

12-05-2000



101536673

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID # _____
- Correction of PTO Error
Reel # _____ Frame # _____
- Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment
Effective Date
Month Day Year

- Merger
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name PocketScript, Inc.

11 2 00

Formerly _____

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other _____
- Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of receiving parties attached

Name Data Critical Corporation

DBA/AK/A _____

Composed of _____

Address (line 1) 19820 North Creek Parkway

Address (line 2) Suite 100

Address (line 3) Bothell WA 98011
City State/Country Zip Code

- Individual
 - General Partnership
 - Limited Partnership
 - Corporation
 - Association
 - Other _____
 - Citizenship/State of Incorporation/Organization Delaware
- If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002186 FRAME: 0116

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

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<input type="text" value="78023018"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Scott J. Moore

Name of Person Signing

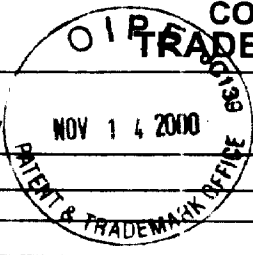
Scott Moore

Signature

11/13/00

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY



Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

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TRADEMARK AND LICENSE SECURITY AGREEMENT

TRADEMARK AND LICENSE SECURITY AGREEMENT (“Agreement”) dated as of November 2, 2000, made by POCKETSCRIPT, INC., a Delaware corporation having its chief executive office at 4680 Parkway Drive, Third Floor, Mason, Ohio 45040 (the “Grantor”) and DATA CRITICAL CORPORATION, a Delaware corporation, as Secured Party.

WITNESSETH:

WHEREAS, the Grantor and the Secured Party have entered into that certain Promissory Note of even date herewith (as the same may hereafter be amended or otherwise modified, the “Note”), pursuant to which the Secured Party has, subject to certain conditions precedent, agreed to make loans, advances and other financial accommodations (collectively, “Advances”) to the Grantor; and

WHEREAS, the Secured Party has required as a condition, among others, to the making of the Advances to the Grantor, in order to secure the prompt and complete payment of all of the “Obligations” (as defined below), that the Grantor grant the security interest contemplated by this Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Note shall have the meanings specified in the Note.

(b) The words “hereof,” “herein” and “hereunder” and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

(d) “Obligations” shall mean (i) all obligations of the Grantor now or hereafter existing hereunder, under the Note and under all of the other instruments, documents and agreements executed by the Grantor and delivered to the Secured Party in connection with the Note (the Note, together with all such other instruments, documents and agreements delivered in connection therewith being hereinafter referred to collectively as the “Loan Documents”), whether for principal, interest (including, without limitation, interest accruing following the filing by or against the Grantor of a Bankruptcy petition, whether or not allowed as a claim in the bankruptcy proceeding), fees, indemnification, expenses or otherwise, and (ii) all other liabilities, obligations, covenants and duties owing to the Secured Party from or by the

Grantor of any kind or nature, present or future, whether or not evidenced by any note, guaranty or other instrument, arising under or in connection with the Loan Documents, whether or not for the payment of money, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

2. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Grantor hereby grants to the Secured Party a security interest in, as and by way of a mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of the Grantor's now owned or existing and filed and hereafter acquired or arising and filed:

(i) trademarks, registered trademarks and trademark applications, trade names and service marks, including, without limitation, the registered trademarks, service marks and applications listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of the Grantor's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, service marks and applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(ii) the goodwill of the Grantor's business connected with and symbolized by the Trademarks; and

(iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks and trademark applications, trade names and service marks, whether the Grantor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B attached hereto and made a part hereof, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of the Secured Party's rights under the Note (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. Restrictions on Future Agreements. The Grantor further agrees that it will not enter into any license or similar agreement or take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take

any action, which would in any material respect adversely affect the validity or enforcement of the rights transferred to the Secured Party under this Agreement.

