's knowledge and except as provided in the Certificate, the Stockholders' Rights Agreement and the Voting Agreement, there is no

(1) For purposes of this Agreement, this figure includes 1,074,096 shares that the Company is contractually obligated to issue.

agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company.

2.4 Authorization. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution, delivery and performance of the Agreements by the Company, the authorization, sale, issuance and delivery of the Notes, the Warrants and the Warrant Stock and the performance of all of the Company's obligations under the Agreements will be taken prior to the Closing. The Agreements, when executed and delivered in accordance with the terms hereof and thereof by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, organization, or similar laws relating to or affecting the enforcement of creditor's rights and to the availability of the remedy of specific performance and to general principles of equity. The Warrant Stock has been duly and validly reserved and, when issued in compliance with the provisions of this Agreement and the Certificate, will be validly issued, and will be fully paid and nonassessable; and the Securities will be free of any liens or encumbrances, assuming the Investors take the Securities with no notice thereof, other than any liens or encumbrances created by or imposed upon the holders through no action of the Company; provided, however, that the Securities may be subject to restrictions on transfer under state and/or federal securities laws as set forth herein.

2.5 Compliance with Other Instruments. The Company is not in violation or default of any term of its Certificate or Bylaws, or in any material respect of any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment, order or decree, and to its knowledge is not in violation of any statute, rule or regulation applicable to the Company where such violation would have a material adverse effect on the Company. The execution, delivery and performance of and compliance with the Agreements, and the issuance of the Securities, have not resulted in and will not result in any material violation of, or conflict with, or constitute with or without the passage of time and the giving of notice a material violation or default under, the Company's Certificate or Bylaws.

2.6 Governmental Consent, etc. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Securities, or the consummation of any other transaction contemplated hereby, except (a) filing of the Certificate in the office of the Delaware Secretary of State and (b) qualification (or taking such action as may be necessary to secure an exemption from qualification, if available) of the offer and sale of the Securities under applicable state Blue Sky laws.

2.7 Offering. Subject to the accuracy of the Investors' representations in Section 3 hereof, the offer, sale and issuance of the Notes and Warrants to be issued in conformity with the terms of this Agreement, and the issuance of the Warrant Stock, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "SECURITIES ACT") and in compliance with applicable state Blue Sky laws.

2.8 Brokers or Finders; Other Offers. The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for

brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

2.9 Intellectual Property. The Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information and proprietary rights and processes necessary for its business as currently conducted without any conflict with, or infringement of, the rights of others. There are no outstanding options, licenses, or agreements of any kind relating to the foregoing, nor is the Company bound by or a party to any options, licenses or arrangements of any kind with respect to the patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other person or entity, except, in either case, for standard end-use, object code, internal use software licenses and support maintenance agreements. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets or other proprietary rights or processes of any other person or entity. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interest of the Company or that would conflict with the Company's business. Neither the execution or delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as currently conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any such employee is now obligated. The Company does not believe it is or will be necessary to use any inventions of any of its employees (or persons it currently intends to hire) made prior to their employment by the Company. Set forth in Section 2.9 of the Schedule of Exceptions is a listing of all registered patents, copyrights and trademarks and applications therefor filed by the Company with the appropriate governmental agency.

2.10 Subsidiaries. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture or partnership.

2.11 Litigation. There is no action, suit, proceeding or, to the Company's knowledge, investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of the Agreements, or the right of the Company to enter into each of the Agreements, or to consummate the transactions contemplated thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality which prohibits the transactions contemplated by this Agreement. There is no action, suit or proceeding by the Company currently pending or which the Company currently intends to initiate. The foregoing includes, without limitation, actions, suits, proceedings or investigations pending or known to be threatened (on any basis therefor known to the Company) involving the prior employment of any of the Company's employees, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employees, or their obligations under any agreements with prior employers.

2.12 Rights of Registration. Except as contemplated in the Stockholders' Rights Agreement, the Company has not granted or agreed to grant any registration rights, including piggyback rights, to any person or entity.

2.13 Corporate Documents. The Certificate and Bylaws of the Company as will be in effect immediately prior to the Closing are attached hereto as Exhibit E and Exhibit F, respectively.

2.14 Employee Benefit Plans. The Company does not have any "employee benefit" plan as defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). The Company is not, nor was it at any time, obligated to contribute to any employee pension benefit plan which is or was a multi-employer plan as defined in ERISA.

2.15 Tax Returns and Payments. The Company has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due. Except as would not have a material adverse effect on the Company, since the date of the Financial Statements (as defined below), the Company has not incurred any taxes, assessments or governmental charges other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all taxes, assessments and governmental charges with respect to its business, properties and operations for such period. Except as would not have a material adverse effect on the Company, the Company has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

2.16 Compliance with Laws. The Company has complied with and is not in violation of any foreign, federal, state or local statute, law or regulation, the violation of which would have a material adverse effect on the Company.

2.17 Title to Property and Assets. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens which arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. With respect to the property and assets it leases, the Company is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.18 No Conflict of Interest. The Company is not indebted to any of its officers or directors or to their respective spouses or children, in any amount whatsoever other than in connection with expenses or advances of expenses incurred in the ordinary course of business. None of the Company's officers or directors, or any members of their immediate families, are indebted to or have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated (other than the Company itself) or with which the Company has a business relationship, or any firm or corporation which competes with the Company except that officers, directors and/or stockholders of the Company may own stock in (but not to exceed two (2) percent of the outstanding capital stock thereof) publicly traded companies that may compete

with the Company. No officer or director or any member of their immediate families is interested in any material contract with the Company.

2.19 Books and Records. The Company has made available to the Investors all corporate and financial books and records of the Company which are current in all material respects.

2.20 Voting Agreements. To the knowledge of the Company, other than the Certificate, the Stockholders' Rights Agreement and the Voting Agreement, there is no stockholder agreement or voting agreement or agreement or understanding between any stockholders or any other persons that grants special rights with respect to any shares of the Company's capital stock.

2.21 Material Agreements. Except as set forth in Section 2.21 of the Schedule of Exceptions, the Company does not have any contract, agreement, lease or commitment, written or oral, absolute or contingent, other than (i) contracts for the purchase of supplies or services entered into in the ordinary course of business and that do not involve more than \$100,000 and do not extend for more than one year beyond the date hereof, (ii) equipment leases entered into in the ordinary course of business and that do not individually provide for rental payments of more than \$100,000 annually, (iii) contracts terminable by the Company on no more than sixty days' notice without materially adverse cost or liability to the Company and (iv) contracts expressly contemplated hereby. The Company has not engaged in the past three (3) months in any substantive and material discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

2.22 Financial Statements. The Company has delivered to each Investor its audited balance sheet and audited statement of income as of and for the twelve month periods ended December 31, 1999 and December 31, 2000, respectively, and its unaudited balance sheet as of March 31, 2001 (the "INTERIM BALANCE SHEET") and unaudited statement of income for the three month period ended March 31, 2001 (collectively, the "FINANCIAL STATEMENTS"), copies of which are attached hereto as Exhibit G. The Financial Statements are in accordance with the books and records of the Company in all material respects and present fairly the financial condition and position of the Company as of the respective statement dates; provided, however, that the unaudited interim financial statements are subject to normal recurring year-end audit adjustments. The Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods indicated, except as disclosed therein. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to March 31, 2001 and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company.

Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company will make a good faith effort to maintain a standard system of accounting established and administered in accordance with GAAP.

2.23 Changes. Except as would not have a material adverse effect on the Company, since March 31, 2001 there has not been:

- (a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;
- (b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted);
- (c) any waiver by the Company of a material debt owed to it;
- (d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted);
- (e) any material change by the Company in any compensation arrangement or agreement with any employee;
- (f) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;
- (g) any resignation or termination of employment of any key officer of the Company; and the Company does not know of the impending resignation or termination of employment of any such officer;
- (h) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;
- (i) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;
- (j) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;
- (k) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(l) to the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

(m) any agreement or commitment by the Company to do any of the things described in this Section 2.23.

2.24 Proprietary Information and Inventions Agreements. Each employee, officer and consultant of the Company has executed a Proprietary Information and Inventions Agreement substantially in the form previously reviewed by counsel to the Investors. The Company is not aware that any of its employees or consultants is in violation thereof and the Company will use its reasonable efforts to prevent any such violation.

2.25 Section 83(b) Elections. To the Company's knowledge, all election notices permitted by Section 83(b) of the Internal Revenue Code and any analogous provisions of applicable state tax laws have been timely filed by all employees who have purchased shares of the Company's common stock under agreements that provide for the vesting of such shares.

2.26 Disclosure. The Company has provided the Investors with the information which the Investors have requested for deciding whether to purchase the Notes and Warrants. To the Company's knowledge, no representation or warranty of the Company contained in this Agreement and the exhibits attached hereto or any certificate furnished or to be furnished to the Investors at the Closing (when read together) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

2.27 Insurance. The Company has in full force and effect fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed.

2.28 Dividends. The Company has not declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock.

2.29 Labor Agreements. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the knowledge of the Company, has sought to represent any of the employees, representatives or agents of the Company. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment. The Company is not aware that any executive officer or key employee intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement,

bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement, except for severance arrangements with certain non-officer employees of the Company.

2.30 Permits. The Company has all franchises, permits, license and any similar authority necessary for the conduct of its business, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company. The Company is not in default under any of such franchises, permits, licenses or other similar authority.

2.31 Usury Representations.

(a) The proceeds from the sale and issuance of the Notes and Warrants will be used for corporate purposes.

(b) The Company has total assets of at least \$2,000,000, as reflected in its balance sheet dated as of a date not more than 90 days from the date hereof, which has been prepared in accordance with GAAP applied on a consistent basis throughout the period indicated.

(c) The Company is experienced in evaluating, and has the capacity to protect its interest in, loan arrangements. The Company is a sophisticated borrower with such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of issuing and selling the Notes and Warrants and is capable of bearing the economic risks of such issuance and sale.

(d) The Notes have not been guaranteed by (i) any individual,
(ii) any partnership that has at least one individual as a general partner or
(iii) any revocable trust that has at least one individual as a trustor.

3. Representations and Warranties of Investors. Each Investor severally represents and warrants to the Company with respect to the acquisition of the Securities as follows:

3.1 No Registration. The Investor understands that the Securities have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Investor's representations as expressed herein or otherwise made pursuant hereto.

3.2 Investment Intent. The Investor is acquiring the Securities for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof.

3.3 Investment Experience. The Investor has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

3.4 Speculative Nature of Investment. The Investor acknowledges that its investment in the Company is highly speculative and entails a substantial degree of risk and the Investor is in a position to lose the entire amount of such investment.

3.5 Access to Data. The Investor has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management. The Investor has also had an opportunity to ask questions of officers of the Company, which questions were answered to its satisfaction. The Investor understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company's business and prospects, but were not necessarily a thorough or exhaustive description. The Investor acknowledges that any business plans prepared by the Company have been, and continue to be, subject to change and that any projections included in such business plans or otherwise are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results.

3.6 Accredited Investor. The Investor is an "accredited investor" within the meaning of Regulation D, Rule 501(a), promulgated by the Securities and Exchange Commission.

3.7 Residency. The residency of the Investor (or, in the case of a partnership, trust or corporation, such entity's principal place of business) is correctly set forth below the Investor's signature on the signature page of this Agreement.

3.8 Restriction on Resales. The Investor acknowledges that the Securities must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. The Company has no present intention of registering any of the Securities. The Investor further understands that there is no assurance that any exemption from registration under the Securities Act will be available or, if available, that such exemption will allow the Investor to dispose of or otherwise transfer any or all of the Securities under the circumstances, in the amounts or at the times the Investor might propose.

3.9 Rule 144. The Investor is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations. The Investor understands that the current public information referred to above is not now available and the Company has no present plans to make such information available. The Investor acknowledges and understands that the Company may not be satisfying the current public information requirement of Rule 144 at the time the Investor wishes to sell the Securities, and that, in such event, the Investor may be precluded from selling such securities under Rule 144, even if the other requirements of Rule 144 have been satisfied. The Investor acknowledges that, in the event all of the requirements of Rule 144 are not met, registration under the Securities Act or an exemption from registration will be required.

for any disposition of the Securities. The Investor understands that, although Rule 144 is not exclusive, the Securities and Exchange Commission has expressed its opinion that persons proposing to sell restricted securities received in a private offering other than in a registered offering or pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers who participate in the transactions do so at their own risk.

