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9-24-99

10-07-1999



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Docket No.:

101163799

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To the Honorable Commissioner of Patents and Trademarks, please return the attached original documents or copy thereof.

1. Name of conveying party(ies):  
Aqueduct Software, Inc.



Name and address of receiving party(ies):

Name: Silicon Valley Bank

09-24-1999

U.S. Patent & TMO/TM Mail Rcp: Dt. #26

Internal Address: HF250

Street Address: 3003 Tasman Drive

City: Santa Clara State: CA ZIP: 95054

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: \_\_\_\_\_

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)  
Serial Number: 75/362972

B. Trademark Registration No.(s)

Additional numbers

Yes  No

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SEP 24 A 9:22  
PATENT & TRADEMARK OFFICE

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Marilyn Tham  
Buchalter, Nemer, Fields & Younger  
Internal Address: \_\_\_\_\_

Street Address: 333 Market Street, 29th Floor

City: San Francisco State: CA ZIP: 94105

6. Total number of applications and registrations involved:..... 1

7. Total fee (37 CFR 3.41):.....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

500977

DO NOT USE THIS SPACE

10/07/1999 MTHA11 00000005 500977 75362972

01 FC:481 40.00

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Marilynn Tham

Name of Person Signing

Signature

September 21, 1999

Date

Total number of pages including cover sheet, attachments, and 1

AMENDED AND RESTATED INTELLECTUAL PROPERTY  
SECURITY AGREEMENT

This Amended and Restated Intellectual Property Security Agreement (this "Agreement") is entered into as of June 21, 1999, by and between SILICON VALLEY BANK ("Bank") and AQUEDUCT SOFTWARE, INC. ("Borrower").

Bank and Borrower have previously entered into that certain Intellectual Property Security Agreement, dated as of July 10, 1998 (the "Original IP Security Agreement"). Bank and Borrower now desire to amend and restate the Original IP Security Agreement in its entirety.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Bank and Borrower hereby amend and restate the Original IP Security Agreement in its entirety as follows:

RECITALS

A. Bank has agreed to make certain advances of money and to extend certain financial accommodation to Borrower (the "Bridge Facility" or the "Loans") in the amounts and manner set forth in that certain Loan and Security Agreement, dated July 10, 1998, by and between Bank and Borrower (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement"; capitalized terms used herein are used as defined in the Loan Agreement; the Loan Agreement, the original IP Security Agreement, the Warrants and this Agreement are collectively called the "Loan Documents"). Bank is willing to continue to extend financial accommodations to Borrower, but only upon the condition, among other things, that Borrower grant to Bank a first priority perfected security interest in certain Intellectual Property Collateral (as defined below), to secure the Obligations.

B. Pursuant to the terms of the Loan Documents, Borrower has granted to Bank a security interest in all of Borrower's right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral, including but not limited to, the Intellectual Property Collateral.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, as collateral security for the prompt and complete payment when due of its obligations under the Loan Agreement, Borrower hereby represents, warrants, covenants and agrees as follows:

## AGREEMENT

### 1. Definitions:

(a) "Intellectual Property Collateral" shall mean and include all Copyrights, Trademarks, Patents, Mask Works, Software Assets, and all proceeds and products of the foregoing, including all insurance, indemnity, or warranty payments.

(b) "Software Assets" shall mean and include the information, data, software programs (including source code, object code and all related applications and data files), interests, and contract and license rights described in Attachments 1-3 hereto, and all successor versions, derivations and/or replacements of such information, data, software programs, interests and contract and license rights.

2. To secure the Obligations, Borrower grants and pledges to Bank a security interest in all of Borrower's right, title and interest in, to and under its Intellectual Property Collateral (including without limitation those Copyrights, Patents, Trademarks, Mask Works and Software Assets listed on Exhibits A through D hereto), and including without limitation all proceeds thereof (such as, by way of example but not by way of limitation, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

3. This security interest is granted in conjunction with the security interest granted to Bank under the Loan Agreement. The rights and remedies of Bank with respect to the security interest granted hereby are in addition to those set forth in the Loan Agreement and the other Loan Documents, and those which are now or hereafter available to Bank as a matter of law or equity. Each right, power and remedy of Bank provided for herein or in the Loan Agreement or any of the Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Bank of any one or more of the rights, powers or remedies provided for in this Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including Bank, of any or all other rights, powers or remedies.

4. Borrower represents, warrants and certifies to Bank as follows:

(a) Attachment 1 hereto lists all software and telecommunications service vendors and related licenses of software (including source code, object code and all related applications and data files) and intellectual property relating to and enabling the operation of software provided by Borrower and the operating environment necessary to support such software and their ongoing development and maintenance.

(b) Attachment 2 hereto lists all software licensed by Borrower relating to and enabling the operation of the software provided by Borrower and the operating environment necessary to support such software and their ongoing development and maintenance.

(c) Attachment 3 hereto lists all software programs (including source code, object code and all related applications and data files) for Borrower's internal operation and Internet web presence/user interface for all active and archived software, all source code used to generate and maintain firewall and security capabilities for Borrower's web hosting site and all source code used for monitoring such software operations and generating real-time alerts.

(d) In preparing Attachments 1-3 hereto, Borrower's employees investigated all relevant business and other records of Borrower and interviewed all of Borrower's personnel having knowledge of Borrower's Software Assets.

(e) Attachments 1-3 hereto are accurate and complete in their description of all of Borrower's Software Assets as of June 21, 1999.

(f) Simultaneously with the execution and delivery of this Agreement, Borrower has delivered to Bank a copy of all (i) software programs (including source code, object code and all related applications and data files) licensed by Borrower relating to and enabling the operation of the Software Assets provided by Borrower and the operating environment necessary to support the Software Assets and their ongoing development and maintenance; (ii) software programs (including source code, object code and all related applications and data files) for Borrower's internal operation and Internet web presence/user interface for all active and archived Software Assets, all source code used to generate and maintain firewall and security capabilities for Borrower's web hosting site and all source code used for monitoring the Software Assets operations and generating real-time alerts; (iii) firmware associated with the property described in clauses (i) and (ii) above; and (iv) documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to the software and firmware described in clauses (i) and (ii) above.

(g) By virtue of this Agreement, to secure the payment, performance and observance of the Obligations, Borrower has granted to Bank a security interest in, and mortgage on, all right, title and interest of Borrower in and to the Software Assets, together with all general intangibles of like nature, now existing or hereafter adopted or acquired, and any and all proceeds of the foregoing, including, without limitation, any claims by Borrower against third parties for infringement.

(h) Bank is authorized to execute and file one or more financing statements (and similar documents) or copies thereof or of this Agreement with respect to the Software Assets signed only by Bank.

(i) Borrower has executed and delivered all agreements, instruments, documents and papers to evidence Bank's security interest in the Software Assets.

(j) Simultaneously with the execution and delivery of this Agreement, Borrower shall perform all acts and execute all documents to evidence, perfect, maintain, record and enforce Bank's interest in the Intellectual Property Collateral, including the Software Assets.

(k) Simultaneously with the execution and delivery of this Agreement, Borrower shall obtain and provide to Bank all consents to the grant of a security interest in all licenses of technology licensed by Borrower from any licensors and consents to the assignment of such licenses in the event Bank exercises any of its rights and remedies under the Loan Documents.

5. Until all of the Obligations are paid and performed in full, Borrower, at its expense, shall furnish to Bank on the fifteenth day of every month commencing on July 15, 1999, a copy of all software programs (including source code, object code and all related applications, data files and so-called "back-up files") for Borrower's internal operation and Internet web presence/user interface for all active and archived Software Assets, all source code used to generate and maintain firewall and security capabilities for Borrower's web hosting site and all source code used for monitoring the software operations and generating real-time alerts.

6. Bank is authorized to conduct at such times and as many times as Bank shall deem reasonably prudent inspections, investigations and audits of all Intellectual Property Collateral, including without limitation software programs including the "back-up files" for Borrower's internal operation and Internet web presence/user interface for all active and archived Software Assets, all source code used to generate and maintain firewall and security capabilities for Borrower's web hosting site and all source code used for monitoring software operations and generating real-time alerts.

7. Borrower assumes all responsibility and liability arising from the use of the Software Assets, and hereby indemnifies and holds Bank harmless from and against any claim, suit, loss, damage or reasonable expense (including reasonable attorneys' fees and expenses (including, without limitation, the allocated costs and expenses of in-house counsel)) arising out of any alleged defect in any Software Asset or product developed, manufactured, promoted, licensed or sold by Borrower (or any affiliate or subsidiary thereof) in connection with any Software Asset or out of the development, manufacture, promotion, labeling, licensing, sale or advertisement of any Software Asset or other product by Borrower (or any affiliate or subsidiary thereof). Borrower agrees that Bank does not assume, and Bank does not have any responsibility for, the payment of any sums due or to become due under any agreement, license or contract included in the Collateral or the performance of any obligations to be performed under or with respect to any such agreement, license or contract by Borrower, and Borrower hereby agrees to indemnify and hold Bank harmless with respect to any and all claims by any person or entity

relating thereto (except for any claims arising out of the gross negligence or willful misconduct of Bank).

8. Bank has the following additional rights and remedies which it may exercise in accordance with the provisions of the Loan Documents:

(a) Subject to the provisions of applicable law, Bank may, after default under any Agreement with Bank, at any time and from time to time, license, whether general, special or otherwise, and whether on an exclusive (subject to existing licenses, if any) or nonexclusive basis, any of the Intellectual Property Collateral, throughout the world for such term or terms, on such conditions, and in such manner, as Bank shall in its sole discretion determine.

(b) Bank may, after default under any Agreement with Bank (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Borrower in, to and under any one or more license agreements with respect to the Intellectual Property Collateral, and take or refrain from taking any action under any license or sublicense thereof, and Borrower hereby releases Bank from, and agree to hold Bank free and harmless from and against, any claims arising out of, any action taken or omitted to be taken with respect to any such license agreement, except to the extent that such claims are the result of the gross negligence or willful misconduct of Bank.

(c) In order to implement the assignment, sale or other disposal of any of the Intellectual Property Collateral, Bank may, at any time, pursuant to the authority granted in the Powers of Attorney described in Section 9 hereof (such authority becoming effective on the date hereof and will remain effective so long as any portion of the Obligations remain unpaid and unperformed), execute and deliver on behalf of Borrower, one or more instruments of assignment of all or any portion of the Intellectual Property Collateral (or any application or registration thereof), in form suitable for filing, recording or registration in any country. Borrower agrees to pay when due all reasonable costs and expenses incurred in any such transfer, including any taxes, fees and reasonable attorneys' fees (including, without limitation, the allocated costs and expenses of in-house counsel), and all such costs shall be added to the Obligations. Nothing contained herein shall be construed as requiring Bank to take any such action at any time. In the event of any such license, assignment, sale or other disposition of the Intellectual Property Collateral, or any of it, after the occurrence or during the continuation of an Event of Default, Borrower shall supply its know-how and expertise relating to the development, manufacture, licensing and sale of the products bearing the Trademarks or in connection with the Patents or Copyrights and its customer lists and other records relating to the Trademarks, Patents or Copyrights and to the distribution of said products, to Bank or its designee.

9. Borrower hereby appoints and constitutes Bank its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of Borrower:

(a) For the purpose of assigning, selling, licensing or otherwise disposing of all right, title and interest of Borrower in and to any Patents, letters patent, design and plant patents, utility models, industrial designs, inventor certificates and statutory invention registrations of the United States or any other country or political subdivision thereof, and all registrations, recordings, reissues, continuations, continuations-in-part, term restorations and extensions thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose.

(b) For the purpose of assigning, selling, licensing or otherwise disposing of all right, title and interest of Borrower in and to any Trademarks, trade names, trade styles and service marks, and all registrations, recordings, reissues, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose.

(c) For the purpose of assigning, selling licensing or otherwise disposing of all right, title and interest of Borrower in and to any Copyrights, and all registrations, recordings, extensions and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose.

(d) To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Bank may in its sole discretion determine.

10. This power of attorney is made pursuant to the Loan Documents as amended from time to time, by Borrower in favor of Bank, is a present grant of authority which will become effective on the date hereof and will remain effective so long as any portion of the Obligations remain unpaid and unperformed, will take effect solely for the purposes stated therein and is subject to the conditions thereof and may not be revoked until the payment or performance in full of all Obligations, and the permanent reduction of the Obligations in full.

11. Borrower hereby releases Bank from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by Bank under the powers of attorney granted to it, other than actions taken or omitted to be taken through Bank's gross negligence, willful misconduct or knowing violation of the law.

12. The Loan Documents shall be deemed to include this Agreement. In the event of a conflict between any of the provisions of this Agreement and any provisions of the other Loan

Documents the parties shall first endeavor to read such provisions in such a manner so as to avoid and minimize such conflict. If such conflict is irreconcilable, the provisions of this Agreement shall control to the extent of such irreconcilable conflict in the absence of manifest error.

13. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

15. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

16. All sections and descriptive headings of subsections in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

17. No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the parties hereto.

18. Borrower understands and agrees that Bank is not its agent, representative or partner.

19. The Loan Documents are made for the sole benefit of Borrower and Bank and their respective successors and assigns, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiary or otherwise.

20. Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. The Loan Documents constitute the entire agreement between the parties with respect to the subject matter hereof, and no modification shall be effective unless in writing and signed by the party to be charged. Each of the Loan Documents is intended to represent the mutual intent of the parties thereto and no rule of strict construction shall be applied against any party. Time is of the essence hereof.

21. WAIVER OF JURY TRIAL. BANK AND BORROWER, AND EACH OF THEM, HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS MODIFICATION OR THE OBLIGATIONS, OR ANY INSTRUMENT OR DOCUMENT DELIVERED IN CONNECTION WITH THIS MODIFICATION OR THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE



VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT THEREOF, OR ANY OTHER CLAIM OR DISPUTE HOWSOEVER ARISING (INCLUDING TORT AND CLAIMS FOR BREACH OF DUTY), BETWEEN BANK AND BORROWER.

IN WITNESS WHEREOF, the parties have cause this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

Borrower:

Address of Borrower:

800 Menlo Avenue  
Menlo Park, CA 94025  
Attn: Tim Unger

AQUEDUCT SOFTWARE, INC.

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

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

BANK:

Address of Bank:

3003 Tasman Drive  
Santa Clara, CA 95054  
Attn: Christopher D. Stedman

SILICON VALLEY BANK

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

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

EXHIBIT A

Copyrights

<u>Description</u>	<u>Registration/ Application Number</u>	<u>Registration/ Application Date</u>	<u>Author</u>
Appl.iq			Aqueduct Software, Inc.
Profiler			Aqueduct Software, Inc.
Appscope			Aqueduct Software, Inc.

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EXHIBIT B

Patents

Description

Registration/  
Application  
Number

Registration/  
Application  
Date

EXHIBIT C

Trademarks

Description

Registration/  
Application  
Number

Registration/  
Application  
Date

Aqueduct

Serial Number:  
75/362972

EXHIBIT D

Mask Works

Description

Registration/  
Application  
Number

Registration/  
Application  
Date

ATTACHMENT 1

(Software and Telecommunications Service Vendors  
and Related Licenses of Software and Intellectual Property)

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**TRADEMARK**  
**REEL: 001971 FRAME: 0302**

ATTACHMENT 2

(Software Licensed by Borrower re: Borrower's Operations)

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**TRADEMARK**  
**REEL: 001971 FRAME: 0303**

ATTACHMENT 3

(Software Programs for Borrower's Internal Operation  
and Internet Web Presence/User Interface)

SF-W:\WORDPROC\S4123\0065\004C-PGB.WPD

RECORDED: 09/24/1999

TRADEMARK  
REEL: 001971 FRAME: 0304