

TRADEMARKS ONLY

TRADEMARKS ONLY

MRD  
9-3-99

To the  
Please n



101138217

1. Name of Party(ies) conveying an interest:

Diamond Multimedia Systems, Inc.

Entity:

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

3. Interest Conveyed:

- Assignment       Change of Name
- Security Agreement       Merger
- Other

Execution Date

July 20, 1999

2. Name and Address of Party(ies) receiving an interest:

Name: S3 Incorporated

Address: 2841 Mission College Boulevard  
Santa Clara, CA 95054

Entity:

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

Citizenship: Delaware

If not domiciled in the United States, a domestic representative designation is attached:

Yes

No

(The attached document must not be an assignment)

4. Application number(s) or registration number(s). Additional sheet attached?

Yes       No

A. Trademark Application No.(s)  
74/448,303

B. Trademark Registration No.(s) 1,647,951; 1,892,970; 1,943,393; 1,862,361; 1,898,726; 2,127,722;  
1,920,769; 1,846,586; 2,058,360; 1,933,368; 1,941,409; 2,127,258; 2,177,372; 2,181,311; 1,820,470

5. Please mail documents back to:

Calendar/Docketing Dept.  
Pillsbury Madison & Sutro LLP  
Post Office Box 7880  
San Francisco, CA 94120

6. Number of applications and registrations involved: 16

7. Amount of fee enclosed: \$ 615

8. If above amount is missing or inadequate, charge deficiency to our Deposit Account No. 03-3975 under Order No. 76823-000-0012/RLK/CEP/KAS.

09/07/1999 DNGUYEN 00000215 74448303

DO NOT USE THIS SPACE

01 FC:481      40.00 DP  
02 FC:482      375.00 DP

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.

Signature

Attorney: Caroline E. Papas

Date: September 1, 1999

Atty/Sec: \_\_\_\_\_

Total number of pages including cover sheet, attachments and document. (excluding duplicate cover sheet)

38  
29

Tel: (415) 983-6187

Fax: (415) 983-1200

NO30 11/1996

File in DUPLICATE with post card receipt

Repl'n. Ref: 09/07/1999 DNGUYEN 0010322100  
DRI: 033975 Name/Number: 74448303  
FC: 704 \$200.00 CR

# PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT

THIS PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT (this "Security Agreement"), entered as of July 20, 1999 by and between **DIAMOND MULTIMEDIA SYSTEMS, INC.**, a Delaware corporation ("Grantor"), and **S3 INCORPORATED**, a Delaware corporation ("Grantee"),

## WITNESSETH:

WHEREAS, Grantor and Grantee have entered into that certain Credit Agreement dated as of June 11, 1999 (as amended, the "Credit Agreement"); and

WHEREAS, Grantor's entering into this Security Agreement is a condition for Grantee's entering to the Credit Agreement and Grantor is willing to enter into this Security Agreement:

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which by Grantor is hereby acknowledged, Grantor agrees with Grantee as follows:

1. Grant of Security. Grantor hereby irrevocably grants as security for the payment and performance of the Obligations to Grantee, a mortgage, lien and security interest upon all of Grantor's right, title and interest throughout the world in and to the following (the "Intellectual Property"):

(a) All patents, patents pending, patent applications and like protection, including, without limitation, patents and patent applications listed on Schedule 1 hereto and improvements, divisions, continuations, renewals, reissues and extensions thereof, now existing or hereafter filed, issued or acquired (hereinafter collectively sometimes "Patents");

(b) All inventions now owned by Grantor or hereafter made, created or acquired by or for Grantor, whether or not any of said inventions are patentable, including those inventions disclosed and/or claimed in Grantor's patents and patent applications (hereinafter collectively sometimes "Inventions");

(c) All rights of action on account of past, present and future unauthorized use or infringement of any of said Inventions and Patents;

(d) The right to file and prosecute: (i) applications for patents, including without limitation improvements, divisions, continuations, renewals, reissues and extensions thereof; and (ii) applications for similar intellectual property;

(e) All trade secrets and agreements, processes, confidential information, and all assets, including any general intangible associated with the Patents and Inventions now owned or hereafter made, created or acquired;

(f) All licenses or other rights to use any Patent or Invention, whether Grantor is a licensor or licensee, and license fees and royalties associated with such Patents or Inventions;

(g) All copyrights (whether or not published or registered under the Copyright Act of 1976), including, without limitation, the copyright registrations listed on Schedule 2, all applications for

registration of copyrights, all works of authorship and other intellectual property rights therein, all license agreements concerning copyrights, whether the Grantor is a licensor or licensee under any such license agreement, all copyrightable materials now or hereafter owned by the Grantor (whether or not copyrighted), and all tangible property embodying copyrights (all of the foregoing herein called "Copyrights");

(h) All trade names, trademarks, trade dress, service marks, trademark and service mark registrations and applications for trademark or service mark registration, including, without limitation, the trademarks and service mark registrations listed on Schedule 3, (all of the foregoing herein called "Marks"), all goodwill of the business connected with the use of and symbolized by each Mark, all license agreements concerning Marks, whether the Grantor is a licensor or licensee under any such license agreement (all of the foregoing herein called "Trademarks");

(i) All renewals, revisions, modifications, reissues, divisions, continuations and extensions of any Patent, Copyright or Trademark;

(j) All income, royalties, damages and payments relating to such Patents and Inventions, now or hereafter due and/or payable, including damages and payments for past or future infringement of any rights conveyed hereunder;

(k) All foreign rights corresponding to the above-described rights, including those available by treaty and reciprocity;

(l) All programmer notes, manuals, computer printouts or readouts, drawings, specifications, descriptions, computer programs, semiconductor chips, microbe and software which incorporate any aspect or part of, or are derived from or were created, produced or are used in association with, said Patents and Inventions now owned or hereafter made, created or acquired;

(m) All products including without limitations all derivations, derivative works, improvements, upgrades, enhancements, updates and other modifications of any Patents, Copyrights, Trademarks or Inventions; and

(n) All proceeds of any and all of the foregoing collateral described in subsections 1(a) through 1(m) hereof (including license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Grantee is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to the foregoing collateral described in subsections 1(a) through 1(m) hereof. For purposes of this Security Agreement, the term "proceeds" includes whatever is receivable or received when Intellectual Property or proceeds are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary; provided that in no event shall Collateral include any licenses of or agreements related to franchises, trademarks, copyrights, patents or similar intellectual property licensed by the Grantor from or to third parties or otherwise owned by and used with the permission of third parties, to the extent that such are consistent with past practices and made in the ordinary course of business and the grant of a security interest therein would terminate, violate or otherwise cause a default under any such license or agreement.

2. Security for Obligations. This Security Agreement secures payment and performance of the Obligations (as defined in the Credit Agreement).

3. Representations and Warranties by Grantor. Grantor hereby represents, warrants, covenants and agrees that:

(a) Grantor is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to own and operate its property, to carry on its business as now conducted and proposed to be conducted, to enter into this Security Agreement and to carry out the transactions contemplated hereby;

(b) The execution, delivery and performance of this Security Agreement and the performance of the transactions contemplated hereby have been duly authorized by all necessary corporate action by Grantor;

(c) The execution, delivery and performance by Grantor of this Security Agreement and performance of the transactions contemplated hereby do not (i) violate any provisions of law applicable to Grantor, the Certificate of Incorporation or Bylaws of Grantor, or any order, judgment or decree of any court or other agency of government binding on Grantor, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any contractual obligation of Grantor, except for loan and security agreements with holders of Existing Debt for which waivers and consents have been obtained, (iii) result in or require the creation or imposition of any Lien (other than the Lien created by this Security Agreement), charge or encumbrance of any nature whatsoever upon any of its properties or assets, or (iv) except such consents required pursuant to the Credit Agreement as have already been obtained from the holders of the Existing Debt, require any approval of stockholders or any approval or consent of any person under any contractual obligation of Grantor except for such contraventions, conflicts or violations referred to in clause (i) or defaults, rights of termination, cancellation or acceleration, or losses or Liens referred to in clause (ii), (iii) or (iv) that would not, individually or in the aggregate, have a Material Adverse Effect on the Borrower;

(d) This Security Agreement is the legally valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforcement may be omitted by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or general principles of equity, whether such enforceability is considered in a proceeding in equity or at law, or subject to the discretion of the court for which any proceeding therefor may be brought 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;

(e) The patents and patent applications listed on the attached Schedule 1 constitute all of the Inventions and Patents now owned by Grantor;

(f) Except for Permitted Liens, in the case of existing Intellectual Property, this Security Agreement creates, and in the case of after acquired Intellectual Property, this Security Agreement will create at the time Grantor first has rights in such after acquired Intellectual Property, in favor of Grantee a valid and perfected first priority security interest in the Intellectual Property in the United States securing the payment and performance of the Obligations upon making the filings referred to in clause (g) below;

(g) Except for, and upon, the filings with the United States Patent and Trademark office with respect to the Patents and Trademarks and with the Copyright Office with respect to the Copyrights necessary to perfect the security interests and assignment created hereunder, and, except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the grant by Grantor of the security interest granted hereby or for the execution, delivery or performance of this Security Agreement by Grantor or (ii) for the perfection in the United States or the exercise by Grantee, of its rights and remedies (except for exclusive and nonexclusive licenses held by Grantor in the Intellectual Property) hereunder;

(h) Grantor has used, and will continue to use for the duration of this Collateral Agreement, consistent standards of high quality in its manufacture and sale of products and services sold under the Intellectual Property; and

(i) All information heretofore, herein or hereafter supplied to Grantee by or on behalf of Grantor with respect to the Intellectual Property is accurate and complete in all material respects.

#### 4. Grantor's Covenants.

(a) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Grantee's prior written consent.

(b) Grantor shall not permit the inclusion in any contract to which it becomes a party of any provisions that could or might in any way impair or prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Intellectual Property acquired under such contracts.

(c) Grantor shall properly maintain and care for the Intellectual Property.

(d) Except for (i) Liens and licenses granted that, individually or in the aggregate, are not materially adverse to the value of the Intellectual Property, (ii) for Permitted Liens, and (iii) licenses granted in the ordinary course of Grantor's business, Grantor shall not grant or permit to exist any Lien upon or with respect to any Intellectual Property and will not execute any security agreement or financing statement covering any of the Intellectual Property, except in the name of Grantee and holders of Permitted Liens for which financing statements are on file on the Effective Date.

(e) Grantor shall not sell, license or contract for sale or otherwise dispose of any Intellectual Property.

(f) Upon any officer of Grantor obtaining knowledge thereof, Grantor will promptly notify Grantee in writing of any event that materially adversely affects the value of any of the Intellectual Property, the ability of Grantor or Grantee to dispose of any of the Intellectual Property or the rights and remedies of Grantee in relation thereto, including the levy of any legal process against any of the Intellectual Property.

#### 5. Applications and Litigation.

(a) Except whenever it is commercially reasonable not to do so in the reasonable judgment of Grantor, is not consistent with past practices of Grantor, or Grantor lacks sufficient funds to do so, Grantor shall have the duty, reasonably acceptable to Grantee, to prosecute diligently any patent application specifically identified in Schedule 1 annexed hereto pending as of the date of this Security Agreement or thereafter, to make application on any existing or future unpatented but patentable inventions and to preserve and maintain all Patents, Trademarks and Copyrights as to which a security interest has been granted pursuant to this Security Agreement. Any expenses incurred in connection with such an application, or in protecting, maintaining or preserving the Patents, Trademarks and Copyrights shall be borne by Grantor.

(b) Notwithstanding section 1, Grantor shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions for infringement, unfair competition, or other damage or reexamination or reissuance proceedings as

are in its reasonable business judgment necessary to protect the Intellectual Property. Grantor hereby agrees to indemnify and hold harmless Grantee for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including attorneys' fees) of any kind whatsoever that may be imposed on, incurred by or asserted against Grantee in connection with or in any way arising out of such suits, proceedings or other actions.

6. New Intellectual Property. If, at any time, Grantor shall obtain rights to or become entitled to the benefit of any Intellectual Property, the provisions of this Security Agreement shall automatically apply thereto. With respect to all of the foregoing rights or benefits, Grantor shall give to Grantee notice in writing thereof.

7. Records of Intellectual Property.

(a) Grantor shall at all times keep at least one complete set of its records concerning substantially all of the Intellectual Property at its chief executive office or principal place of business at 2880 Junction Avenue, San Jose, CA 95134-1922 and will not change the location of its chief executive office or such records without giving Grantee at least thirty (30) days prior written notice thereof.

(b) Grantor shall, from time to time, upon Grantee's request, cause its books and records to be marked with such legends or segregated in such manner as Grantee may reasonably specify, and take or cause to be taken such other action and adopt such procedures as may be reasonably necessary, or as Grantee may reasonably specify to give notice of, or to perfect, the security interests in the Intellectual Property intended to be created hereby.

(c) Grantor shall furnish to Grantee from time to time statements and schedules further identifying and describing the Intellectual Property and such other materials evidencing or reports pertaining to the Intellectual Property as Grantee may reasonably request, all in reasonable detail; provided, however, nothing herein shall entitle Grantee access to Grantor's trade secrets and other proprietary information.

8. Inspection Rights. Grantor hereby grants to Grantee and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable notice to Grantor following the occurrence and during the continuance of an Event of Default, and any of Grantor's and its subcontractors' plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold under any of the Intellectual Property, and to inspect the products and quality control records relating thereto upon reasonable notice to Grantor and as often as may be reasonably requested; provided, however, nothing herein shall entitle Grantee access to Grantor's trade secrets and other proprietary information.

9. Further Assurances.

(a) On a continuing basis, Grantor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and, upon request from Grantee, file and record in the proper filing and recording places in the United States, all such instruments, including, appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and Copyright Office, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Grantee to carry out the intent and purposes of this Security Agreement, or for assuring and confirming to Grantee the grant or perfection of a security interest in all Patents; provided, however, that nothing in this Security Agreement shall relieve Grantor of its obligations to file all necessary financing and continuation statements in order to perfect and protect the security interests granted or purported to be granted hereby.

(b) Grantor shall obtain any necessary consents of third parties to the grant or perfection of security interests to Grantee with respect to the Intellectual Property.

(c) Grantor shall promptly, following its becoming aware thereof, notify Grantee of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office of any federal, state, local or foreign court regarding Grantee's claim of ownership or security interests in any of the Intellectual Property.

(d) Concurrently with the filing of an application for any patents, Grantor shall execute, deliver and record in all places where this Security Agreement is recorded an appropriate Patent Security Agreement, substantially in the form hereof, with appropriate insertions to the extent of its interest therein unless so doing would, in the reasonable judgment of Grantor, after due inquiry, result in the grant of a Patent in the name of Grantee, in which event, Grantor shall give written notice to Grantee as soon as reasonably practicable and the filing shall instead be undertaken as soon as practicable but in no case later than immediately following the grant of the patent.

10. Grantee Appointed Attorney in Fact. Grantor hereby irrevocably appoints Grantee as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Grantee or otherwise, from time to time in Grantee's discretion, to take any action and to execute any instrument which Grantee may deem necessary or advisable to accomplish the purposes of this Security Agreement, including:

(a) To modify, in its sole discretion, this Security Agreement without first obtaining Grantor's approval of or signature to such modification by amending Schedule 1 thereof to include reference to any right, title or interest in any existing patents and patent applications acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any patents and patent applications in which Grantor no longer has or claims any right, title or interest; and

(b) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property without the signature of Grantor where permitted by law.

11. Grantee May Perform. If Grantor fails to perform any agreement contained herein, Grantee may itself perform, or cause performance of, such agreement, and the expenses of Grantee incurred in connection therewith shall be payable by Grantor under Section 18.

12. Grantee's Duties. The powers conferred on Grantee hereunder are solely to protect its interest in the Intellectual Property and shall not impose on it any duty to exercise such powers. Except for the safe custody of any Intellectual Property in its possession and the accounting for moneys actually received by it hereunder, Grantee shall have no duty as to the Intellectual Property or any responsibility for taking any necessary steps to preserve rights against any parties with respect to any Intellectual Property. Grantee shall be deemed to have exercised reasonable care in the custody and preservation of any Intellectual Property in its possession if the Intellectual Property is accorded treatment substantially equal to that which Grantee accords its own property.

13. Grantor Remains Liable.

(a) Anything herein to the contrary notwithstanding, (i) Grantor shall remain liable under the Intellectual Property and any contracts and agreements related thereto, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not

been executed, (ii) the exercise by Grantee of any of the rights hereunder shall not release Grantor from any of its duties or obligations under the Intellectual Property or any contracts and agreements related thereto and (iii) Grantee shall not have any obligation or liability under the Intellectual Property or any contracts and agreements related thereto by reason of this Security Agreement, nor shall Grantee be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(b) Except as otherwise provided in this Section 13(b), Grantor shall continue to collect, at its own expense, all amounts due or to become due Grantor in respect of the Intellectual Property. Upon the occurrence and during the continuance of an Event of Default (as defined in the Credit Agreement), to the extent permitted by FINOVA, Grantee is hereby given full power and authority, without notice or demand, (i) to notify any and all obligors with respect to any Intellectual Property of the existence of the security interest created, and the conditional assignment effected, hereby and (ii) to demand, take, collect, sue for and receive for its own use all amounts due or to become due to Grantor in respect of the Intellectual Property, and in connection therewith to enforce all rights and remedies with respect to any Intellectual Property which Grantor could enforce if this Assignment had not been made; and Grantor hereby ratifies any action which Grantee shall lawfully take to enforce Grantee's rights hereunder. Whether or not Grantee shall have so notified any obligors, Grantor shall at its expense render all reasonable assistance to Grantee in enforcing claims against such obligors.

14. Events of Default and Remedies. Upon the occurrence of an Event of Default, Grantee may exercise in respect of the Intellectual Property, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the Uniform Commercial Code as in effect in the State of California (the "Code") (whether or not the Code applies to the affected Intellectual Property) and Grantee may require Grantor to, and Grantor hereby agrees that it will at its expense and upon request of Grantee forthwith, assemble all or part of the Intellectual Property as directed by Grantee and make it available to Grantee at a place to be designated by Grantee which is reasonably convenient to both parties. Grantee may also without notice (except as specified below) sell the Intellectual Property or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of Grantee's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Grantee may deem commercially reasonable, irrespective of the impact of any such sales on the market price of the Intellectual Property. Grantee may be the purchaser of any or all of the Intellectual Property at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Intellectual Property sold at any such public sale, to use and apply any of the Obligations owed to Grantee as a credit on account of the purchase price of any Intellectual Property payable by Grantee at such sale. Each purchaser at any such sale shall hold the property absolutely free from any claim or right on the part of Grantor, and Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and/or appraisal that it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Grantor agrees that, to the extent notice of sale shall be required by law, at least forty-five (45) Business Days' notice to Grantor of the time and place of any public sale or the time after which a private sale is to be made shall constitute reasonable notification. Grantee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Grantor hereby waives any claims against Grantee arising by reason of the fact that the price at which any Intellectual Property may have been sold at such private sale was less than the price that might have been obtained at a public sale, even if Grantee accepts the first offer received and does not offer such Intellectual Property to more than one offeree. All of Grantee's rights and remedies with respect to the Intellectual Property, whether established hereby or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Grantor acknowledges and agrees that this Security Agreement is not intended



to limit or restrict in any way the rights and remedies of Grantee under or the security agreement between Grantor and Grantee but rather is intended to facilitate the exercise of such rights and remedies.

15. Application of Proceeds. After and during the continuance of an Event of Default, any cash held by Grantee as collateral and all cash proceeds received by Grantee (all such cash being "Proceeds") in respect of any sale of, collection from, or other realization upon all or any part of the Intellectual Property pursuant to the exercise by Grantee of its remedies as a secured creditor as provided in Section 16 hereof shall be applied promptly from time to time by Grantee as follows:

First: To the payment of the costs and expenses of such sale, collection or other realization, and all expenses, liabilities and advances made or incurred by Grantee in connection therewith and in connection with this Security Agreement, in accordance with section 18;

Second: After payment in full of the amounts specified in the preceding subparagraph, to the payment of the Obligations; and

Third: After payment in full of the amounts specified in the preceding subparagraphs, to the payment to or upon the order of Grantor, or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, of any surplus then remaining from such Proceeds.

16. Indemnity and Expenses.

(a) Grantor agrees to indemnify Grantee from and against any and all claims, losses and liabilities growing out of or resulting from this Security Agreement (including enforcement of this Security Agreement), except claims, losses or liabilities, or expenses resulting from Grantee's gross negligence or willful misconduct.

(b) Without limiting the generality of subsection 16(a) hereof, Grantor hereby agrees to indemnify and hold harmless Grantee for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) of any kind whatsoever that may be imposed on, incurred by or asserted against Grantee in connection with, or in any way arising out of, any such suits, proceedings or other actions concerning, or the defense of, any such suits, proceedings or other actions, whether that claim is made by Grantor or any other person, and for any damages, costs, expenses and lost profits that may be awarded as a consequence of any such suits, proceedings or other actions in which an allegation of the liability, strict or otherwise, of Grantor is or may be made by any person who alleges or may allege having suffered damages as a consequence of alleged improper, imprudent, reckless, negligent, willful, faulty, defective or substandard design, testing, specification, manufacturing supervision, manufacturing defect, manufacturing deficiency, publicity or advertisement, or improper use, howsoever arising or by whomsoever caused, of the Intellectual Property.

(c) Grantor will upon demand pay to Grantee the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, that Grantee may incur in connection with (i) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Intellectual Property, (ii) the exercise or enforcement of any of the rights of Grantee hereunder, or (iii) the failure by Grantor to perform or observe any of the provisions hereof.

17. Nonwaivers. No course of dealing between Grantor and Grantee, nor any failure to exercise,

nor any delay in exercising, on the part of Grantee, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

18. Amendments; Etc. No amendment or waiver of any provision of this Security Agreement nor consent to any departure by Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by Grantee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

19. Notices. Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered, sent by telecopier, overnight courier or deposited in the mail, postage prepaid, sent certified or registered, return receipt requested, and addressed as set forth in Section 8.8 of the Credit Agreement.

20. Continuing Security Interest; Payment of Obligations. This Security Agreement shall create a continuing security interest in the Intellectual Property and shall (a) remain in full force and effect until payment in full of the Obligations, (b) be binding upon Grantor and its successors and assigns, and (c) inure to the benefit of Grantee and its successors, transferees and assigns.

21. Attorneys' Fees. If any lawsuit or other action or proceeding relating to this Security Agreement is brought by either party hereto against the other party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

**22. GOVERNING LAW AND CONSENT TO JURISDICTION. THE VALIDITY, CONSTRUCTION AND EFFECT OF THIS SECURITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ITS LAWS REGARDING CHOICE OF APPLICABLE LAW.**

**ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GRANTOR WITH RESPECT TO THIS SECURITY AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, AND GRANTOR ACCEPTS FOR ITSELF AND ITS ASSETS AND PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS.**

**GRANTOR WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION (INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS) WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH JURISDICTION.**

**NOTHING HEREIN SHALL LIMIT THE RIGHT OF GRANTOR OR GRANTEE TO BRING PROCEEDINGS AGAINST THE OTHER PARTY IN THE COURT OF ANY OTHER JURISDICTION.**

23. Severability. In case any provision in or obligation under this Security Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be

affected or impaired thereby.

24. Headings. Section headings in this Security Agreement are included herein for convenience of reference only and shall not constitute a part of this Security Agreement for any other purpose or be given any substantive effect.

25. Construction.

(a) The capitalized terms used but not defined in this Security Agreement that are defined in the Credit Agreement shall have the meanings as set forth therein.

(b) The definitions in this Security Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" as used in this Security Agreement shall be deemed in each case to be followed by the phrase "without limitation."

26. Termination.

(a) Upon payment in full of all Obligations, the liens and security interests created by this Security Agreement shall terminate forthwith and all right, title and interest of Grantee in and to the Intellectual Property shall revert to Grantor, its successors and assigns.

(b) Upon the termination of Grantee's liens and security interests, Grantee will promptly, at Grantor's written request and expense, (i) execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence the termination of such security interest or the release of the Intellectual Property, and (ii) deliver or cause to be delivered to Grantor all property of Grantor's then held by Grantee or any agent thereof.

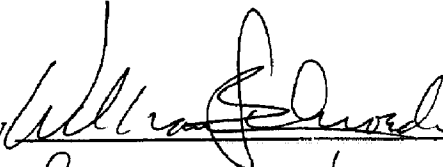
(c) This Security Agreement shall terminate when the liens and security interests granted hereunder have terminated and the Intellectual Property has been released, provided that the provisions of Section 18 hereof shall survive the termination of this Security Agreement.

27. Counterparts. This Security Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Security Agreement to be duly executed as of the day and year first above written.

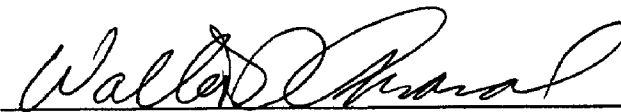
GRANTOR:

DIAMOND MULTIMEDIA SYSTEMS, INC.

By   
Its PRESIDENT & CEO

GRANTEE:

S3 INCORPORATED

By   
Its SRVP & CFO

STATE OF CALIFORNIA,

)

) ss.

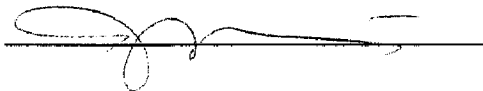
Santa Clara

)

On July 19, 1999, before me, Janet K. Munoz, a Notary Public in and for the State of California, personally appeared William John Schroeder personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledge to me that he or she executed the within instrument in his or her authorized capacity and that, by his or her signature on the within instrument, the person or entity upon behalf of which he or she acted executed the within instrument.

WITNESS my hand and official seal.

Signature



(Seal)

