

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM540231

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	RELEASE OF SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
SILICON VALLEY BANK		08/31/2017	Corporation: CALIFORNIA
RECEIVING PARTY DATA			
Name:	WHISKER LABS, INC.		
Street Address:	12410 MILESTONE CENTER DRIVE		
Internal Address:	SUITE 300		
City:	GERMANTOWN		
State/Country:	MARYLAND		
Postal Code:	20876		
Entity Type:	Corporation: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	4704876		
CORRESPONDENCE DATA			
Fax Number:	6082519166		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	608-251-5000		
Email:	tm-dept@quarles.com, julie.hughes@quarles.com		
Correspondent Name:	Quarles & Brady LLP		
Address Line 1:	33 East Main Street, Suite 900		
Address Line 2:	Lori S. Meddings		
Address Line 4:	Madison, WISCONSIN 53703		
ATTORNEY DOCKET NUMBER:	157977.00002		
NAME OF SUBMITTER:	Lori S. Meddings		
SIGNATURE:	/Lori S. Meddings/		
DATE SIGNED:	09/10/2019		
Total Attachments: 7			
source=SVB Consent Release and First Amendment to Restated LSA#page1.tif			
source=SVB Consent Release and First Amendment to Restated LSA#page2.tif			
source=SVB Consent Release and First Amendment to Restated LSA#page3.tif			

CH \$40.00 4704876

source=SVB Consent Release and First Amendment to Restated LSA#page4.tif

source=SVB Consent Release and First Amendment to Restated LSA#page5.tif

source=SVB Consent Release and First Amendment to Restated LSA#page6.tif

source=SVB Consent Release and First Amendment to Restated LSA#page7.tif

TRADEMARK

REEL: 006741 FRAME: 0118

**CONSENT, RELEASE AND FIRST AMENDMENT TO
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

THIS CONSENT, RELEASE AND FIRST AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Amendment") is entered into as of August 31, 2017, by and among **SILICON VALLEY BANK**, a California corporation with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 ("**Bank**"), **EARTH NETWORKS, INC.**, a Delaware corporation ("**Earth Networks**") and **WHISKER LABS, INC.**, a Delaware corporation ("**Whisker**", and together with Earth Networks, individually and collectively, jointly and severally, the "**Borrower**").

RECITALS

A. WHEREAS, reference is made to that certain Second Amended and Restated Loan and Security Agreement dated as of May 31, 2017 (as the same may from time to time be further amended, modified, supplemented or restated, the "**Loan Agreement**");

B. WHEREAS, Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement;

C. WHEREAS, Borrower has requested that Bank agree to release Whisker as a "Borrower" under the Loan Agreement and to release the Collateral of Whisker granted to Bank in connection with such release;

D. WHEREAS, Borrower has requested that Bank amend the Loan Agreement to (i) consent to the release of Whisker; (ii) revise the Adjusted Quick Ratio financial covenant; and (iii) make certain other revisions to the Loan Agreement as more fully set forth herein; and

D. WHEREAS, Bank has agreed to release Whisker and so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

- 1. Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.
- 2. Limited Consent.** Borrower has informed Bank that it intends to "spin-off" Whisker such that (i) Whisker will no longer be a wholly owned Subsidiary of Earth Networks and (ii) Whisker will no longer be a party to the Loan Documents (the "**Whisker Disposition**"). Borrower acknowledges that Section 7.1 (*Dispositions*); Section 7.2 (*Changes in business, Management, Control or Business Location*); Section 7.5 (*Encumbrance*) and/or Section 7.7 (*Distributions/Investments*) prohibit the Whisker

Disposition without the prior written consent of the Bank. Subject to the terms and conditions of this Amendment, Bank consents to the Whisker Disposition and waives any Event of Default that would otherwise arise as a result of the Whisker Disposition. The foregoing consent and waiver applies only to the Whisker Disposition and is not a consent to or waiver of any subsequent application of the same provisions of the Loan Agreement, nor is it a waiver of any breach of any other provision of the Loan Agreement or the other Loan Documents. The foregoing consent does not establish a course of dealing upon which the Borrower may rely in the future.

3. Release of Whisker from Loan Documents. Subject to the terms and conditions of this Amendment, Bank hereby releases Whisker from the Loan Agreement effective as of the First Amendment Effective Date. Without limiting the foregoing, subject to the terms and conditions of this Amendment, effective as of the First Amendment Effective Date:

3.1 The obligations of Whisker to Bank under the Loan Agreement are hereby satisfied, terminated, and discharged in full and of no further force and effect, it being understood that nothing in this Amendment shall constitute a satisfaction of the Obligations;

3.2 All security interests and Liens granted by Whisker to Bank pursuant to the Loan Agreement and/or any other Loan Document are (without recourse, representation or warranty) are hereby automatically, and without the need for further action, discharged, terminated and released, and are of no further force and effect; and

3.3 Bank hereby authorizes Whisker or its designee to prepare, file and deliver to the appropriate party or parties any UCC-3 termination statements and any other releases necessary or desirable to effectuate the releases or terminations contemplated by this Section 3 and Bank shall, from and after the date hereof, execute and deliver any and all further releases, discharges, pledged stock, instruments and documents and take such further action as Whisker may at any time and from time to time reasonably request to effectuate, evidence or reflect in the public record, the release and discharge of the security interests and Liens granted by Whisker in the Loan Agreement and/or the other Loan Documents.

3.4 From and after the First Amendment Effective Date (as defined below), subject to the terms and conditions of this Amendment, all references to "Borrower" in the Loan Agreement and the other Loan Documents shall be a reference to Earth Networks.

4. Amendments to Loan Agreement.

4.1 Section 2.3 (Payment of Interest on the Credit Extensions). Subsection (d) of Section 2.3 is amended in its entirety and replaced with the following:

"(d) Payment; Interest Computation. Interest is payable monthly on the Payment Date of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Eastern time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the

same day on which it is made, such day shall be included in computing interest on such Credit Extension.”

4.2 Section 6.9 (Financial Covenants). Section 6.9 is amended in its entirety and replaced with the following:

“6.9 Financial Covenants.

Borrower shall maintain at all times, to be tested as of the last day of each month, unless otherwise noted:

(a) Adjusted Quick Ratio. Maintain a minimum Adjusted Quick Ratio of at least 1.50:1.00; provided, that for the period commencing August 31, 2017 through and including March 31, 2018, maintain a minimum Adjusted Quick Ratio of at least 1.25:1.00.

(b) Minimum Cash. Commencing August 31, 2017 through and including March 31, 2018, maintain at all times, to be certified by Borrower as of the last day of each month, unrestricted cash at Bank (net of outstanding Advances on the Revolving Line) of at least Three Million Five Hundred Thousand Dollars (\$3,500,000.00).”

4.3 Section 13.1 (Definitions). The following new terms and their respective definitions are hereby inserted in **Section 13.1**, each in its applicable alphabetical order:

“**First Amendment Effective Date**” is August 31, 2017.

“**Whisker**” is Whisker Labs, Inc., a Delaware corporation and an Affiliate of Borrower.

4.4 Section 13.1 (Definitions). Clause (i) of the definition of “Permitted Investments” appearing in **Section 13.1** is deleted in its entirety and replaced with the following:

“(i) (i) Investments in Subsidiaries in or to other Subsidiaries or Borrower and Investments of Borrower in Subsidiaries in an aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00) in any fiscal year; and (ii) so long as no Event of Default has occurred and is continuing, or would result immediately after giving effect to such Investment, Investments (including Investments consisting of loans) of Borrower in or to Whisker, in an aggregate amount not to exceed Three Million Dollars (\$3,000,000.00) and”

4.5 Exhibit A (Compliance Certificate). The Compliance Certificate attached to the Loan Agreement as Exhibit B is amended in its entirety and replaced with the Compliance Certificate in the form of Exhibit A attached hereto.

4.6 Exhibit B (Updated to Perfection Certificate). An updated Perfection Certificate is attached as Exhibit B hereto.

5. Limitation of Amendments.

5.1 The amendments set forth in **Section 4**, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

5.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

6. Fees. Borrower shall pay to Bank a fully-earned, non-refundable amendment fee equal to Five Thousand Dollars (\$5,000.00), payable on or before the date hereof. Borrower shall also reimburse Bank for all legal fees and expenses incurred in connection with this Amendment and the other Loan Documents.

7. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

7.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

7.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

7.3 The organizational documents of Borrower delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect or have otherwise been delivered to Bank on the date hereof;

7.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

7.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

7.6 The execution and delivery by Borrower of this Amendment and the

performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on either Borrower, except as already has been obtained or made; and

7.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

8. Updated Perfection Certificate. Attached as Exhibit B hereto is the updated Perfection Certificate, including (i) to reflect the divestiture by Borrower of Whisker; and (ii) such other changes as reflected on Exhibit B hereto. From and after First Amendment Effective Date, all references to "Perfection Certificate" in the Loan Documents shall be deemed to be a reference to the updated Perfection Certificate attached as Exhibit B hereto.

9. Integration. This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

10. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

11. Governing Law. This Amendment constitutes a Loan Document. Section 11 of the Loan Agreement is hereby incorporated in its entirety.

12. Continuing Validity. Borrower understands and agrees that in modifying the existing Obligations, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the existing Loan Documents. Except as expressly modified pursuant to this Amendment and the release of Whisker effectuated hereby, the terms of the existing Loan Documents remain unchanged and in full force and effect. Bank's agreement to modifications to the existing Obligations pursuant to this Amendment in no way shall obligate Bank to make any future modifications to the Obligations. Nothing in this Amendment shall constitute a satisfaction of the Obligations.

13. Effectiveness. This Amendment shall be deemed effective as of the First Amendment Effective Date upon Bank's receipt of each of the following conditions precedent:


- (a) the due execution and delivery to Bank of this Amendment by each party hereto;

- (b) Borrower's payment of the fees and expenses referenced in **Section 6** hereof, due and payable on the date hereof;
- (c) Delivery of Exhibit B – updated Perfection Certificate, showing revised Investments and Subsidiaries of Earth Networks; and
- (d) such other documents as Bank may reasonably request.

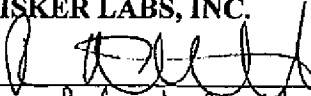
[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

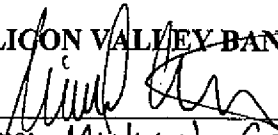
EARTH NETWORKS, INC.

By 
Name: Joel P. Reiser
Title: CEO

WHISKER LABS, INC.

By 
Name: Robert S. Marshall
Title: CEO

SILICON VALLEY BANK

By 
Name: Michael Conroy
Title: Vice President

[Signature page to Consent, Release and First Amendment to Second Amended and Restated Loan and Security Agreement]