3.10 No Public Market. The Investor understands and acknowledges that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

3.11 Authorization.

(a) The Investor has all requisite power and authority to execute and deliver this Agreement, to purchase the Securities and to carry out and perform its obligations under the terms of this Agreement. All action on the part of the Investor necessary for the authorization, execution, delivery and performance of this Agreement, and the performance of all of the Investor's obligations under this Agreement, has been taken.

(b) This Agreement, when executed and delivered by the Investor, will constitute the valid and legally binding obligation of the Investor, enforceable in accordance with its terms except: (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and

(ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies or by general principles of equity.

(c) No consent, approval, authorization, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by the Investor in connection with the execution and delivery of this Agreement or the performance of the Investor's obligations hereunder.

3.12 Brokers or Finders. The Investor has not engaged any brokers, finders, or agents, and neither the Company nor any other Investor has, nor will, incur, directly or indirectly, as a result of any action taken by the Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreements.

3.13 Investor Counsel. The Investor acknowledges that it has had the opportunity to review the Agreements, the exhibits and schedules attached hereto and thereto and the transactions contemplated by the Agreements with its own legal counsel.

3.14 Tax Advisors. The Investor has reviewed with its own tax advisors the U.S. federal, state, local, and foreign tax consequences of this investment and the transactions contemplated by the Agreements. With respect to such matters, the Investor has relied solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by the Agreements.

3.15 Restrictions on Transfer. The Investor understands that none of the Securities may be transferred in the absence of (i) an effective registration statement under the Securities Act as to any of such Securities and registration or qualification of under any applicable Blue Sky or state securities law then in effect, or (ii) an opinion of counsel, satisfactory to the Company, that such registration and qualification are not required; provided, however, that no opinion need be obtained with respect to a transfer to (A) a partner or member, active or retired, of an Investor, (B) the estate of any such partner or member, (C) an "affiliate" of an Investor as that term is defined in Rule 405 promulgated by the Securities and Exchange Commission under the Securities Act, or (D) the spouse, children, grandchildren or spouse of such children or grandchildren of an Investor or to trusts for the benefit of an Investor or such persons, in each case if the transferee agrees to be subject to the terms hereof. Notwithstanding the foregoing, any transferee receiving shares that (A) have been registered under the Securities Act or (B) are resaleable under Rule 144 promulgated under the Securities Act shall not be required to agree in writing to be subject to the terms of this Section 3.15. The Investor agrees that each certificate or other instrument representing the Securities shall bear the following legend:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR PURSUANT TO RULE 144 THEREUNDER OR UNLESS SUCH SALE, PLEDGE, OR TRANSFER IS OTHERWISE EXEMPT FROM REGISTRATION."

4. Conditions to Closing.

4.1 Conditions to Obligations of the Investors. The Investors' obligations at the Closing are subject to the fulfillment, on or prior to the Closing Date, of all of the following conditions, any of which may be waived in whole or in part by the Investors:

(a) The representations and warranties made by the Company in Section 2 shall be true and correct in all material respects as of the Closing;

(b) The Company shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement required to be performed or complied with by the Company prior to or at the Closing;

(c) Except for the notices required or permitted to be filed with certain federal and state securities commissions after Closing, the Company shall have obtained all U.S. governmental approvals required in connection with the sale and issuance of the Securities;

(d) The Company and the holders of a majority of Registrable Securities (as defined in the Stockholders' Rights Agreement (as defined below)) shall have executed the Amended and Restated Stockholders' Rights Agreement in substantially the form attached hereto as Exhibit H (the "STOCKHOLDERS' RIGHTS AGREEMENT") dated as of the date hereof to, among other things, include the Warrant Stock as Registrable Securities under that agreement;

(e) The Company, Reed Hastings and Marc Randolph shall have executed the Voting Agreement attached hereto as Exhibit I (the "VOTING AGREEMENT") dated as of the date hereof;

(f) Each Investor shall have received from Wilson Sonsini Goodrich & Rosati, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as Exhibit J;

(g) The Company shall have delivered to the Investors:

(1) A copy of the Amended and Restated Certificate of Incorporation, Bylaws and resolutions of the Board of Directors and the stockholders of the Company authorizing and approving all matters in connection with the Agreements and the transactions contemplated hereby and thereby, certified by the Secretary of the Company as of the Closing Date.

(2) A certificate, executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Closing Date, certifying to the fulfillment of the conditions specified in Sections 4.1(a) and

(b) of this Agreement and that the "Right to Maintain" (as defined in Section 17 of the Stockholders' Rights Agreement) of all parties to the Stockholders' Rights Agreement having such Right to Maintain been waived or satisfied prior to the Closing Date; and

(h) All corporate and other proceedings in connection with the transactions contemplated by the Agreements and all documents and instruments incident to such transactions required to be delivered at or prior to the Closing shall be reasonably satisfactory in substance and form to the Investors and their special counsel, and the Investors and their special counsel shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request.

4.2 Conditions to Obligations of the Company. The Company's obligation to issue and sell the Notes and Warrants is subject to the fulfillment, on or prior to the Closing Date, of all of the following conditions, any of which may be waived in whole or in part by the Company:

(a) The representations and warranties made by the Investors in Section 3 shall be true and correct when made, and shall be true and correct on the Closing Date with the same force and effect as if they had been made on and as of the same date;

(b) The Investors shall have signed and delivered the Stockholders' Rights Agreement;

(c) The Investors shall have signed and delivered the Voting Agreement;

(d) The Investors who hold outstanding warrants to purchase Series E Non-Voting Preferred Stock shall have signed and delivered a warrant cancellation agreement in a form reasonably acceptable to the Company;

(e) Except for the notices required or permitted to be filed after the Closing Date with certain federal and state securities commissions, the Company shall have obtained all consents, approvals, permits and waivers required in connection with the lawful sale and issuance of the Securities; and

(f) At the Closing, the sale and issuance by the Company, and the purchase by the Investors, of the Securities shall be legally permitted by all laws and regulations to which the Investors or the Company are subject.

5. Miscellaneous

5.1 Amendment. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged, or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Investors holding a majority of the outstanding principal amount of the Notes. Any such amendment, waiver, discharge, or termination effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted or exchanged or for which such securities have been exercised) and each future holder of all such securities. Each Investor acknowledges that by the operation of this paragraph, the holders of a majority of the outstanding principal amount of the Notes will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

5.2 Covenants.

(a) Within 60 days of the Closing, the Company shall have obtained directors' and officers' insurance providing for coverage of up to \$5,000,000, which policy shall be maintained at all times unless otherwise agreed by the holders of a majority of the outstanding principal amount of the Notes.

(b) Except for indebtedness to banks, leasing companies or similar financial institutions, whether currently outstanding or incurred following the date hereof, the Company agrees that it will not issue any indebtedness for borrowed money that would rank senior or pari passu to the Notes in a liquidation of the Company without the prior written consent of the holders of a majority of the outstanding principal amount of the Notes.

5.3 Notices. All notices and other communications required or permitted hereunder shall be in writing and delivered, mailed or transmitted by any standard form of telecommunication. Notices and other communications to an Investor shall be directed to it at its address noted in the Company's records; and notices and other communications to the Company shall be directed to it at its address at NetFlix.com, Inc., 970 University Avenue, Los Gatos, California 95032, attention: Chief Financial Officer, with a copy to NetFlix.com, Inc., 970 University Avenue, Los Gatos, California 95032, attention: General Counsel; or as to each party, at such other address as shall be designated by such party in a written notice to the other party pursuant hereto. Any such notice or other communication shall be deemed to have been duly given (a) when sent by Federal Express or other overnight delivery service of recognized standing, on the business day following deposit with such service; (b) when mailed by registered

or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery; and (d) when telecopied, upon confirmation of receipt. Any party hereto may by notice so given change its address for future notice hereunder.

5.4 Governing Law. This Agreement and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of California, without application of conflicts of law principles thereunder.

5.5 Survival. The warranties, representations and covenants of the Company and the Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investors or the Company.

5.6 Successors and Assigns. The terms of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

5.7 Entire Agreement. The Agreements and the exhibits and schedules hereto and thereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein or therein.

5.8 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

5.9 Severability. Unless otherwise expressly provided herein, the rights of the Investors hereunder are several rights, not rights jointly held with any of the other Investors. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, and the parties agree to negotiate, in good faith, a legal and enforceable substitute provision which most nearly effects the parties' intent in entering into this Agreement.

5.10 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this

Agreement. All references in this Agreement to sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits and schedules attached hereto.

5.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

5.12 Telecopy Execution and Delivery. A facsimile, telecopy, or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute an original of this Agreement as well as any facsimile, telecopy, or other reproduction hereof.

5.13 Jurisdiction; Venue. With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara county in the State of California (or in the event of exclusive federal jurisdiction, the courts of the United States in the Northern District of California).

5.14 Further Assurances. Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

5.15 Brokers. The Company and each Investor will indemnify and save the other parties harmless from and against any and all claims, liabilities, or obligations with respect to brokerage or finders' fees or commissions, or consulting fees in connection with the transactions contemplated by this Agreement asserted by any person on the basis of any statement or representation alleged to have been made by such indemnifying party.

5.16 Expenses. Irrespective of whether the Closing is effected, the Company shall be responsible for all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. If the Closing is effected, the Company will pay the reasonable legal fees and expenses (but in no event more than \$30,000) of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, special counsel to the Investors. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement the adjudicating party may in its discretion order that the non-prevailing party, as determined by such adjudicating party, reimburse the prevailing party for reasonable attorney's fees and costs in addition to any other relief to which such prevailing party may be entitled.

5.17 Additional Parties. The parties hereto agree that any transferees of any Securities shall be added as parties to this Agreement by execution of a counterpart to this Agreement, and shall thereupon be deemed for all purposes an "Investor" hereunder. The parties agree that Exhibit A hereto shall be updated automatically without any formal amendment to reflect the addition of any such additional party.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

COMPANY:

NETFLIX.COM, INC.

By: /s/ _____
Name: Barry McCarthy
Title: CFO

INVESTORS:

**INSTITUTIONAL VENTURE
PARTNERS VIII, L.P.,** by its General
Partner Institutional Venture
Management VIII, LLC

By: /s/ _____
Name: Timothy M. Haley, Managing
Director

IVM INVESTMENT FUND VIII, LLC, by its
Manager Institutional Venture
Management VIII, LLC

By: /s/ _____
Name: Timothy M. Haley, Managing
Director

[SIGNATURE PAGE TO NOTE AND WARRANT PURCHASE AGREEMENT]

TCV II, V.O.F.
a Netherlands Antilles General Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

Technology Crossover Ventures II, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

TCV II (Q), L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

TCV II Strategic Partners, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

[SIGNATURE PAGE TO NOTE AND WARRANT PURCHASE AGREEMENT]

Technology Crossover Ventures II, C.V.
a Netherlands Antilles Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/ _____
Name: Carla S. Newell
Title: Attorney-In-Fact

Foundation Capital Leadership Fund, L.P. By FC Leadership Management Co., LLC

By: /s/ _____
Manager

Foundation Capital Leadership Principals Fund, LLC By FC Leadership Management Co., LLC

By: /s/ _____
Manager

STEPHEN J. KAHN and KAREN B. HENKEN,
tees KAHN/HENKEN T/A dtd 8/29/95

By: /s/ _____
Name:
Title:

Box 2000 Children's Trust UTA dated
April 10, 2000 Joseph J. Dooling Trustee

By: /s/ _____

[SIGNATURE PAGE TO NOTE AND WARRANT PURCHASE AGREEMENT]

TCV IV, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

TCV IV Strategic Partners, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

TCV Franchise Fund, L.P.
a Delaware Limited Partnership

By: TCVF Management, L.L.C.
Its: General Partner

By: /s/

Name: Carla S. Newell
Title: Attorney-In-Fact

[SIGNATURE PAGE TO NOTE AND WARRANT PURCHASE AGREEMENT]

John Mark Box, Trustee of the MARK BOX
LIVING TRUST U/A dated December 5, 1995, as amended

By: /s/

Name:
Title:

Randolph B. Randolph

 /s/

Neil Hunt

 /s/

J.M. Lowe

 /s/

Larry Marcus

 /s/

Barry McCarthy

 /s/

Patricia McCord

 /s/

Mary Ryan McCarthy

 /s/

Deborah Pinkston

 /s/

[SIGNATURE PAGE TO NOTE AND WARRANT PURCHASE AGREEMENT]