4. New Trademarks. The Grantor represents and warrants that the Trademarks and Licenses listed on Schedules A and B, respectively, as of the date hereof, include all of the trademarks, trademark registrations, trademark applications, tradenames, service marks and license agreements in connection with trademarks, registered trademarks, trademark applications, tradenames and service marks now owned or held by the Grantor. If, prior to the satisfaction in full of the Obligations, the Grantor shall (i) obtain rights to any new trademarks, trademark registrations, trademark applications, trade names or service marks or license agreements in connection with trademarks, registered trademarks, trademark applications, trade names or service marks, or (ii) become entitled to the benefit of any trademark, trademark registration, trademark application, trade name or service mark renewals, the provisions of Section 2 above shall automatically apply thereto and the Grantor shall give to the Secured Party prompt written notice thereof. The Grantor hereby authorizes the Secured Party, upon notice to the Grantor, to modify this Agreement by (i) amending Schedules A or B, as the case may be, to include any future trademarks, trademark registrations, trademark applications, trade names, service marks and license agreements in connection with trademarks, registered trademarks, trademark applications, service marks and trade names that are Trademarks or Licenses under Section 2, above or under this Section 4, and (ii) filing, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such future trademarks, trademark registrations, trademark applications, trade names, service marks and license agreements in connection with trademarks, registered trademarks, trademark applications, service marks and trade names which are Trademarks or Licenses under Section 2 above or this Section 4.

5. Royalties. The Grantor hereby agrees that the use by the Secured Party of the Trademarks and Licenses as authorized hereunder shall be coextensive with the Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Secured Party to the Grantor.

6. Nature and Continuation of the Secured Party's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Note has been terminated.

7. Further Assignments and Security Interests. The Grantor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks without the prior written consent of the Secured Party, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, and (iii) not to change the quality of such products in any material respect without the prior written consent of the Secured Party.

8. Duties of the Grantor. The Grantor shall have the duty, to the extent desirable in the normal conduct of the Grantor's business and consistent with the Grantor's current business practices, (i) to prosecute diligently any trademark application that is part of the

Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make application for trademarks and service marks as the Grantor deems appropriate, and (iii) to take reasonable steps (except as otherwise permitted in the Security Agreement) to preserve and maintain all of the Grantor's rights in the trademark applications and trademark and service mark registrations that are part of the Trademarks. Any expenses incurred in connection with the foregoing shall be borne by the Grantor. Except as otherwise permitted under the Security Agreement, the Grantor shall not abandon any material trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be necessary or economically desirable in the operation of the Grantor's business; provided, however, the Grantor shall be permitted to abandon any such trademark or service mark which has not itself, or through the sale of any Inventory or other goods associated therewith, generated at least \$50,000 in revenue in any rolling twelve (12) month period during the term of this Agreement, commencing with the twelve (12) month period ending on the date of this Agreement. The Secured Party shall not have any duty with respect to the Trademarks. Without limiting the generality of the foregoing, the Secured Party shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at its option upon the occurrence and during the continuance of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the sole account of the Grantor and added to the Obligations secured hereby and by the other Loan Documents.

9. The Secured Party's Right to Sue. Upon the occurrence and during the continuance of an Event of Default, and subject to the terms of the Note, the Secured Party shall have the right, but shall not be obligated, to bring suit to enforce the Trademarks and the Licenses and, if the Secured Party shall commence any such suit, the Grantor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by the Secured Party in aid of such enforcement. The Grantor shall, upon demand, promptly reimburse and indemnify the Secured Party for all out-of-pocket costs and reasonable expenses incurred by the Secured Party in the exercise of its rights under this Section 9 (including, without limitation, all reasonable attorneys' fees and expenses). If, for any reason whatsoever, the Secured Party is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby and by the other Loan Documents.