EXHIBIT A

(To Note and Warrant Purchase Agreement)

SCHEDULE OF INVESTORS

PURCHASER -----	NOTES -----	WARRANT SHARES -----	WARRANT COST -----	TOTAL COST -----
TCV IV, L.P. 528 Ramona Street Palo Alto, CA 94301	\$6,249,103.85	10,413,867	\$10,413.87	\$6,259,517.72
TCV IV Strategic Partners, L.P. 528 Ramona Street Palo Alto, CA 94301	\$ 233,020.73	388,319	\$ 388.32	\$ 233,409.05
TCV II, V.O.F 528 Ramona Street Palo Alto, CA 94301	\$ 25,485.24	42,470	\$ 42.47	\$ 25,527.71
Technology Crossover Ventures II, L.P. 528 Ramona Street Palo Alto, CA 94301	\$ 784,520.78	1,307,371	\$ 1,307.37	\$ 785,828.15
TCV II (Q), L.P. 528 Ramona Street Palo Alto, CA 94301	\$ 603,150.79	1,005,125	\$ 1,005.13	\$ 604,155.92
TCV II Strategic Partners, L.P. 528 Ramona Street Palo Alto, CA 94301	\$ 107,038.03	178,374	\$ 178.37	\$ 107,216.40
Technology Crossover Ventures II, C.V 528 Ramona Street Palo Alto, CA 94301	\$ 119,780.65	199,610	\$ 199.61	\$ 119,980.26
TCV Franchise Fund, L.P. 528 Ramona Street Palo Alto, CA 94301	\$ 168,186.56	280,275	\$ 280.28	\$ 168,466.84

PURCHASER -----	NOTES -----	WARRANT SHARES -----	WARRANT COST -----	TOTAL COST -----
Institutional Venture Partners VIII, L.P. 3000 Sand Hill Road Bldg. 2, Suite 290 Menlo Park, CA 94025	\$1,639,759.00	1,639,759	\$1,639.76	\$1,641,398.76
IVM Investment Fund VIII, LLC 3000 Sand Hill Road Bldg. 2, Suite 290 Menlo Park, CA 94025	\$ 30,907.80	30,907	\$ 30.91	\$ 30,938.71
Foundation Capital Leadership Fund, L.P. 70 Willow Road Suite 200 Menlo Park, CA 94025	\$2,700,305.92	4,500,065	\$ 4,500.07	\$2,704,805.99
Foundation Capital Leadership Principals Fund, LLC 70 Willow Road Suite 200 Menlo Park, CA 94025	\$ 72,082.09	120,002	\$ 120.00	\$ 72,202.09
Stephen J. Kahn and Karen B. Henken, tees, KAHN/HENKEN T/A dtd 8/29/95. 1395 Fairway Drive Los Altos, CA 94024	\$ 125,000	196,266	\$ 196.27	\$ 125,196.27
Randolph Randolph P.O. Box 287 Mt. Kisco, NY 10549	\$ 2,500.00	2,842	\$ 2.84	\$ 2,502.84
John Mark Box, Trustee of the MARK BOX LIVING TRUST U/A dated December 5, 1995, as amended 125 Fawn Lane Portola Valley, CA 94028	\$ 50,000	60,351	\$ 60.35	\$ 50,060.35

PURCHASER -----	NOTES -----	WARRANT SHARES -----	WARRANT COST -----	TOTAL COST -----
Larry Marcus 1155 Barroiher Drive Hillsborough, CA 94010	\$ 3,158.56	5,263	\$ 5.26	\$ 3,163.82
J.M. Lowe 735 Bay Road Mill Valley, CA 94941	\$ 1,000	1,000	\$ 1.00	\$ 1,001.00
Barry McCarthy 102 Alta Heights Court Los Gatos, CA 95030	\$ 30,000	30,000	\$ 30.00	\$ 30,030.00
Marry Ryan McCarthy 12596 Northhampton Court Saratoga, CA 95070	\$ 10,000	10,000	\$ 10.00	\$ 10,010.00
Patricia McCord 422 Sims Road Santa Cruz, CA 95060	\$ 10,000	10,000	\$ 10.00	\$ 10,010.00
Deborah Pinkston 1832 White Oaks Court Campbell, CA 95008	\$ 5,000	5,000	\$ 5.00	\$ 5,005.00
Box 2000 Children's Trust UTA Dated April 10, 2000 Joseph J. Dooling Trustee 125 Fawn Lane Portola Valley, CA 94028	\$ 10,000	10,000	\$ 10.00	\$ 10,010.00
Neil Hunt 685 Lola Lane Mountain View, CA 94040	\$ 20,000	20,000	\$ 20.00	\$ 20,020.00
TOTALS	\$ 13,000,000 =====	20,456,866 =====	\$ 20,456.88 =====	\$13,020,456.88 =====

EXHIBIT 4

NETFLIX.COM, INC.

SERIES D PREFERRED STOCK PURCHASE AGREEMENT

This Agreement is made as of June 22, 1999 among NetFlix.com, Inc., a Delaware corporation (the "COMPANY") and the persons and entities listed on the Schedule of Investors attached hereto as Exhibit A (the "INVESTORS").

SECTION I

AUTHORIZATION AND SALE OF PREFERRED STOCK

1.1 AUTHORIZATION. The Company will authorize the sale and issuance of up to 4,650,000 shares of its Series D Preferred Stock, (the "SHARES"), having the rights, privileges and preferences as set forth in the Amended and Restated Certificate of Incorporation (the "CERTIFICATE") in the form attached to this Agreement as Exhibit B.

1.2 SALE OF PREFERRED. Subject to the terms and conditions hereof, at the Closing (as defined below) the Company will severally issue and sell to each of the Investors and the Investors will severally buy from the Company the total number of Shares set forth opposite such Investor's name in column 2 of the Schedule of Investors attached hereto as Exhibit A for the aggregate purchase price calculated on a per share purchase price of \$6.52, set forth in column 3 opposite the Investor's name in the Schedule of Investors. The Company's agreements with each of the Investors are separate agreements, and the sales to each of the Investors are separate sales.

SECTION II

CLOSING DATE; DELIVERY

2.1 CLOSING. The purchase and sale of the Shares shall take place in a closing (the "CLOSING") at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304-1050 on or about June 15, 1999 or at such other time as the Company and the Investors mutually agree upon.

2.2 SUBSEQUENT CLOSING. The Company may sell up to the balance of the authorized shares of the Series D Preferred Stock not sold at the initial Closing at one or more subsequent closings on the terms contained herein and in the exhibits hereto for a price per share of not less than \$6.52, provided that any such subsequent closing(s) for the purchase and sale of Shares are completed not later than fifteen days after the date of this Agreement. Upon completion of each subsequent closing, if any, additional purchasers of shares of Series D Preferred Stock and each such subsequent closing shall be considered "Investors" and a "Closing," respectively, within the meaning of this Agreement.

2.3 DELIVERY. At the Closing, the Company will deliver to each Investor a certificate, registered in such Investor's name, representing the number of Shares to be purchased by such

Investor as specified in the Schedule of Investors, against payment of the purchase price therefor by cancellation of indebtedness, by check payable to the Company, by wire transfer in accordance with the Company's wiring instructions, or by a combination thereof. Upon completion of the Closing, all purchasers of Shares shall be considered "Investors" within the meaning of this Agreement.

SECTION III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth on the Schedule of Exceptions attached hereto as Exhibit C (the "Schedule of Exceptions") attached hereto, the Company represents and warrants to the Investors as follows:

3.1 ORGANIZATION AND STANDING; CERTIFICATE AND BYLAWS. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of Delaware and is in good standing under such laws. The Company has requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as presently conducted, and is in good standing in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or properties.

3.2 CORPORATE POWER. The Company will have at the Closing all requisite legal and corporate power and authority to execute and deliver this Agreement and any agreements set forth as exhibits hereto (collectively, the "AGREEMENTS"), to sell and issue the Shares hereunder, to issue the Common Stock issuable upon conversion of the Shares and to carry out and perform its obligations under the terms of the Agreements.

3.3 CAPITALIZATION. The authorized capital stock of the Company will, upon the filing of the Certificate, consist of 31,650,000 shares of Common Stock (the "COMMON STOCK") and 20,176,616 shares of Preferred Stock (the "PREFERRED STOCK"), 5,000,000 of which are designated Series A Preferred Stock, 5,776,616 of which are designated Series B Preferred Stock, 4,750,000 of which are designated Series C Preferred Stock and 4,650,000 of which are designated Series D Preferred Stock. Immediately prior to the Closing, 6,697,516 shares of Common Stock will be outstanding, 4,444,545 shares of Series A Preferred Stock will be outstanding, 5,684,024 shares of Series B Preferred Stock will be outstanding and 4,650,269 shares of Series C Preferred Stock will be outstanding. The Company has reserved 20,176,616 shares of Common Stock for issuance upon conversion of the Preferred Stock. The Company has reserved 1,452,056 shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its 1997 Stock Plan duly adopted by the Board of Directors and approved by the Company's stockholders (the "1997 Stock Plan"). Of such reserved shares of Common Stock, options to purchase 1,310,535 shares have been granted and are currently outstanding and 141,521 shares of Common Stock remain available for issuance pursuant to the 1997 Stock Plan. All of the outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock are duly authorized, validly issued, fully paid and nonassessable, and were issued in compliance with applicable federal and state securities laws. The Shares, when issued pursuant to the terms of this Agreement, will be duly authorized, validly issued, fully paid and nonassessable and will be free

of restrictions on transfer except for such restrictions as are imposed by law and the Agreements and free of any preemptive or similar rights other than those arising under the Stockholders' Rights Agreement between the Company and certain of its investors which rights will have been waived with respect to the issuance of the Shares. Except those purchase rights, options and warrants as set forth in Schedule 3.3 of the Schedule of Exceptions, there are no other options, warrants or other rights (including conversion or preemptive rights) or agreements outstanding to purchase any of the Company's authorized and unissued capital stock. To the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company.

3.4 AUTHORIZATION. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution, delivery and performance of the Agreements by the Company, the authorization, sale, issuance and delivery of the Shares (and the Common Stock issuable upon conversion of the Shares) and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms. The Shares, when issued in compliance with the provisions of this Agreement, will be validly issued, will be fully paid and nonassessable, and will have the rights, preferences and privileges described in the Certificate; the Common Stock issuable upon conversion of the Shares has been duly and validly reserved and, when issued in compliance with the provisions of this Agreement and the Certificate, will be validly issued, and will be fully paid and nonassessable; and the Shares and such Common Stock will be free of any liens or encumbrances, assuming the Investors take the shares with no notice thereof, other than any liens or encumbrances created by or imposed upon the holders; provided, however, that the Shares (and the Common Stock issuable upon conversion thereof) may be subject to restrictions on transfer under state and/or federal securities laws as set forth herein.

3.5 COMPLIANCE WITH OTHER INSTRUMENTS. The Company is not in violation or default of any term of its Certificate or Bylaws, or in any material respect of any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment, order or decree, and to its knowledge is not in violation of any statute, rule or regulation applicable to the Company where such violation would have a material adverse effect on the Company. The execution, delivery and performance of and compliance with the Agreements, and the issuance of the Shares and the Common Stock issuable upon conversion of the Shares, have not resulted in and will not result in any material violation of, or conflict with, or constitute with or without the passage of time and the giving of notice a material violation or default under, the Company's Certificate or Bylaws.

3.6 GOVERNMENTAL CONSENT, ETC. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares (and the Common Stock issuable upon conversion of the Shares), or the consummation of any other transaction contemplated hereby, except (a) filing of the Certificate in the office of the Delaware Secretary of State and (b) qualification (or taking such action as may be necessary to secure an exemption from qualification, if available) of the offer and sale of

the Shares (and the Common Stock issuable upon conversion of the Shares) under applicable Blue Sky laws.

3.7 OFFERING. Subject to the accuracy of the Investors' representations in Section 4 hereof, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement, and the issuance of the Common Stock to be issued upon conversion of the Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "SECURITIES ACT") and in compliance with applicable state securities laws.

3.8 BROKERS OR FINDERS; OTHER OFFERS. The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

3.9 INTELLECTUAL PROPERTY. The Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information and proprietary rights and processes necessary for its business as currently conducted without any conflict with, or infringement of, the rights of others. There are no outstanding options, licenses, or agreements of any kind relating to the foregoing, nor is the Company bound by or a party to any options, licenses or arrangements of any kind with respect to the patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information, proprietary rights and process of any other person or entity, except, in either case, for standard end-use, object code, internal use software licenses and support maintenance agreements. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets or other proprietary rights or processes of any other person or entity. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interest of the Company or that would conflict with the Company's business. Neither the execution or delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as currently conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any such employee is now obligated. The Company does not believe it is or will be necessary to use any inventions of any of its employees (or persons it currently intends to hire) made prior to their employment by the Company. Set forth in Section 3.9 of the Schedule of Exceptions is a listing of all patents, trademarks and licenses of the Company.

3.10 SUBSIDIARIES. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture or partnership.

3.11 LITIGATION. There is no action, suit, proceeding or, to the Company's knowledge, investigation pending or, to the Company's knowledge, currently threatened against the

Company that questions the validity of this Agreement, the Amended and Restated Stockholders' Rights Agreement, attached hereto as Exhibit D (the "STOCKHOLDERS' RIGHTS AGREEMENT") and of even date herewith, or the right of the Company to enter into each such agreement, or to consummate the transactions contemplated hereby or thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality which prohibits the transactions contemplated by this Agreement. There is no action, suit or proceeding by the Company currently pending or which the Company currently intends to initiate. The foregoing includes, without limitation, actions, suits, proceedings or investigations pending or threatened (on any basis therefor) known to the Company involving the prior employment of any of the Company's employees, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employees, or their obligations under any agreements with prior employers.

3.12 RIGHTS OF REGISTRATION. Except as contemplated in the Stockholders' Rights Agreement, the Company has not granted or agreed to grant any registration rights, including piggyback rights, to any person or entity.

3.13 CORPORATE DOCUMENTS. The Certificate and Bylaws of the Company are in substantially the forms attached hereto as Exhibit B and Exhibit E, respectively.

3.14 EMPLOYEE BENEFIT PLANS. The Company does not have any "employee benefit" plan as defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). The Company is not, nor was it at any time, obligated to contribute to any employee pension benefit plan which is or was a multi-employer plan as defined in ERISA.

3.15 TAX RETURNS AND PAYMENTS. The Company has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due. Except as would not have a material adverse effect on the Company, since the date of the Financial Statements, the Company has not incurred any taxes, assessments or governmental charges other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all taxes, assessments and governmental charges with respect to its business, properties and operations for such period. Except as would not have a material adverse effect on the Company, the Company has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

3.16 COMPLIANCE WITH LAWS. The Company has complied with and is not in violation of any foreign, federal, state or local statute, law or regulation, the violation of which would have a material adverse effect on the Company.

3.17 TITLE TO PROPERTY AND ASSETS. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens which arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. With respect to the property and assets it leases, the

Company is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

3.18 NO CONFLICT OF INTEREST. Except as set forth on Schedule 3.18, the Company is not indebted to any of its officers or directors or to their respective spouses or children, in any amount whatsoever other than in connection with expenses or advances of expenses incurred in the ordinary course of business. None of the Company's officers or directors, or any members of their immediate families, are indebted to or have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated (other than the Company itself) or with which the Company has a business relationship, or any firm or corporation which competes with the Company except that officers, directors and/or stockholders of the Company may own stock in (but not to exceed two (2) percent of the outstanding capital stock thereof) publicly traded companies that may compete with the Company. No officer or director or any member of their immediate families is interested in any material contract with the Company.

3.19 BOOKS AND RECORDS. The Company has made available to the Investors all corporate and financial books and records of the Company which are current in all material respects.

3.20 VOTING AGREEMENTS. To the knowledge of the Company, other than the Stockholders' Rights Agreement, there is no stockholder agreement or voting agreement or agreement or understanding between any stockholders or any other persons that grants special rights with respect to any shares of the Company's capital stock.

3.21 MATERIAL AGREEMENTS. Except as set forth in the Schedule 3.22, the Company does not have any contract, agreement, lease or commitment, written or oral, absolute or contingent, other than (i) contracts for the purchase of supplies or services entered into in the ordinary course of business and that do not involve more than \$15,000 and do not extend for more than one year beyond the date hereof, (ii) equipment leases entered into in the ordinary course of business and that do not individually provide for rental payments of more than \$20,000 annually, (iii) contracts terminable by the Company on no more than sixty days' notice without materially adverse cost or liability to the Company and (iv) contracts expressly contemplated hereby. The Company has not engaged in the past three (3) months in any substantive and material discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

3.22 FINANCIAL STATEMENTS. The Company has delivered to each Investor its unaudited balance sheet as of _____, 1998 and unaudited statement of income for the [_____] -month period ending on _____, 1998 (collectively, the "Financial Statements"), copies of which are attached hereto as Exhibit F. The Financial Statements are in accordance with the books and records of the Company and present fairly the financial condition and position of the Company as of the statement date, and other dates therein specified; provided, however, that the

unaudited interim financial statements are subject to normal recurring year-end audit adjustments. The Company has made a good faith effort to prepare the Financial Statements in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, and the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to April 30, 1999 and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company will make a good faith effort to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

3.23 CHANGES. Except as would not have a material adverse effect on the Company, since April 30, 1999 there has not been:

- a. any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;
- b. any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted);
- c. any waiver by the Company of a material debt owed to it;
- d. any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted);
- e. any material change to the Company in any compensation arrangement or agreement with any employee;
- f. any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;
- g. any resignation or termination of employment of any key officer of the Company; and the Company does not know of the impending resignation or termination of employment of any such officer;
- h. receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

i. any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

j. any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

k. any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

l. to the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

m. any agreement or commitment by the Company to do any of the things described in this Section 3.23.

3.24 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. Each employee, officer and consultant of the Company has executed a Proprietary Information and Inventions Agreement substantially in the form of Exhibit G attached hereto. The Company is not aware that any of its employees or consultants is in violation thereof and the Company will use its reasonable efforts to prevent any such violation.

3.25 SECTION 83(b) ELECTIONS. To the Company's knowledge, all election notices permitted by Section 83(b) of the Internal Revenue Code and any analogous provisions of applicable state tax laws have been timely filed by all employees who have purchased shares of the Company's common stock under agreements that provide for the vesting of such shares.

3.26 DISCLOSURE. The Company has provided the Investors with the information which the Investors have requested for deciding whether to acquire the Shares. To the Company's knowledge, no representation or warranty of the Company contained in this Agreement and the exhibits attached hereto or any certificate furnished or to be furnished to the Investors at the Closing (when read together) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

3.27 INSURANCE. The Company has in full force and effect fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed.

3.28 DIVIDENDS. The Company has not declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock.

3.29 QUALIFIED SMALL BUSINESS STOCK. The Company represents and warrants to the Investors that, to the best of its knowledge, the Shares should qualify as "Qualified Small

Business Stock" as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended as of the date hereof.

3.30 LABOR AGREEMENTS. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the knowledge of the Company, has sought to represent any of the employees, representatives or agents of the Company. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment. The Company is not aware that any executive officer or key employee intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement.

3.31 PERMITS. The Company has all franchises, permits, license and any similar authority necessary for the conduct of its business, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company. The Company is not in default under any of such franchises, permits, licenses or other similar authority.

SECTION IV

REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor hereby severally represents and warrants to the Company with respect to the purchase of the Shares as follows:

4.1 EXPERIENCE. It has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

4.2 INVESTMENT. It is acquiring the Shares and the Common Stock underlying the Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof. It understands that the Shares to be purchased and the Common Stock underlying the Shares have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Investor's representations as expressed herein.

4.3 ACCREDITED INVESTORS. The Investor is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

4.4 RULE 144. It acknowledges that the Shares and the underlying Common Stock must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations.

4.5 NO PUBLIC MARKET. It understands that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.6 ACCESS TO DATA. It has had an opportunity to discuss the Company's business, management and financial affairs with its management. It has also had an opportunity to ask questions of officers of the Company, which questions were answered to its satisfaction. It understands that such discussions, as well as any written information issued by the Company, were intended to describe certain aspects of the Company's business but were not a thorough or exhaustive description. The foregoing does not, however, limit or modify the representations and warranties of the Company in Section III hereof, or the right of the Investors to rely thereon.

4.7 AUTHORIZATION. This Agreement when executed and delivered by such Investor will constitute a valid and legally binding obligation of the Investor, enforceable in accordance with its terms.

4.8 BROKERS OR FINDERS. Each Investor has not, and will not, incur, directly or indirectly, as a result of any action taken by such Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

4.9 TAX CONSEQUENCES; LEGAL REPRESENTATION. Each Investor has reviewed with the Investor's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement (including any tax consequences that may result under recently enacted tax legislation). Each Investor is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Each Investor understands that the Investor (and not the Company) shall be responsible for the Investor's own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement. Each Investor understands that the law firm of Wilson Sonsini Goodrich & Rosati is acting as counsel to the Company in connection with the transactions contemplated by this Agreement, and is not acting as counsel for the Investors.

SECTION V

CONDITIONS TO CLOSING OF INVESTORS

Each Investors' obligation to purchase Shares at the Closing is, at the option of such Investor, subject to the fulfillment of the following conditions on or before the Closing:

5.1 REPRESENTATIONS AND WARRANTIES CORRECT. The representations and warranties made by the Company in Section III hereof shall be true and correct in all material respects as of the Closing.

5.2 QUALIFICATIONS. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall be obtained and effective as of the Closing.

5.3 OPINION OF COMPANY COUNSEL. The Investors shall have received from Wilson Sonsini Goodrich & Rosati, counsel for the Company, an opinion, dated as of the Closing, in substantially the form of Exhibit G.

5.4 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. The Company and each of its employees shall have entered into the Company's standard form Proprietary Information and Inventions Agreement, in substantially the form provided to the Investors.

5.5 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing shall have been performed or complied with.

5.6 BLUE SKY. With respect to the purchase of Shares by such Investor, the Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Common Stock issuable upon conversion of the Shares as contemplated herein.

5.7 AMENDED AND RESTATED CERTIFICATE. The Certificate shall have been filed with the Delaware Secretary of State.

5.8 STOCKHOLDERS' RIGHTS AGREEMENT. The Company shall have delivered an executed copy of the Stockholders' Rights Agreement and shall be bound thereby.

5.9 COMPLIANCE CERTIFICATE. The Company shall have delivered to the Investors a certificate executed by the President of the Company, dated as of the Closing, and certifying to the fulfillment of the conditions specified in Sections 5.1 and 5.5 of this Agreement.

5.10 DELIVERY OF SHARE CERTIFICATES. The Company shall deliver, and the Investors shall have received, the share certificate representing each such Investor's purchase of the Series D Preferred Stock under this Agreement.

SECTION VI

CONDITIONS TO CLOSING OF COMPANY

The Company's obligation to sell and issue any Shares at the Closing is, at the option of the Company, subject to the fulfillment as of the Closing of the following conditions:

6.1 REPRESENTATIONS AND WARRANTIES CORRECT. The representations and warranties made by each Investor in Section IV hereof shall be true and correct when made, and shall be true and correct on the date of the Closing.

6.2 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by each Investor on or prior to the Closing shall have been performed or complied with in all material respects.

6.3 BLUE SKY. The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Common Stock issuable upon conversion of the Shares as contemplated herein.

6.4 AMENDED AND RESTATED CERTIFICATE. The Certificate shall have been filed with the Delaware Secretary of State.

6.5 STOCKHOLDERS' RIGHTS AGREEMENT. Each Investor shall have delivered an executed copy of the Stockholders' Rights Agreement and shall be bound thereby.

SECTION VII

AFFIRMATIVE COVENANTS OF THE COMPANY

7.1 COMPLIANCE WITH SECTION 1202(c) OF THE CODE. The Company hereby agrees that as long as the Shares are held by the Investors (or a transferee in whose hands such capital stock is eligible to qualify as a Qualified Small Business Stock as defined in Section 1202(c) of the Code), the Company will comply with all reporting and record-keeping requirements required of a Qualified Small Business under the Code or regulations promulgated thereunder. In addition, the Company shall submit to the Investors and to the Internal Revenue Service any reports that may be required under Section 1202(d)(1)(C) of the Code and any related Treasury Regulations. In addition, within ten (10) days after any Investor has delivered to the Company a written request therefor the Company shall deliver to such Investor a "QSBS Certificate" (the form of which is attached hereto as Exhibit G) informing the Investor whether such Investor's interest in the Company constitutes "Qualified Small Business Stock" as defined in Section 1202(c) of the Code. The Company's obligation to furnish this QSBS Certificate pursuant to this Section 7.1 shall continue until five (5) years from the date hereof, notwithstanding the fact that a class of the Company's stock may be traded on an established securities market during such period.

7.2 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. The Company hereby agrees to enter into the Company's standard form Proprietary Information and Inventions Agreement with each employee and consultant it hires hereafter.

7.3 1997 STOCK PLAN.

a. Except as otherwise determined by the Board of Directors:

(i) twenty-five percent (25%) of such shares issued under the 1997 Stock Plan shall vest on the first anniversary of the vesting commencement date and the remainder shall vest at one forty-eighth (1/48) per month thereafter;

(ii) such shares issued under the Stock Plan may not be transferred prior to vesting;

(iii) in the event that an employee is terminated by the Company, the Company shall have a right to repurchase at cost any unvested shares of Common Stock issued under the 1997 Stock Plan held by such employee;

(iv) such shares issued under the 1997 Stock Plan shall not be transferable for one hundred and eighty (180) days following the effective date of an Initial Public Offering; and

(v) in the event of a Change of Control as defined in the Certificate of the Company and the termination of an employee without cause, the vesting on those shares issued under the 1997 Stock Plan held by such employee shall accelerate by twelve (12) months.

SECTION VIII

MISCELLANEOUS

8.1 SURVIVAL OF WARRANTIES. The representations and warranties of the Company and the Investors contained in and made pursuant to this Agreement shall survive for a period of two (2) years after the execution and delivery of this Agreement.

8.2 GOVERNING LAW. This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California. The parties hereto hereby submit to the exclusive jurisdiction and venue of the United States District Court for the Northern District of California.

8.3 SUCCESSORS AND ASSIGNS. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto, provided, however, that the rights of an Investor to purchase Shares shall not be assignable without the consent of the Company.

8.4 ENTIRE AGREEMENT; AMENDMENT. The Agreements and the other documents delivered pursuant hereto at the Closing constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought; provided, however, that holders of 75% of the Common Stock issued or issuable upon conversion of the Shares may, with the Company's prior written consent, waive, modify or amend on behalf of all Investors, any provision hereof.

8.5 NOTICES, ETC. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, overnight courier or by facsimile upon proper confirmation of receipt, addressed

- (a) if to an Investor, at such Investor's address or addresses set forth in Exhibit A, or at such other address as such Investor shall have furnished to the Company in writing, or (b) if to any other holder of any Shares, at such address as such holder shall have furnished the Company in writing, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Shares who has so furnished an address to the Company, or
- (c) if to the Company, one copy should be sent to such address as the Company shall have furnished to the Investors.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or seventy-two (72) hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

8.6 EXPENSES. If the Closing is effected, the Company agrees to pay an amount not to exceed \$15,000 for fees of outside legal counsel to the Investors arising in connection with the negotiation, execution and consummation of the transactions contemplated by this Agreement. The Company shall not be responsible for any other fees and expenses of the Investors, whether incurred pursuant to the negotiation, execution and consummation of the transactions contemplated by this Agreement or otherwise. In the event that the financing does not close, the Company and each Investor shall bear its own legal and other expenses incurred to date with respect to the transactions contemplated by this Agreement.

8.7 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the Investors, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one and the same instrument.

8.8 SEVERABILITY. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

8.9 DELAYS OR OMISSIONS. No delay or omission to exercise any right, power or remedy accruing to any party to this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party shall be cumulative and not alternative.

8.10 FURTHER ASSURANCES. Each party hereto agrees to take such further actions including the execution of such documents as may be necessary or desirable, or reasonably requested by the other, in order to carry out the purposes of this Agreement.

8.11 FINDER'S FEE. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. The Company agrees to indemnify and hold harmless each Investor for any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

8.12 LEGAL FEES. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of the Agreements, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

IN WITNESS WHEREOF, the parties have executed this Series D Preferred Stock Purchase Agreement on the day and year first set forth above.

"COMPANY"

NETFLIX.COM, INC.

a Delaware corporation

By: /s/

Reed Hastings
Chief Executive Officer

"INVESTORS"

TCV II, V.O.F.

a Netherlands Antilles General Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TECHNOLOGY CROSSOVER VENTURES II, L.P.

a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TCV II (Q), L.P.

a Delaware Limited Partnership

[Signature Page to NetFlix.com, Inc. Series D Stock Purchase Agreement]

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TCV II STRATEGIC PARTNERS, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TECHNOLOGY CROSSOVER VENTURES II, C.V.
a Netherlands Antilles Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

[Signature Page to NetFlix.com, Inc. Series D Stock Purchase Agreement]

FOUNDATION CAPITAL II, L.P.

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

FOUNDATION CAPITAL II ENTREPRENEURS FUND, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

FOUNDATION CAPITAL II PRINCIPALS FUND, LLC

By: Foundation Management II, LLC
Its: Manager

By: /s/

Name:
Title:

EXHIBIT 5

NETFLIX.COM, INC.

SERIES C PREFERRED STOCK PURCHASE AGREEMENT

This Agreement is made as of February __, 1999 among NetFlix.com, Inc., a Delaware corporation (the "COMPANY") and the persons and entities listed on the Schedule of Investors attached hereto as Exhibit A (the "INVESTORS").

SECTION I

AUTHORIZATION AND SALE OF PREFERRED STOCK

1.1 AUTHORIZATION. The Company will authorize the sale and issuance of up to 4,750,000 shares of its Series C Preferred Stock, (the "SHARES"), having the rights, privileges and preferences as set forth in the Amended and Restated Certificate of Incorporation (the "CERTIFICATE") in the form attached to this Agreement as Exhibit B.

1.2 SALE OF PREFERRED. Subject to the terms and conditions hereof, at the Closing (as defined below) the Company will severally issue and sell to each of the Investors and the Investors will severally buy from the Company the total number of Shares set forth opposite such Investor's name in column 2 of the Schedule of Investors attached hereto as Exhibit A for the aggregate purchase price, calculated on a per share purchase price of \$3.27 (except with respect to those shares to be purchased by Comdisco, Inc. for which Comdisco, Inc. will pay \$2.72 per share) ,set forth in column 3 opposite the Investor's name in the Schedule of Investors. The Company's agreements with each of the Investors are separate agreements, and the sales to each of the Investors are separate sales.

SECTION II

CLOSING DATE; DELIVERY

2.1 CLOSING. The purchase and sale of the Shares shall take place in a closing (the "CLOSING") at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304-1050 on or about February 17, 1999 or at such other time as the Company and the Investors mutually agree upon.

2.2 DELIVERY. At the Closing, the Company will deliver to each Investor a certificate, registered in such Investor's name, representing the number of Shares to be purchased by such Investor as specified in the Schedule of Investors, against payment of the purchase price therefor by cancellation of indebtedness, by check payable to the Company, by wire transfer in accordance with the Company's wiring instructions, or by a combination thereof. Upon completion of the Closing, all purchasers of Shares shall be considered "Investors" within the meaning of this Agreement.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth on Exhibit C attached hereto, the Company represents and warrants to the Investors as follows:

3.1 ORGANIZATION AND STANDING; CERTIFICATE AND BYLAWS. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of Delaware and is in good standing under such laws. The Company has requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as presently conducted, and is in good standing in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or properties.

3.2 CORPORATE POWER. The Company will have at the Closing all requisite legal and corporate power and authority to execute and deliver this Agreement and any agreements set forth as exhibits hereto (collectively, the "AGREEMENTS"), to sell and issue the Shares hereunder, to issue the Common Stock issuable upon conversion of the Shares and to carry out and perform its obligations under the terms of the Agreements.

3.3 CAPITALIZATION. The authorized capital stock of the Company will, upon the filing of the Certificate, consist of 27,000,000 shares of Common Stock (the "COMMON STOCK") and 15,526,616 shares of Preferred Stock (the "PREFERRED STOCK"), 5,000,000 of which are designated Series A Preferred Stock, 5,776,616 of which are designated Series B Preferred Stock and 4,750,000 of which are designated Series C Preferred Stock. Immediately prior to the Closing, 6,623,464 shares of Common Stock will be outstanding, 4,444,545 shares of Series A Preferred Stock will be outstanding and 5,684,024 shares of Series B Preferred Stock will be outstanding. The Company has reserved 15,526,616 shares of Common Stock for issuance upon conversion of the Preferred Stock. The Company has reserved 1,526,108 shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its 1997 Stock Plan duly adopted by the Board of Directors and approved by the Company's stockholders (the "1997 Stock Plan"). Of such reserved shares of Common Stock, options to purchase 526,108 shares have been granted and are currently outstanding and 1,000,000 shares of Common Stock remain available for issuance pursuant to the 1997 Stock Plan. All of the outstanding shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock are duly authorized, validly issued, fully paid and nonassessable, and were issued in compliance with applicable federal and state securities laws. The Shares, when issued pursuant to the terms of this Agreement, will be duly authorized, validly issued, fully paid and nonassessable. Except those purchase rights, options and warrants as set forth in Schedule 3.3, there are no other options, warrants or other rights (including conversion or preemptive rights) or agreements outstanding to purchase any of the Company's authorized and unissued capital stock. To the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company.

3.4 AUTHORIZATION. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution, delivery and performance

of the Agreements by the Company, the authorization, sale, issuance and delivery of the Shares (and the Common Stock issuable upon conversion of the Shares) and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms. The Shares, when issued in compliance with the provisions of this Agreement, will be validly issued, will be fully paid and nonassessable, and will have the rights, preferences and privileges described in the Certificate; the Common Stock issuable upon conversion of the Shares has been duly and validly reserved and, when issued in compliance with the provisions of this Agreement and the Certificate, will be validly issued, and will be fully paid and nonassessable; and the Shares and such Common Stock will be free of any liens or encumbrances, assuming the Investors take the shares with no notice thereof, other than any liens or encumbrances created by or imposed upon the holders; provided, however, that the Shares (and the Common Stock issuable upon conversion thereof) may be subject to restrictions on transfer under state and/or federal securities laws as set forth herein.

3.5 COMPLIANCE WITH OTHER INSTRUMENTS. The Company is not in violation or default of any term of its Certificate or Bylaws, or in any material respect of any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment, order or decree, and to its knowledge is not in violation of any statute, rule or regulation applicable to the Company where such violation would have a material adverse effect on the Company. The execution, delivery and performance of and compliance with the Agreements, and the issuance of the Shares and the Common Stock issuable upon conversion of the Shares, have not resulted in and will not result in any material violation of, or conflict with, or constitute with or without the passage of time and the giving of notice a material violation or default under, the Company's Certificate or Bylaws.

3.6 GOVERNMENTAL CONSENT, ETC. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares (and the Common Stock issuable upon conversion of the Shares), or the consummation of any other transaction contemplated hereby, except (a) filing of the Certificate in the office of the Delaware Secretary of State and (b) qualification (or taking such action as may be necessary to secure an exemption from qualification, if available) of the offer and sale of the Shares (and the Common Stock issuable upon conversion of the Shares) under applicable Blue Sky laws.

3.7 OFFERING. Subject to the accuracy of the Investors' representations in Section 4 hereof, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement, and the issuance of the Common Stock to be issued upon conversion of the Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "SECURITIES ACT") and in compliance with applicable state securities laws.

3.8 BROKERS OR FINDERS; OTHER OFFERS. The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for

brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

3.9 INTELLECTUAL PROPERTY. The Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information and proprietary rights and processes necessary for its business as currently conducted without any conflict with, or infringement of, the rights of others. There are no outstanding options, licenses, or agreements of any kind relating to the foregoing, nor is the Company bound by or a party to any options, licenses or arrangements of any kind with respect to the patents, trademarks, service marks, tradenames, copyrights, trade secrets, licenses, information, proprietary rights and process of any other person or entity, except, in either case, for standard end-use, object code, internal use software licenses and support maintenance agreements. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets or other proprietary rights or processes of any other person or entity. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interest of the Company or that would conflict with the Company's business. Neither the execution or delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as currently conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any such employee is now obligated. The Company does not believe it is or will be necessary to use any inventions of any of its employees (or persons it currently intends to hire) made prior to their employment by the Company. Set forth in Section 3.9 of the Schedule of Exceptions is a listing of all patents, trademarks and licenses of the Company.

3.10 SUBSIDIARIES. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity.

3.11 LITIGATION. There is no action, suit, proceeding or, to the Company's knowledge, investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of this Agreement, the Amended and Restated Stockholders' Rights Agreement, attached hereto as Exhibit D (the "STOCKHOLDERS' RIGHTS AGREEMENT") and of even date herewith, or the right of the Company to enter into each such agreement, or to consummate the transactions contemplated hereby or thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality which prohibits the transactions contemplated by this Agreement. There is no action, suit or proceeding by the Company currently pending or which the Company currently intends to initiate. The foregoing includes, without limitation, actions, suits, proceedings or investigations pending or threatened (or any basis therefor) known to the Company involving the prior employment of any of the Company's employees, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employees, or their obligations under any agreements with prior employers.

3.12 RIGHTS OF REGISTRATION. Except as contemplated in the Stockholders' Rights Agreement, the Company has not granted or agreed to grant any registration rights, including piggyback rights, to any person or entity.

3.13 CORPORATE DOCUMENTS. The Certificate and Bylaws of the Company are in substantially the forms attached hereto as Exhibit B and Exhibit E, respectively.

3.14 EMPLOYEE BENEFIT PLANS. The Company does not have any "employee benefit" plan as defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). The Company is not, nor was it at any time, obligated to contribute to any employee pension benefit plan which is or was a multi-employer plan as defined in ERISA.

3.15 TAX RETURNS AND PAYMENTS. The Company has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due. Except as would not have a material adverse effect on the Company, since the date of the Financial Statements, the Company has not incurred any taxes, assessments or governmental charges other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all taxes, assessments and governmental charges with respect to its business, properties and operations for such period. Except as would not have a material adverse effect on the Company, the Company has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

3.16 COMPLIANCE WITH LAWS. The Company has complied with and is not in violation of any foreign, federal, state or local statute, law or regulation, the violation of which would have a material adverse effect on the Company.

3.17 TITLE TO PROPERTY AND ASSETS. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens which arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. With respect to the property and assets it leases, the Company is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

3.18 NO CONFLICT OF INTEREST. Except as set forth on Schedule 3.18, the Company is not indebted to any of its officers or directors or to their respective spouses or children, in any amount whatsoever other than in connection with expenses or advances of expenses incurred in the ordinary course of business. None of the Company's officers or directors, or any members of their immediate families, are indebted to or have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated (other than the Company itself) or with which the Company has a business relationship, or any firm or corporation which competes with the Company except that officers, directors and/or stockholders of the Company may own stock in (but not to exceed two (2) percent of the outstanding capital stock thereof) publicly traded companies that may compete with the Company. No officer or director or any member of their immediate families is interested in any material contract with the Company.

3.19 BOOKS AND RECORDS. The Company has made available to the Investors all corporate and financial books and records of the Company which are current in all material respects.

3.20 VOTING AGREEMENTS. To the knowledge of the Company, other than the Stockholders' Rights Agreement, there is no stockholder agreement or voting agreement or agreement or understanding between any stockholders or any other persons that grants special rights with respect to any shares of the Company's capital stock.

3.21 MATERIAL AGREEMENTS. Except as set forth in the Schedule 3.22 of the Schedule of Exceptions, the Company does not have any contract, agreement, lease or commitment, written or oral, absolute or contingent, other than (i) contracts for the purchase of supplies or services entered into in the ordinary course of business and that do not involve more than \$15,000 and do not extend for more than one year beyond the date hereof, (ii) equipment leases entered into in the ordinary course of business and that do not individually provide for rental payments of more than \$20,000 annually, (iii) contracts terminable by the Company on no more than sixty days' notice without materially adverse cost or liability to the Company and (iv) contracts expressly contemplated hereby. The Company has not engaged in the past three (3) months in any substantive and material discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

3.22 FINANCIAL STATEMENTS. The Company has delivered to each Investor its unaudited balance sheet as of December 31, 1998 and unaudited statement of income for the twelve-month period ending on December 31, 1998 (collectively, the "Financial Statements"), copies of which are attached hereto as Exhibit F. The Financial Statements are in accordance with the books and records of the Company and present fairly the financial condition and position of the Company as of the statement date, and other dates therein specified; provided, however, that the unaudited interim financial statements are subject to normal recurring year-end audit adjustments. The Company has made a good faith effort to prepare the Financial Statements in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, and the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to December 31, 1998, and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company will make a good faith effort to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

3.23 CHANGES. Except as would not have a material adverse effect on the Company, since December 31, 1998 there has not been:

- a. any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;
- b. any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted);
- c. any waiver by the Company of a material debt owed to it;
- d. any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted);
- e. any material change to the Company in any compensation arrangement or agreement with any employee;
- f. any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;
- g. any resignation or termination of employment of any key officer of the Company; and the Company does not know of the impending resignation or termination of employment of any such officer;
- h. receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;
- i. any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;
- j. any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;
- k. any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;
- l. to the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

m. any agreement or commitment by the Company to do any of the things described in this Section 3.23.

3.24 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. Each employee, officer and consultant of the Company has executed a Proprietary Information and Inventions Agreement substantially in the form of previously reviewed by counsel to the Purchasers. The Company is not aware that any of its employees or consultants is in violation thereof and the Company will use its reasonable efforts to prevent any such violation.

3.25 SECTION 83(b) ELECTIONS. To the Company's knowledge, all election notices permitted by Section 83(b) of the Internal Revenue Code and any analogous provisions of applicable state tax laws have been timely filed by all employees who have purchased shares of the Company's common stock under agreements that provide for the vesting of such shares.

3.26 DISCLOSURE. The Company has provided the Investors with the information which the Investors have requested for deciding whether to acquire the Shares. To the Company's knowledge, no representation or warranty of the Company contained in this Agreement and the exhibits attached hereto or any certificate furnished or to be furnished to the Investors at the Closing (when read together) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

3.27 INSURANCE. The Company has in full force and effect fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed.

3.28 DIVIDENDS. The Company has not declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock.

3.29 QUALIFIED SMALL BUSINESS STOCK. The Company represents and warrants to the Investors that, to the best of its knowledge, the Shares should qualify as "Qualified Small Business Stock" as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended as of the date hereof.

3.30 LABOR AGREEMENTS. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the knowledge of the Company, has sought to represent any of the employees, representatives or agents of the Company. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment. The Company is not aware that any executive officer or key employee intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement,

bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement.

3.31 PERMITS. The Company has all franchises, permits, license and any similar authority necessary for the conduct of its business, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company. The Company is not in default under any of such franchises, permits, licenses or other similar authority.

SECTION IV

REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor hereby severally represents and warrants to the Company with respect to the purchase of the Shares as follows:

4.1 EXPERIENCE. It has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

4.2 INVESTMENT. It is acquiring the Shares and the Common Stock underlying the Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof. It understands that the Shares to be purchased and the Common Stock underlying the Shares have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Investor's representations as expressed herein.

4.3 ACCREDITED INVESTORS. The Investor is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

4.4 RULE 144. It acknowledges that the Shares and the underlying Common Stock must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations.

4.5 NO PUBLIC MARKET. It understands that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.6 ACCESS TO DATA. It has had an opportunity to discuss the Company's business, management and financial affairs with its management. It has also had an opportunity to ask questions of officers of the Company, which questions were answered to its satisfaction. It understands that such discussions, as well as any written information issued by the Company, were intended to describe certain aspects of the Company's business but were not a thorough or exhaustive description. The foregoing does not, however, limit or modify the representations and warranties of the Company in Section III hereof, or the right of the Investors to rely thereon.

4.7 AUTHORIZATION. This Agreement when executed and delivered by such Investor will constitute a valid and legally binding obligation of the Investor, enforceable in accordance with its terms.

4.8 BROKERS OR FINDERS. Each Investor has not, and will not, incur, directly or indirectly, as a result of any action taken by such Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

4.9 TAX CONSEQUENCES; LEGAL REPRESENTATION. Each Investor has reviewed with the Investor's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement (including any tax consequences that may result under recently enacted tax legislation). Each Investor is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Each Investor understands that the Investor (and not the Company) shall be responsible for the Investor's own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement. Each Investor understands that the law firm of Wilson Sonsini Goodrich & Rosati is acting as counsel to the Company in connection with the transactions contemplated by this Agreement, and is not acting as counsel for the Investors.

SECTION V

CONDITIONS TO CLOSING OF INVESTORS

Each Investors' obligation to purchase Shares at the Closing is, at the option of such Investor, subject to the fulfillment of the following conditions on or before the Closing:

5.1 REPRESENTATIONS AND WARRANTIES CORRECT. The representations and warranties made by the Company in Section III hereof shall be true and correct in all material respects as of the Closing.

5.2 QUALIFICATIONS. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall be obtained and effective as of the Closing.

5.3 OPINION OF COMPANY COUNSEL. The Investors shall have received from Wilson Sonsini Goodrich & Rosati, counsel for the Company, an opinion, dated as of the Closing, in substantially the form of Exhibit H.

5.4 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. The Company and each of its employees shall have entered into the Company's standard form Proprietary Information and Inventions Agreement, in substantially the form provided to the Investors.

5.5 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing shall have been performed or complied with.

5.6 BLUE SKY. With respect to the purchase of Shares by such Investor, the Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Common Stock issuable upon conversion of the Shares as contemplated herein.

5.7 AMENDED AND RESTATED CERTIFICATE. The Certificate shall have been filed with the Delaware Secretary of State.

5.8 STOCKHOLDERS' RIGHTS AGREEMENT. The Company shall have delivered an executed copy of the Stockholders' Rights Agreement and shall be bound thereby.

5.9 COMPLIANCE CERTIFICATE. The Company shall have delivered to the Investors a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing, and certifying to the fulfillment of the conditions specified in Sections 5.1 and 5.5 of this Agreement.

5.10 DELIVERY OF SHARE CERTIFICATES. The Company shall deliver, and the Investors shall have received, the share certificate representing each such Investor's purchase of the Series C Preferred Stock under this Agreement.

5.11 MANAGEMENT RIGHTS AGREEMENTS. The Company shall have delivered an executed copy of the Management Rights Agreements collectively attached hereto as Exhibit F and shall be bound thereby.

5.12 MANAGEMENT RIGHTS AGREEMENTS. Concurrent with the Closing, Mike Schuh shall be appointed to the board of directors of the Company.

SECTION VI

CONDITIONS TO CLOSING OF COMPANY

The Company's obligation to sell and issue any Shares at the Closing is, at the option of the Company, subject to the fulfillment as of the Closing of the following conditions:

6.1 REPRESENTATIONS AND WARRANTIES CORRECT. The representations and warranties made by each Investor in Section IV hereof shall be true and correct when made, and shall be true and correct on the date of the Closing.

6.2 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by each Investor on or prior to the Closing shall have been performed or complied with in all material respects.

6.3 BLUE SKY. The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Common Stock issuable upon conversion of the Shares as contemplated herein.

6.4 AMENDED AND RESTATED CERTIFICATE. The Certificate shall have been filed with the Delaware Secretary of State.

6.5 STOCKHOLDERS' RIGHTS AGREEMENT. Each Investor shall have delivered an executed copy of the Stockholders' Rights Agreement and shall be bound thereby.

SECTION VII

AFFIRMATIVE COVENANTS OF THE COMPANY

7.1 COMPLIANCE WITH SECTION 1202(c) OF THE CODE. The Company hereby agrees that as long as the Shares are held by the Investors (or a transferee in whose hands such capital stock is eligible to qualify as a Qualified Small Business Stock as defined in Section 1202(c) of the Code), the Company will comply with all reporting and record-keeping requirements required of a Qualified Small Business under the Code or regulations promulgated thereunder. In addition, the Company shall submit to the Investors and to the Internal Revenue Service any reports that may be required under Section 1202(d)(1)(C) of the Code and any related Treasury Regulations. In addition, within ten (10) days after any Investor has delivered to the Company a written request therefor the Company shall deliver to such Investor a "QSBS Certificate" (the form of which is attached hereto as Exhibit G) informing the Investor whether such Investor's interest in the Company constitutes "Qualified Small Business Stock" as defined in Section 1202(c) of the Code. The Company's obligation to furnish this QSBS Certificate pursuant to this Section 7.1 shall continue until five (5) years from the date hereof, notwithstanding the fact that a class of the Company's stock may be traded on an established securities market during such period.

7.2 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENTS. The Company hereby agrees to enter into the Company's standard form Proprietary Information and Inventions Agreement with each employee and consultant it hires hereafter.

7.3 1997 STOCK PLAN.

a. Except as otherwise determined by the Board of Directors:

(i) twenty-five percent (25%) of such shares issued under the 1997 Stock Plan shall vest on the first anniversary of the vesting commencement date and the remainder shall vest at one forty-eighth (1/48) per month thereafter;

(ii) such shares issued under the Stock Plan may not be transferred prior to vesting;

(iii) in the event that an employee is terminated by the Company, the Company shall have a right to repurchase at cost any unvested shares of Common Stock issued under the 1997 Stock Plan held by such employee;

(iv) such shares issued under the 1997 Stock Plan shall not be transferable for one hundred and eighty (180) days following the effective date of an Initial Public Offering; and

(v) in the event of a Change of Control as defined in the Certificate of the Company and the termination of an employee without cause, the vesting on those shares issued under the 1997 Stock Plan held by such employee shall accelerate by twelve (12) months.

SECTION VIII

MISCELLANEOUS

8.1 SURVIVAL OF WARRANTIES. The representations and warranties of the Company and the Investors contained in and made pursuant to this Agreement shall survive for a period of two (2) years after the execution and delivery of this Agreement.

8.2 GOVERNING LAW. This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California. The parties hereto hereby submit to the exclusive jurisdiction and venue of the United States District Court for the Northern District of California.

8.3 SUCCESSORS AND ASSIGNS. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto, provided, however, that the rights of an Investor to purchase Shares shall not be assignable without the consent of the Company.

8.4 ENTIRE AGREEMENT; AMENDMENT. The Agreements and the other documents delivered pursuant hereto at the Closing constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought; provided, however, that holders of 75% of the Common Stock issued or issuable upon conversion of the Shares may, with the Company's prior written consent, waive, modify or amend on behalf of all Investors, any provision hereof.

8.5 NOTICES, ETC. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, overnight courier or by facsimile upon proper confirmation of receipt, addressed

(a) if to an Investor, at such Investor's address or addresses set forth in Exhibit A, or at such other address as such Investor shall have furnished to the Company in writing, or (b) if to any other holder of any Shares, at such address as such holder shall have

furnished the Company in writing, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Shares who has so furnished an address to the Company, or (c) if to the Company, one copy should be sent to such address as the Company shall have furnished to the Investors.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or seventy-two (72) hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

8.6 EXPENSES. If the Closing is effected, the Company agrees to pay an amount not to exceed \$15,000 for fees of outside legal counsel to the Investors arising in connection with the negotiation, execution and consummation of the transactions contemplated by this Agreement. The Company shall not be responsible for any other fees and expenses of the Investors, whether incurred pursuant to the negotiation, execution and consummation of the transactions contemplated by this Agreement or otherwise. In the event that the financing does not close, the Company and each Investor shall bear its own legal and other expenses incurred to date with respect to the transactions contemplated by this Agreement.

8.7 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the Investors, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one and the same instrument.

8.8 SEVERABILITY. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

8.9 DELAYS OR OMISSIONS. No delay or omission to exercise any right, power or remedy accruing to any party to this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party shall be cumulative and not alternative.

8.10 FURTHER ASSURANCES. Each party hereto agrees to take such further actions including the execution of such documents as may be necessary or desirable, or reasonably requested by the other, in order to carry out the purposes of this Agreement.

8.11 FINDER'S FEE. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. The Company agrees to indemnify and hold harmless each Investor for any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

8.12 LEGAL FEES. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of the Agreements, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Series C Preferred Stock Purchase Agreement on the day and year first set forth above.

"COMPANY"

NETFLIX.COM, INC.

a Delaware corporation

By: /s/

Reed Hastings
Chief Executive Officer

"INVESTORS"

FOUNDATION CAPITAL II, L.P.

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

FOUNDATION CAPITAL II ENTREPRENEURS FUND, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

[Signature Page to NetFlix.com, Inc. Series C Stock Purchase Agreement]

FOUNDATION CAPITAL II PRINCIPALS FUND, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/

Name:
Title:

TCV II, V.O.F.
a Netherlands Antilles General Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TECHNOLOGY CROSSOVER VENTURES II, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TCV II (Q), L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/

Name: Robert C. Bensky
Title: Chief Financial Officer

TCV II STRATEGIC PARTNERS, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/ _____
Name: Robert C. Bensky
Title: Chief Financial Officer

TECHNOLOGY CROSSOVER VENTURES II, C.V.
a Netherlands Antilles Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/ _____
Name: Robert C. Bensky
Title: Chief Financial Officer

INSTITUTIONAL VENTURE PARTNERS VIII, L.P.

By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/ _____
Name:
Title: Managing Director

IVM INVESTMENT FUND VIII, LLC

By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/ _____
Name:
Title: Managing Director

REED HASTINGS

WS INVESTMENT COMPANY 99A

/s/

By: M. Korman
Title: Member

COMDISCO, INC.

/s/

By:
Title:

Robert D. Sanchez

/s/

WS INVESTMENT COMPANY 99A

/s/

By:
Title:

COMDISCO, INC.

/s/

By:
Title:

Robert D. Sanchez

/s/

EXHIBIT A

NETFLIX.COM, INC.

SERIES C PREFERRED STOCK FINANCING

SCHEDULE OF INVESTORS

INVESTOR -----	NUMBER OF SHARES -----	PURCHASE PRICE -----
Foundation Capital II, L.P.		[\$6,000,000.00]
Foundation Capital II Entrepreneurs Fund, LLC		
Foundation Capital II Principals Fund, LLC		
TCV II, V.O.F.	25,514	\$ 93,240.78
Technology Crossover Ventures II, L.P.	877,749	\$ 2,870,239.23
TCV II (Q), L.P.	674,826	\$ 2,206,681.02
TCV II Strategic Partners, L.P.	119,758	\$ 391,608.66
Technology Crossover Ventures II, C.V.	134,015	\$ 438,229.05
Institutional Venture Partners VIII, L.P.	602,444	\$ 1,970,001.69
IVM Investment Fund VIII, LLC	9,174	\$ 29,998.98
Reed Hastings	-----	[\$1,000,000.00] -----
TOTAL:	4,587,156 =====	\$15,000,000.00 =====

EXHIBIT 7

THIS WARRANT HAS BEEN ACQUIRED FOR INVESTMENT AND NOT FOR DISTRIBUTION, AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. IT MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT THERETO UNDER SUCH ACT UNLESS SOLD PURSUANT TO RULE 144 OF SUCH ACT OR UNLESS SUCH SALE, PLEDGE, HYPOTHECATION, OR TRANSFER IS OTHERWISE EXEMPT FROM REGISTRATION. THE COMPANY MAY REQUEST A WRITTEN OPINION OF COUNSEL (FROM COUNSEL ACCEPTABLE TO THE COMPANY) SATISFACTORY TO THE COMPANY, TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED IN CONNECTION WITH SUCH SALE, PLEDGE OR HYPOTHECATION, OR OTHER TRANSFER. THIS NOTE MUST BE SURRENDERED TO THE CORPORATION OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, PLEDGE, HYPOTHECATION, OR ANY OTHER TRANSFER OF ANY INTEREST IN THIS NOTE.

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE HEREOF ARE SUBJECT TO RESTRICTIONS ON TRANSFER CONTAINED IN A NOTE AND WARRANT PURCHASE AGREEMENT AND A STOCKHOLDER'S RIGHTS AGREEMENT, A COPY OF EACH OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

NETFLIX.COM, INC.

COMMON STOCK WARRANT

Warrant No. WCS-# Number of Shares: _____ Date of Issuance: July 10, 2001 (subject to adjustment)

NETFLIX.COM, INC. (the "COMPANY"), for valid consideration received, hereby certifies that _____, or its registered assigns (in each case the "HOLDER"), is entitled, subject to the terms set forth below, to purchase from the Company, prior to termination as provided in Section 5 hereof, up to _____ shares of Common Stock of the Company with \$.001 par value ("COMMON STOCK"), at a purchase price of \$1.00 per share. The shares purchasable upon exercise of this Warrant, and the purchase price per share, each as adjusted from time to time pursuant to the terms of this Warrant, are hereinafter referred to as the "WARRANT STOCK" and the "PURCHASE PRICE," respectively. This Warrant is issued pursuant to the terms of that certain Note and Warrant Purchase Agreement dated as of the date hereof (the "PURCHASE AGREEMENT") in connection with the Company's issuance to the Holder of a Subordinated Promissory Note dated as of the date hereof.

1. EXERCISE.

(a) This Warrant may be exercised by the Holder, in whole or in part, on or after the date hereof by surrendering this Warrant, with the purchase form appended hereto as Exhibit A duly executed by such Holder or by such Holder's duly authorized attorney, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by

payment in full by cash, check or wire transfer of the Purchase Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise, or as provided in Section 1(c) below.

(b) The exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 1(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise shall be deemed to have become the holder or holders of record of the Warrant Stock represented by such certificates.

(c) Net Issue Exercise.

(i) In lieu of exercising this Warrant in the manner provided above in Section 1(a), the Holder may elect to receive shares equal to the value of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election in which event the Company shall issue to Holder a number of shares of Warrant Stock computed using the following formula:

$$X = Y (A - B)$$

A

Where	X = The number of shares of Warrant Stock to be issued to the Holder pursuant to this net exercise.
	Y = The number of shares of Warrant Stock in respect of which the net issue election is made (at the date of such calculation).
	A = The fair market value of one share of Common Stock (at the date of such calculation).
	B = The Purchase Price (as adjusted to the date of such calculation).

(ii) For purposes of this Section 1(c) and Section 12,

"FAIR MARKET VALUE" of a share of Common Stock as of a particular date (the "DETERMINATION DATE") shall mean (A) if shares of Common Stock are traded on a national securities exchange (an "EXCHANGE"), the average of the closing price of a share of the Common Stock of the Company on the last twenty (20) trading days prior to the Determination Date reported on such Exchange as reported in The Wall Street Journal, or (B) if shares of Common Stock are not traded on an Exchange but trade in the over-the-counter market and such shares are quoted on the National Association of Securities Dealers Automated Quotations System ("NASDAQ"), (I) the average of the last sales prices reported on NASDAQ or (II) if such shares are an issue for which last sale prices are not reported on NASDAQ, the average of the closing bid and ask prices, in each case on the last twenty (20) trading days (or if the relevant price or quotation did not exist on any of such days, the relevant price or quotation on the next preceding business day on which there was such a price or quotation) prior to the Determination Date as reported in The Wall Street Journal; or (C) if the shares of Common Stock are neither traded on an Exchange or in the over-the-counter market, then as determined in good faith by the Board of Directors of the Company; provided, that, if the Warrant is being exercised

upon the closing of the issuance and sale of shares of Common Stock of the Company in the Company's first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the value will be the initial "Price to Public" of one share of Common Stock specified in the final prospectus with respect to such offering.

(d) As soon as practicable after the exercise of this Warrant, and in any event within 15 days thereafter, the Company at Holder's expense will cause to be issued in the name of, and delivered to, the Holder, or as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct, a certificate or certificates for the number of shares of Warrant Stock to which such Holder shall be entitled.

2. ADJUSTMENTS.

(a) If outstanding shares of the Company's Common Stock shall be subdivided into a greater number of shares or a stock dividend shall be paid in respect of Common Stock, the Purchase Price in effect immediately prior to such subdivision or at the record date of such dividend, as the case may be, shall simultaneously with the effectiveness of such subdivision or immediately after the record date of such dividend be proportionately reduced. If outstanding shares of Common Stock shall be combined into a smaller number of shares, the Purchase Price in effect immediately prior to such combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Purchase Price, the number of shares of Warrant Stock purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares of Warrant Stock issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Purchase Price in effect immediately prior to such adjustment, by (ii) the Purchase Price in effect immediately after such adjustment. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) In case of any reclassification, change or conversion of securities of the Company of the class issuable upon the exercise of this Warrant or in case of any reorganization of the Company on or after the date hereof, other than upon a Change of Control Transaction (as defined in Section 5(a) below) and other than as a result of a subdivision, combination or stock dividend provided for in Section 2(a) above, then and in each such case the Holder of this Warrant, upon the exercise hereof at any time after the consummation of such reclassification, change, conversion or reorganization shall be entitled to receive (and upon written request, the Company shall provide the Holder duly executed documents evidencing the same), in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which such Holder would have been entitled upon such consummation if such Holder had exercised this Warrant immediately prior thereto, at an aggregate exercise price not more than that payable upon the exercise if this Warrant prior to such consummation, all subject to further adjustment as provided in paragraph (a); and in each such case, the terms of this Section 2 shall be applicable to the shares of stock or other securities properly receivable upon the exercise of this Warrant after such consummation.

(c) Whenever the Purchase Price or the number of shares of Warrant Stock purchasable hereunder shall be adjusted pursuant to Section 2 hereof, the Company shall make a certificate signed by its chief financial officer setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Purchase Price and the number of shares of Warrant Stock purchasable hereunder after giving effect to such adjustment.

3. TRANSFERS.

(a) Each Holder of this Warrant acknowledges that this Warrant and the Warrant Stock have not been registered under the Securities Act, and agrees not to sell, pledge, distribute, offer for sale, transfer or otherwise dispose of this Warrant or any Warrant Stock issued upon its exercise except in compliance with the terms of the Purchase Agreement with respect to the Warrant and in compliance with the terms of that certain Amended and Restated Stockholders' Rights Agreement dated as of July____, 2001, as such may be amended or restated from time to time (the "STOCKHOLDERS' RIGHTS AGREEMENT").

(b) Subject to the provisions of Section 3(a) hereof, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment (in the form of Exhibit B hereto) at the principal office of the Company, and the transferee shall be deemed to be a "HOLDER" hereunder, provided, however, that this Warrant may not be transferred in whole or in part to any person or entity that the Board of Directors determines in good faith directly or indirectly competes with the Company. Any transferee shall execute appropriate documentation to become a party to, have the benefits of and be bound by the terms of the Purchase Agreement and the Stockholders' Rights Agreement.

(c) Until any transfer of this Warrant is made in the warrant register, the Company may treat the Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if and when this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary and such transferee may be deemed by the Company to be the "HOLDER."

(d) The Company will maintain a register containing the name and address of the Holder of this Warrant. The Holder may change such Holder's address as shown on the warrant register by written notice to the Company requesting such change.

4. NO IMPAIRMENT. The Company will not, by amendment of its Certificate of Incorporation or through reorganization, consolidation, merger, dissolution, sale of assets or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will (subject to Section 13 below) at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be reasonably necessary or appropriate in order to protect the rights of the holder of this Warrant against impairment.

5. TERMINATION.

(a) This Warrant (and the right to purchase securities upon exercise hereof) shall terminate upon the earliest of: (i) July __, 2006, or (ii) the closing of the Company's sale of all or substantially all of its assets or the acquisition of the Company by another person or entity by means of merger or other transaction or series of related transactions as a result of which the shareholders of the Company immediately prior to such transaction or series of related transactions possess a minority of the voting power of the surviving or acquiring entity immediately thereafter (a "CHANGE OF CONTROL TRANSACTION"). The foregoing notwithstanding, a transaction shall not constitute a Change of Control Transaction if (A) its sole purpose is to change the state of the Company's incorporation or create a holding company that will be owned in substantially the same proportions by the persons who held the Company's equity securities immediately before such transaction; (B) it is the initial public offering of the Company's equity securities or a bona fide private equity financing of the Company, or (C) the consideration received by the stockholders of the Company in such transaction is other than cash and/or securities of an entity whose securities of the same type are traded on a national securities exchange or the Nasdaq National Market.

(b) This Warrant shall be deemed to be exercised automatically in full pursuant to the provisions of Section 1(c) hereof, without any further action on behalf of the Holder, immediately prior to the time this Warrant would otherwise terminate pursuant to subsection (a) above.

6. NOTICES OF CERTAIN TRANSACTIONS. In case:

(a) the Company shall take a record of the holders of its Common Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, or

(b) of any capital reorganization of the Company, any reclassification of the capital stock of the Company, any Change of Control Transaction, any other consolidation or merger of the Company with or into another corporation, or any other transaction or series of related transactions pursuant to which the Company's stockholders immediately prior thereto will possess a minority of the voting power of the surviving or acquiring entity immediately thereafter, or any transfer of all or substantially all of the assets of the Company, or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company,

then, and in each such case, the Company will mail or cause to be mailed to the Holder of this Warrant a notice specifying, as the case may be, (i) the date on which a record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, Change of Control Transaction, dissolution, liquidation, winding-up or redemption is to take place, and the time, if any is to be fixed, as of which

the holders of record of Common Stock (or such other stock or securities at the time deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up or redemption) shall be determined. Such notice shall be mailed at least fifteen (15) days prior to the record date or effective date for the event specified in such notice.

7. **RESERVATION OF STOCK.** The Company will at all times reserve and keep available, solely for the issuance and delivery upon the exercise of this Warrant, such shares of Warrant Stock and other stock, securities and property, as from time to time shall be issuable upon the exercise of this Warrant. The Company covenants and agrees that all shares of Warrant Stock which may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be duly authorized, validly issued, fully paid (assuming payment of the exercise price by Holder) and nonassessable and free from all preemptive rights of any shareholder and free of all taxes, liens and charges with respect to the issue thereof. The Company will take all such action as may be reasonably necessary to assure that such shares of Warrant Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any domestic securities exchange upon which the Preferred Stock may be listed; provided, however, that the Company shall not be required to effect a registration under Federal or state securities laws with respect to such exercise.

8. **EXCHANGE OF WARRANTS.** Upon the surrender by the Holder of any Warrant, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 3 hereof, issue and deliver to or upon the order of such Holder, at the Holder's expense, a new Warrant of like tenor, in the name of such Holder or as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock called for on the face or faces of the Warrant so surrendered.

9. **REPLACEMENT OF WARRANTS.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor at the Holder's expense.

10. **NOTICES.** All notices and other communications required or permitted hereunder shall be in writing and delivered, mailed or transmitted by any standard form of telecommunication. Notices and other communications to the Holder shall be directed to it at its address noted in the Company's records; and notices and other communications to the Company shall be directed to it at its address at NetFlix.com, Inc., 970 University Avenue, Los Gatos, California 95032, attention: Chief Financial Officer, with a copy to NetFlix.com, Inc., 970 University Avenue, Los Gatos, California 95032, attention: General Counsel; or as to each party, at such other address as shall be designated by such party in a written notice to the other party pursuant hereto. Any such notice or other communication shall be deemed to have been duly given (a) when sent by Federal Express or other overnight delivery service of recognized standing, on the business day following deposit with such service; (b) when mailed by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery;

and (d) when telecopied, upon confirmation of receipt. Any party hereto may by notice so given change its address for future notice hereunder.

11. NO RIGHTS AS STOCKHOLDER. Until the exercise of this Warrant, the Holder of this Warrant shall not have or exercise any rights by virtue hereof as a stockholder of the Company. Without limiting the generality of the foregoing, and except as otherwise provided in Section 2 hereof, no dividends shall accrue to the shares of Warrant Stock underlying this Warrant until the exercise hereof and the purchase of the underlying shares of Warrant Stock, at which point dividends shall begin to accrue with respect to such purchased shares of Warrant Stock from and after the date such shares of Warrant Stock are so purchased. Nothing in this Section 12 shall limit the right of the Holder to be provided the notices required to be provided pursuant to the terms of this Warrant or the Purchase Agreement.

12. NO FRACTIONAL SHARES. No fractional shares of Warrant Stock will be issued in connection with any exercise hereunder. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Warrant Stock on the date of exercise, as determined in accordance with Section 1(c)(ii) hereof.

13. AMENDMENT OR WAIVER. Any term of this Warrant may be amended or waived only by an instrument in writing signed by the Company and the holders of at least a majority of the outstanding principal amount of the subordinated promissory notes issued pursuant to the Purchase Agreement. Any waiver or amendment effected in accordance with this Section 14 shall be binding upon each holder of any Warrants issued pursuant to the Purchase Agreement, any shares of Warrant Stock then outstanding, each future holder of the Warrant and all such shares, and the Company. The Holder acknowledges that by the operation of this Section 14, the holders of a majority of the outstanding principal amount of the subordinated promissory notes issued pursuant to the Purchase Agreement will have the right and power to diminish or eliminate all rights of Holder under this Warrant or under the Purchase Agreement. Notwithstanding the foregoing, Holder may waive any of its rights arising pursuant to the terms of this Warrant without the consent of any of the other holders of the subordinated promissory notes issued pursuant to the Purchase Agreement.

14. HEADINGS. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

15. GOVERNING LAW. This Warrant and all actions arising out of or in connection with this Warrant shall be governed by and construed in accordance with the laws of the State of California, without application of conflicts of law principles thereunder.

16. SUCCESSOR AND ASSIGNS. The terms and provisions of this Warrant and the Purchase Agreement shall incur to the benefit of, and be binding upon, the Company and each Holder hereof and their respective permitted successors and assigns.

18. ATTORNEYS' FEES. If any action at law or in equity is necessary to enforce or interpret the terms of this Warrant the adjudicating party may in its discretion order that the non-prevailing party, as determined by such adjudicating party, reimburse the prevailing party for reasonable

attorney's fees and costs in addition to any other relief to which such prevailing party may be entitled.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its duly authorized officer as of the date first written above.

NETFLIX.COM, INC.

By: _____

Name: Barry McCarthy

Title: CFO

Address: 970 University Avenue
Los Gatos, California 95032

By its counter-signature below, Holder hereby agrees to the foregoing terms and conditions set forth in this Warrant.

"HOLDER"

TCV IV, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: _____

Name: Carla S. Newell

Title: Attorney-In-Fact

Address:

EXHIBIT A

PURCHASE FORM

To: NETFLIX.COM, INC. Dated: _____

(1) The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby irrevocably elects to purchase _____ shares of the Warrant Stock covered by such Warrant and herewith makes payment of \$_____, representing the full purchase price for such shares at the price per share provided for in such Warrant, together with all applicable transfer taxes, if any.

(2) The undersigned hereby elects to purchase shares of Warrant Stock pursuant to Section 1(c) of the attached Warrant by requesting cancellation of [all] [that part] of this Warrant representing _____ shares of Warrant Stock and issuance of that number of shares of Warrant Stock that is issuable to the Holder pursuant to the formula in Section 1(c) regarding Net Issue Exercise.

(3) Please issue a certificate or certificates representing said shares of Warrant Stock in the name of the undersigned or in such other name as is specified below:

(Name)

(Address)

(4) The undersigned represents that the aforesaid shares of Warrant Stock are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares except in compliance with applicable securities laws.

(Date) (Signature)

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant with respect to the number of shares of Warrant Stock covered thereby set forth below, unto:

NAME OF ASSIGNEE ADDRESS NO. OF SHARES

Dated: _____ Signature: _____

Witness: _____

WARRANT RECEIPT

The undersigned hereby acknowledges receipt of the following Common Stock warrant of NetFlix.com, Inc. dated July 10, 2001:

Certificate No.

WCS-1

Number of Shares

10,413,867

The undersigned also acknowledges that said certificate bears a certain legend on the reverse side referring to the Securities Act of 1933.

Dated: _____, 2001

TCV IV, L.P.

By: _____

Title: _____

**SCHEDULE OF THE NUMBER OF SHARES OF COMMON STOCK
UNDERLYING THE WARRANTS
ISSUED TO THE REPORTING PERSONS**

PURCHASER	NOTES	WARRANT SHARES	WARRANT COST	TOTAL COST
-----	-----	-----	-----	-----
TCV IV, L.P. 528 RAMONA STREET PALO ALTO, CA 94301	\$6,249,103.85	10,413,867	\$10,413.87	\$6,259,517.72
TCV IV STRATEGIC PARTNERS, L.P. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 233,020.73	388,319	\$ 388.32	\$ 233,409.05
TCV II, V.O.F. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 25,485.24	42,470	\$ 42.47	\$ 25,527.71
TECHNOLOGY CROSSOVER VENTURES II, L.P. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 784,520.78	1,307,371	\$ 1,307.37	\$ 785,828.15
TCV II (Q), L.P. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 603,150.79	1,005,125	\$ 1,005.13	\$ 604,155.92
TCV II STRATEGIC PARTNERS, L.P. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 107,038.03	178,374	\$ 178.37	\$ 107,216.40
TECHNOLOGY CROSSOVER VENTURES II, C.V. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 119,780.65	199,610	\$ 199.61	\$ 199,980.26
TCV FRANCHISE FUND, L.P. 528 RAMONA STREET PALO ALTO, CA 94301	\$ 168,186.56	280,275	\$ 280.28	\$ 168,466.84

End of Filing

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