10. Waivers. No course of dealing between the Grantor and the Secured Party, and no failure to exercise or delay in exercising on the part of the Secured Party any right, power or privilege hereunder or under the Note shall operate as a waiver of any of the Secured Party's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Note shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. The Secured Party's Exercise of Rights and Remedies upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, the Secured Party may exercise any of the rights and remedies provided in this Agreement, the Note, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing,

the Grantor acknowledges and agrees that (i) the Trademarks and Licenses comprise a portion of the Collateral and the Secured Party shall have the right, except as otherwise set forth herein, to exercise its rights under the Note with respect to the Trademarks and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) upon the occurrence and during the continuance of an Event of Default, the Secured Party or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute, prepare for sale and sell the Inventory, or otherwise in connection with the conduct of the Grantor's business.

12. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

13. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 4 hereof or by a writing signed by the parties hereto.

14. Cumulative Remedies; Power of Attorney. All of the Secured Party's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. The Grantor hereby irrevocably appoints the Secured Party as the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise to carry out the acts described below. Subject to the terms of the Note, upon the occurrence and during the continuance of an Event of Default and the giving by the Secured Party of written notice to the Grantor of the Secured Party's intention to enforce its rights and claims against the Grantor, the Grantor hereby authorizes the Secured Party to, in its sole discretion, (i) endorse the Grantor's name on all applications, documents, papers and instruments necessary or desirable for the Secured Party in the use of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as the Secured Party deems is in its best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks and Licenses to anyone on commercially reasonable terms. The Secured Party shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 14 without taking like action with respect to the entire goodwill of the Grantor's business connected with the use of, and symbolized by, such Trademarks and Licenses. The Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. The Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Secured Party under the Note, but rather is intended to facilitate the exercise of such rights and remedies. The Secured Party shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform

Commercial Code as enacted in any jurisdiction in which the Trademarks may be located or deemed located.

15. Binding Effect; Benefits. This Agreement shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Secured Party and its nominees, successors and assigns. The Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for the Grantor, provided, however, that the Grantor shall not voluntarily assign its obligations hereunder without the prior written consent of the Secured Party.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as distinguished from the conflicts of law provisions) and decisions of the State of New York.

17. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Security Agreement.

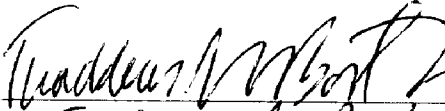
18. Section Headings. The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

19. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.


[signature page follows]

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written

POCKETSCRIPT, INC.

By: 
Name: Thuddeus M. Bort
Title: Treasurer

Attest:

By: 
Name: John T. Cannon
Title: General Counsel + Assistant Secretary

Acknowledged and agreed to as of the day and year first above written.

DATA CRITICAL CORPORATION., as Secured Party

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

POCKETSCRIPT, INC.

By: _____
Name: _____
Title: _____

Attest:

By: _____
Name: _____
Title: _____

Acknowledged and agreed to as
of the day and year first above
written.

DATA CRITICAL CORPORATION., as Secured Party

By: Michael F. Singer
Name: Michael F. Singer
Title: CFO, EVF

STATE OF OHIO)
) SS.:
COUNTY OF Wayne)

The foregoing Trademark and License Security Agreement was executed and acknowledged before me this 2nd day of November, 2000, by Thaddeus M. Best and John J. Curran, personally known to me to be the Treasurer and the Assistant Secretary, respectively, of PocketScript, Inc., a Delaware corporation, on behalf of such corporation.

(SEAL)

Lauren A. Perkins
My Commission expires 10/16/05

LAUREN A. PERKINS
Notary Public, State of Ohio
My Commission Expires Oct. 16, 2005

Schedule A
to
Trademark and License Security Agreement

Dated as of November 2, 2000

ISSUED U.S. TRADEMARK REGISTRATIONS

None.

PENDING U.S. TRADEMARK APPLICATIONS

None, except:

<u>Mark</u>	<u>Serial No.</u>	<u>Filing Date</u>
POCKETSCRIPT	75858312	11/26/99
ESCRIPCONNECT	78023018	8/25/00

ISSUED U.S. SERVICE MARK REGISTRATIONS

None.

PENDING U.S. SERVICE MARK APPLICATIONS

None.

TRADENAMES

None.

Schedule B
to
Trademark and License Security Agreement

Dated as of November 2, 2000

License Agreements

None, except: