

12-22-2000



01559012

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

☐ Merger

☐ Change of Name

☐ Other

Effective Date  
Month Day Year

12 07 2000

Conveying Party

☐ Mark if additional names of conveying parties attached

Name NETENSITY, INC.

Execution Date  
Month Day Year

12 07 2000

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 COMERICA BANK - TEXAS

DBA/AKA/TA

Composed of

Address (line 1) P. O. BOX 650282

Address (line 2)

Address (line 3) DALLAS

City

TX

State/Country

75265-0282

Zip Code

☐ Individual ☐ General Partnership ☐ Limited Partnership

☐ Corporation ☐ Association

☒ Other TEXAS BANKING ASSOCIATION

☒ Citizenship/State of Incorporation/Organization TEXAS

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.

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TRADEMARK  
REEL: 002199 FRAME: 0777

**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 214-969-1604

Name

LINDA WILCOX

Address (line 1)

THOMPSON & KNIGHT L.L.P.

Address (line 2)

1700 PACIFIC AVENUE

Address (line 3)

SUITE 3300

Address (line 4)

DALLAS, TEXAS 75201

**Pages**

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

# 10

**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)

76035449

76024514

**Number of Properties**

Enter the total number of properties involved.

# 2

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 80.00

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.

LINDA WILCOX

Name of Person Signing

Signature

DECEMBER 19, 2000

Date Signed

As of December 7, 2000, for value received, Netensity, Inc., a Delaware corporation ("Borrower") pledges, assigns and grants to Comerica Bank-Texas, a Texas banking association ("Bank"), whose address is P. O. Box 650282, Dallas, Texas 75265-0282, Attention: Steve Moiles, Mail Code 6546, a continuing security interest and lien (any pledge, assignment, security interest or other lien arising hereunder is sometimes referred to herein as a "security interest") in the Collateral (as defined below) to secure payment when due, whether by stated maturity, demand, acceleration or otherwise, of all existing and future indebtedness ("Indebtedness") to Bank of Borrower. Indebtedness includes without limit any and all obligations or liabilities of Borrower to the Bank, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint or several, known or unknown, originally payable to the Bank or to a third party and subsequently acquired by the Bank including, without limitation, any late charges, loan fees or charges, and overdraft indebtedness, any and all obligations or liabilities for which Borrower would otherwise be liable to the Bank were it not for the invalidity or unenforceability of them by reason of any bankruptcy, insolvency or other law, or for any other reason; any and all amendments, modifications, renewals and/or extensions of any of the above; all costs incurred by Bank in establishing, determining, continuing, or defending the validity or priority of any security interest, or in pursuing its rights and remedies under this Agreement or under any other agreement between Bank and Borrower or in connection with any proceeding involving Bank as a result of any financial accommodation to Borrower; and all other costs of collecting Indebtedness, including without limit attorneys' fees. Borrower agrees to pay Bank all such costs incurred by the Bank, immediately upon demand, and until paid all costs shall bear interest at the highest per annum rate applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Agreement to attorneys' fees shall be deemed a reference to reasonable fees, costs, and expenses of both in-house and outside counsel and paralegals, whether inside or outside counsel is used, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorneys' fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise. The term of this Agreement shall extend from the date hereof and until all Indebtedness shall have been finally paid or collected by Bank.

1. **Collateral** shall mean all of the following property Borrower now or later owns or has an interest in, wherever located:

- (a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");
- (b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;
- (c) Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held;
- (d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");
- (e) Any trademark or servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");
- (f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;
- (g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;
- (h) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks or Patents;
- (i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing;
- (j) All Accounts Receivable (for purposes of this Agreement, "Accounts Receivable" consists of all accounts, general intangibles, chattel paper, contract rights, deposit accounts, documents and instruments);
- (k) All Inventory;
- (l) All Equipment;
- (m) All goods, instruments, documents, policies and certificates of insurance, deposits, money, investment property or other property (except real property which is not a fixture), and
- (n) All additions, attachments, accessions, parts, replacements, substitutions, renewals, interest, dividends, distributions, rights of any kind (including but not limited to stock splits, stock rights, voting and preferential rights), products, and proceeds of or pertaining to the above including, without limit, cash or other property which were proceeds and are recovered by a bankruptcy trustee or otherwise as a preferential transfer by Borrower.

2. **Warranties, Covenants and Agreements.** Borrower warrants, covenants and agrees as follows:

- 2.1 Borrower shall (i) furnish to Bank, in form and at intervals as Bank may request, any information Bank may reasonably request; (ii) allow Bank to examine, inspect, and copy any of Borrower's books and records, and (iii) allow Bank to visit and inspect any of Borrower's plants or facilities that manufacture, install or store products (or that have done so during the 6 month period immediately preceding the date hereof) and to inspect the products and quality control records relating thereto. Borrower shall, at the request of Bank, mark its records and the Collateral to clearly indicate the security interest of Bank under this Agreement.

- 2.2 At the time any Collateral becomes, or is represented to be, subject to a security interest in favor of Bank, Borrower shall be deemed to have warranted that (a) Borrower is the lawful owner of the Collateral and has the right and authority to subject it to a security interest granted to Bank; (b) none of the Collateral is subject to any security interest other than that in favor of Bank and the Permitted Liens (as defined in the Term Loan Agreement of even date herewith between Borrower and Bank) and there are no financing statements on file, other than in favor of Bank and those with respect to the Permitted Liens; and (c) Borrower acquired its rights in the Collateral in the ordinary course of its business.
- 2.3 Borrower will use commercially reasonable efforts keep the Collateral free at all times from all claims, liens, security interests and encumbrances other than those in favor of Bank and the Permitted Liens. Borrower will not, without the prior written consent of Bank, sell, transfer or lease, or permit to be sold, transferred or leased, any or all of the Collateral, except for (i) Inventory sold, transferred or leased in the ordinary course of its business and (ii) non-exclusive licenses granted by Borrower in the ordinary course of business. Bank or its representatives may at all reasonable times inspect the Collateral and may enter upon all premises where the Collateral is kept or might be located; provided that so long as no Event of Default has occurred, Bank shall give Borrower reasonable notice prior to each such inspection.
- 2.4 Borrower will do all acts and will execute or cause to be executed all writings requested by Bank and reasonably necessary to establish, maintain and continue a perfected and first security interest of Bank in the Collateral. Borrower agrees that Bank has no obligation to acquire or perfect any lien on or security interest in any asset(s) of Borrower, whether realty or personally, to secure payment of the Indebtedness and Borrower is not relying upon assets in which the Bank may have a lien or security interest for payment of the Indebtedness.
- 2.5 Borrower will pay within the time that they can be paid without interest or penalty all taxes, assessments and similar charges which at any time are or may become a lien, charge, or encumbrance upon any Collateral, except to the extent contested in good faith. If Borrower fails to pay any of these taxes, assessments, or other charges in the time provided above, Bank has the option (but not the obligation) to do so, and Borrower agrees to repay all amounts so expended by Bank immediately upon demand, together with interest at the highest lawful default rate which could be charged by Bank thereon.
- 2.6 Borrower will use reasonable efforts to keep the Collateral in good condition and protect it from loss or damage, reasonable wear and tear excepted. Borrower has and will maintain at all times (a) with respect to the Collateral, insurance reasonable and customary as to the form of Collateral being insured, which insurance shall contain a lender's loss payable endorsement acceptable to Bank. If Borrower fails to maintain satisfactory insurance, Bank has the option (but not the obligation) to do so and Borrower agrees to repay all amounts so expended by Bank immediately upon demand, together with interest at the highest lawful default rate which could be charged by Bank thereon.
- 2.7 On each occasion on which Borrower evidences to Bank the account balances on and the nature and extent of the Accounts Receivable, Borrower shall be deemed to have warranted, to the best of Borrower's knowledge, that except as otherwise indicated (a) each of those Accounts Receivable is valid and enforceable without performance by Borrower of any act; (b) each of those account balances are in fact owing; (c) there are no setoffs, recoupments, credits, contra accounts, counterclaims or defenses against any of those Accounts Receivable; (d) as to any Accounts Receivable represented by a note, trade acceptance, draft or other instrument or by any chattel paper or document, the same have been endorsed and/or delivered by Borrower to Bank; (e) Borrower has not received with respect to any Account Receivable, any notice of the death of the related account debtor, or of the dissolution, liquidation, termination of existence, insolvency, business failure, appointment of a receiver for, assignment for the benefit of creditors by, or filing of a petition in bankruptcy by or against, the account debtor; and (f) as to each Account Receivable, the account debtor is not an affiliate of Borrower or the United States of America or any department, agency or instrumentality of it. Borrower will do all acts and will execute all writings reasonably requested by Bank to perform, enforce performance of, and collect all Accounts Receivable. Borrower shall neither make nor permit any modification, compromise or substitution for any Account Receivable without the prior written consent of Bank. Borrower shall, at Bank's request, arrange for verification of Accounts Receivable directly with account debtors or by other methods acceptable to Bank.
- 2.8 Borrower at all times shall be in material compliance with all applicable laws, including without limitation any laws, ordinances, directives, orders, statutes, or regulations an object of which is to regulate or improve health, safety, or the environment ("Environmental Laws").
- 2.9 If, after the occurrence of an Event of Default, the Collateral has been delivered to Bank, if Bank, acting in its sole discretion redelivers Collateral to Borrower or Borrower's designee for the purpose of (a) the ultimate sale or exchange thereof; or (b) presentation, collection, renewal, or registration of transfer thereof; or (c) loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with it preliminary to sale or exchange; such redelivery shall be in trust for the benefit of Bank and shall not constitute a release of Bank's security interest in it or in the proceeds or products of it unless Bank specifically so agrees in writing. If Borrower requests any such redelivery, Borrower will deliver with such request a duly executed financing statement in form and substance satisfactory to Bank. Any proceeds of Collateral coming into Borrower's possession as a result of any such redelivery shall be held in trust for Bank and immediately delivered to Bank for application on the Indebtedness. Bank may (in its sole discretion) deliver any or all of the Collateral to Borrower, and such delivery by Bank shall discharge Bank from all liability or responsibility for such Collateral. After the occurrence of an Event of Default, Bank, at its option, may require delivery of any Collateral to Bank at any time with such endorsements or assignments of the Collateral as Bank may request.
- 2.10 At any time and without notice, Bank may (a) after the occurrence of an Event of Default, cause any or all of the Collateral to be transferred to its name or to the name of its nominees; (b) after the occurrence of an Event of Default, receive or collect by legal proceedings or otherwise all dividends, interest, principal payments and other sums and all other distributions at any time payable or receivable on account of the Collateral, and hold the same as Collateral, or apply the same to the Indebtedness, the manner and distribution of the application to be in the sole discretion of Bank; (c) enter into any extension, subordination, reorganization, deposit, merger or consolidation agreement or any other agreement relating to or affecting the Collateral, and deposit or surrender control of the Collateral, and accept other property in exchange for the Collateral and hold or apply the property or money so received pursuant to this Agreement.
- 2.11 Bank may assign any of the Indebtedness and deliver any or all of the Collateral to its assignee, who then shall have with respect to Collateral so delivered all the rights and powers of Bank under this Agreement, and after that Bank shall be fully discharged from all liability and responsibility with respect to Collateral so delivered, provided that (i) such assignees shall be subject to the confidentiality provisions set forth in Section 5.18 hereof and (ii) so long as no Event of Default exists, Bank shall give notice to Borrower prior to any such assignment or delivery to any assignee other than Bank's parent, affiliates or subsidiaries.
- 2.12 Intentionally Omitted.
- 2.13 Borrower shall defend, indemnify and hold harmless Bank, its employees, agents, shareholders, affiliates, officers, and directors from and against any and all claims, damages, fines, expenses, liabilities or causes of action of whatever kind, including without limitation consultant fees, legal expenses, and attorneys' fees, suffered by any of them as a direct or indirect result of any actual or asserted violation of any law, including, without limit, Environmental Laws, or of any remediation relating to any property required by any law, including without limit

Environmental Laws, INCLUDING ANY CLAIMS, DAMAGES, FINES, EXPENSES, LIABILITIES OR CAUSES OF ACTION OF WHATEVER KIND ARISING OUT OF ANY CLAIM OR THEORY OF STRICT LIABILITY OR RESULTING FROM BANK'S OWN NEGLIGENCE, except and to the extent (but only to the extent) caused by Bank's gross negligence or willful misconduct.

- 2.14 Borrower is now the sole owner of the Collateral, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business.
- 2.15 Performance of this Agreement does not conflict with or result in a breach of any agreement to which Borrower is party or by which Borrower is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Agreement constitutes an assignment.
- 2.16 To the best of Borrower's knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party.
- 2.17 Borrower shall (i) use reasonable efforts to protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Bank in writing of material infringements detected and (iii) use reasonable efforts to not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld, unless Borrower determines that reasonable business practices suggest that abandonment is appropriate.
- 2.18 Borrower shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those intellectual property rights listed on Exhibits A, B and C hereto within thirty (30) days of the date of this Security Agreement. Borrower shall register or cause to be registered with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those additional intellectual property rights developed or acquired by Borrower from time to time in connection with any product prior to the sale or licensing of such product to any third party (including without limitation revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Borrower shall, from time to time, execute and file such other instruments, and take such further actions as Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Collateral.
- 2.19 This Agreement creates, and in the case of after-acquired Collateral, this Security Agreement will create at the time Borrower first has rights in such after-acquired Collateral, in favor of Bank a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the indebtedness upon making the filings referred to below.
- 2.20 Except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interests 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 U.S. governmental authority or U.S. regulatory body is required for the grant by Borrower of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Borrower in the U.S.
- 2.21 To Borrower's knowledge, all information heretofore, herein or hereafter supplied to Bank by or on behalf of Borrower with respect to the Collateral is accurate and complete in all material respects as of the date such information was submitted to Bank by Borrower.
- 2.22 Borrower shall not enter into any agreement that would materially impair or conflict with Borrower's obligations hereunder without Bank's prior written consent. Other than in the ordinary course of its business, Borrower shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Borrower's rights and interests in any property included within the definition of the Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts if Borrower is required, in its commercially reasonable judgment to accept such provisions.
- 2.23 Upon any executive officer of Borrower obtaining knowledge thereof, Borrower will promptly notify Bank in writing of any event that materially adversely affects the value of any of the Collateral, the ability of Borrower to dispose of any Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Collateral.

### 3. Collection of Proceeds.

- 3.1 Borrower agrees to use reasonable commercial efforts to collect and enforce payment of all Collateral until Bank shall direct Borrower to the contrary. Upon the occurrence of an Event of Default and notice to Borrower by Bank and at all times after that, Borrower agrees to fully and promptly cooperate and assist Bank in the collection and enforcement of all Collateral and to hold in trust for Bank all payments received in connection with Collateral and from the sale, lease or other disposition of any Collateral, all rights by way of suretyship or guaranty and all rights in the nature of a lien or security interest which Borrower now or later has regarding Collateral. Immediately upon and after such notice, Borrower agrees to (a) endorse to Bank and immediately deliver to Bank all payments received on Collateral or from the sale, lease or other disposition of any Collateral or arising from any other rights or interests of Borrower in the Collateral, in the form received by Borrower without commingling with any other funds, and (b) immediately deliver to Bank all property in Borrower's possession or later coming into Borrower's possession through enforcement of Borrower's rights or interests in the Collateral. After the occurrence of an Event of Default, Borrower authorizes Bank or any Bank employee or agent to endorse the name of Borrower upon any checks or other items which are received in payment for any Collateral, and to do any and all things necessary in order to reduce these items to money, but only to the extent that Indebtedness remains outstanding. Bank shall have no duty as to the collection or protection of Collateral or the proceeds thereof, or as to the preservation of any related rights, beyond the use of reasonable care in the custody and preservation of Collateral in the possession of Bank. Borrower agrees to take steps necessary to preserve rights against prior parties with respect to the Collateral. Nothing in this Section 3.1 shall be deemed a consent by Bank to any sale, lease or other disposition of any Collateral.
- 3.2 Intentionally Omitted.
- 3.3 Intentionally Omitted.

### 4. Defaults, Enforcement and Application of Proceeds.

- 4.1 Upon the occurrence of any of the following events (each an "Event of Default"), Borrower shall be in default under this Agreement:

- (a) Any failure to pay the Indebtedness when due, or such portion of it as may be due, by acceleration or otherwise and such failure continues unremedied for a period of five (5) days; or
- (b) Any failure to pay any indebtedness of Borrower (other than to the Bank) when due, or such portion of it as may be due, by acceleration or otherwise and such failure continues unremedied for a period of ten (10) days; or
- (c) Any failure or neglect to comply with, or breach of or default under, any term of this Agreement, or any other agreement or commitment between Borrower and Bank and such failure continues unremedied for a period of ten (10) days; or
- (d) Any warranty, representation, financial statement, or other material information made, given or furnished to Bank by or on behalf of Borrower shall be, or shall prove to have been, false or materially misleading when made, given, or furnished to Bank; or
- (e) Any substantial damage or destruction to or of any Collateral which has an aggregate value in excess of \$250,000, or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection with any Collateral or of any other judicial process of, upon or in respect of Borrower or any Collateral; or
- (f) Any voluntary suspension of the transaction of business by Borrower, or dissolution, termination of existence (other than in connection with a merger or consolidation), insolvency, business failure, or assignment for the benefit of creditors of or by Borrower, or commencement of any proceedings under any state or federal bankruptcy or insolvency laws or laws for the relief of Borrowers by or against Borrower and if such bankruptcy proceedings are involuntary proceedings such proceedings are not dismissed within sixty (60) days; or the appointment of a receiver, trustee, court appointee, sequestrator or otherwise, for all or any part of the property of Borrower; or
- (g) An event of default shall occur under any instrument, agreement or other document evidencing, securing or otherwise relating to any of the Indebtedness and such default continues for more than the applicable cure period, if any, with respect thereto; or
- (h) By January 15, 2001, Borrower has not executed either a term sheet or definitive agreement with a third party providing for either the issuance by Borrower of its Series B Preferred Shares or the sale of all or substantially all of Borrower's assets.

4.2 Upon the occurrence of any Event of Default, Bank may at its discretion and without prior notice to Borrower declare any or all of the outstanding Indebtedness to be immediately due and payable, and shall have and may exercise any right or remedy available to it including, without limitation, any one or more of the following rights and remedies:

- (a) Exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code and other applicable law;
- (b) Institute legal proceedings to foreclose upon the lien and security interest granted by this Agreement, to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any Collateral or the proceeds of any sale thereof;
- (c) Institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all Collateral and/or
- (d) Personally or by agents, attorneys, or appointment of a receiver, enter upon any premises where Collateral may then be located, and take possession of all or any of it and/or render it unusable; and without being responsible for loss or damage to such Collateral, hold, operate, sell, lease, or dispose of all or any Collateral at one or more public or private sales, leaseings or other dispositions, at places and times and on terms and conditions as Bank may reasonably deem fit, without any previous demand or advertisement; and except as provided in this Agreement, all notice of sale, lease or other disposition, and advertisement, and other notice or demand, any right or equity of redemption, and any obligation of a prospective purchaser or lessee to inquire as to the power and authority of Bank to sell, lease, or otherwise dispose of the Collateral or as to the application by Bank of the proceeds of sale or otherwise, which would otherwise be required by, or available to Borrower under, applicable law are expressly waived by Borrower to the fullest extent permitted.

At any sale pursuant to this Section 4.2, whether under the power of sale, by virtue of judicial proceedings or otherwise, it shall not be necessary for Bank or a public officer under order of a court to have present physical or constructive possession of Collateral to be sold. The recitals contained in any conveyances and receipts made and given by Bank or the public officer to any purchaser at any sale made pursuant to this Agreement shall, to the extent permitted by applicable law, conclusively establish the truth and accuracy of the matters stated (including, without limit, as to the amounts of the principal of and interest on the Indebtedness, the accrual and nonpayment thereof and the advertisement and conduct of the sale); and all prerequisites to the sale shall be presumed to have been satisfied and performed. Upon any sale of any Collateral, the receipt of the purchase price by the officer making the sale under judicial proceedings or by Bank shall be sufficient discharge of the Collateral to the purchaser, and the purchaser shall not be obligated to see to the application of the money. Any sale of any Collateral under this Agreement shall be a perpetual bar against Borrower with respect to that Collateral.

- 4.3 Borrower shall at the request of Bank, notify the account debtors or obligors of Bank's security interest in the Collateral and, after the occurrence of an Event of Default, direct payment of any Accounts Receivable to Bank. Bank may, itself, upon the occurrence of any Event of Default so notify and direct any account debtor or obligor.
- 4.4 The proceeds of any sale or other disposition of Collateral authorized by this Agreement shall be applied by Bank in such order as the Bank in its discretion, deems appropriate including, without limitation, the following order: first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorneys' fees and legal expenses incurred by Bank; the balance of the proceeds of the sale or other disposition shall be applied in the payment of the Indebtedness, first to interest, then to principal, then to remaining Indebtedness and the surplus, if any, shall be paid over to Borrower or to such other person(s) as may be entitled to it under applicable law. Borrower shall remain liable for any deficiency, which it shall pay to Bank immediately upon demand.
- 4.5 Nothing in this Agreement is intended, nor shall it be construed, to preclude Bank from pursuing any other remedy provided by law or in equity for the collection of the Indebtedness or for the recovery of any other sum to which Bank may be entitled for the breach of this Agreement by Borrower. Nothing in this Agreement shall reduce or release in any way any rights or security interests of Bank contained in any existing agreement between Borrower and Bank.
- 4.6 No waiver of default or consent to any act by Borrower shall be effective unless in writing and signed by an authorized officer of Bank. No waiver of any default or forbearance on the part of Bank in enforcing any of its rights under this Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any rights.

- 4.7 Borrower irrevocably appoints Bank or any agent of Bank (which appointment is coupled with an interest) the true and lawful attorney of Borrower (with full power of substitution) in the name, place and stead of, and at the expense of, Borrower:
- (a) upon the occurrence of an Event of Default, to demand, receive, sue for, and give receipts or acquittances for any moneys due or to become due on any Collateral and to enclose any item representing any payment on or proceeds of the Collateral;
  - (b) to execute and file in the name of and on behalf of Borrower all financing statements or other filings deemed necessary or desirable by Bank to evidence, perfect, or continue the security interests granted in this Agreement, and Borrower further authorizes and requests that the Register of Copyrights and the commissioner of Patents and Trademarks record this Agreement; and
  - (c) upon the occurrence of an Event of Default, to do and perform any act on behalf of Borrower permitted or required under this Agreement with respect to the Collateral.
- 4.8 Upon the occurrence of an Event of Default, Borrower also agrees, upon request of Bank, to assemble the Collateral and make it available to Bank at any place designated by Bank which is reasonably convenient to Bank and Borrower.

**5. Miscellaneous.**

- 5.1 Until Bank is advised in writing by Borrower to the contrary, all notices, requests and demands required under this Agreement or by law shall be given to, or made upon, Borrower at the first address indicated in Section 5.15 below.
- 5.2 Borrower will give Bank not less than 30 days prior written notice of all contemplated changes in Borrower's name, chief executive office location, principal place of business location, and/or location of any Collateral, but the giving of this notice shall not cure any Event of Default caused by this change.
- 5.3 Bank assumes no duty of performance or other responsibility under any contracts contained within the Collateral.
- 5.4 Bank has the right to sell, assign, transfer, negotiate or grant participations or any interest in, any or all of the Indebtedness and any related obligations, including without limit this Agreement, provided that (i) any such assignee or participant shall be subject to the confidentiality provisions set forth in Section 5.18 hereof and (ii) so long as no Event of Default then exists, Bank shall give notice to Borrower prior to any such sale, assignment, transfer, negotiation or grant if the assignee or participant is not Bank's parent, or one of its affiliates or subsidiaries. In connection with the above, but without limiting its ability to make other disclosures to the full extent allowable, Bank may (after notice to Borrower if required by the immediately preceding sentence) disclose all documents and information which Bank now or later has relating to Borrower, the Indebtedness or this Agreement, however obtained. Borrower further agrees that Bank may provide information relating to this Agreement or relating to Borrower or the Indebtedness to the Bank's parent, affiliates, subsidiaries, and service providers, provided that Bank's parent, affiliates, subsidiaries and service providers shall be subject to the confidentiality provisions set forth in Section 5.18 hereof to the same extent as if they were a party hereto.
- 5.5 In addition to Bank's other rights, any indebtedness owing from Bank to Borrower can be set off and applied by Bank on any Indebtedness at any time(s) either before or after maturity or demand without notice to anyone. Any such action shall not constitute acceptance of collateral in discharge of any portion of the Indebtedness.
- 5.6 Borrower waives any right to require the Bank to: (a) proceed against any person or property; (b) give notice of the terms, time and place of any public or private sale of personal property security held from Borrower or any other person, or otherwise comply with the provisions of Section 9.504 of the Uniform Commercial Code; or (c) pursue any other remedy in the Bank's power. Borrower waives notice of acceptance of this Agreement and presentment, demand, protest, notice of protest, dishonor, notice of dishonor, notice of default, notice of intent to accelerate or demand payment or notice of acceleration of any Indebtedness, any and all other notices to which the undersigned might otherwise be entitled, and diligence in collecting any Indebtedness. Borrower unconditionally and irrevocably waives each and every defense and setoff of any nature which, under principles of guaranty or otherwise, would operate to impair or diminish in any way the obligation of Borrower under this Agreement, and acknowledges that such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from Borrower now or later securing the Indebtedness, and acknowledges that as of the date of this Agreement no such defense or setoff exists.
- 5.7 Intentionally Omitted.
- 5.8 In the event that applicable law shall obligate Bank to give prior notice to Borrower of any action to be taken under this Agreement, Borrower agrees that a written notice given to Borrower at least ten days before the date of the act shall be reasonable notice of the act and, specifically, reasonable notification of the time and place of any public sale or of the time after which any private sale, lease, or other disposition is to be made. A notice shall be deemed to be given under this Agreement when delivered to Borrower or when placed in an envelope addressed to Borrower and deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States Postal Service or delivered to an overnight courier. The mailing shall be by overnight courier, certified, or first class mail.
- 5.9 Notwithstanding any prior revocation, termination, surrender, or discharge of this Agreement in whole or in part, the effectiveness of this Agreement shall automatically continue or be reinstated in the event that any payment received or credit given by Bank in respect of the Indebtedness is returned, disgorged, or rescinded under any applicable law, including, without limitation, bankruptcy or insolvency laws in which case this Agreement, shall be enforceable against Borrower as if the returned, disgorged, or rescinded payment or credit had not been received or given by Bank, and whether or not Bank relied upon this payment or credit or changed its position as a consequence of it. In the event of continuation or reinstatement of this Agreement, Borrower agrees upon demand by Bank to execute and deliver to Bank those documents which Bank determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement although the failure of Borrower to do so shall not affect in any way the reinstatement or continuation.
- 5.10 This Agreement and all the rights and remedies of Bank under this Agreement shall inure to the benefit of Bank's successors and assigns and to any other holder who derives from Bank title to or an interest in the Indebtedness or any portion of it, and shall bind Borrower and the successors, and assigns of Borrower. Nothing in this Section 5.10 is deemed a consent by Bank to any assignment by Borrower.
- 5.11 Intentionally Omitted.
- 5.12 Except as otherwise provided in this Agreement, all terms in this Agreement have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the Uniform Commercial Code. "Uniform Commercial Code" means the Texas Business and Commerce Code as amended.

5.13 No single or partial exercise, or delay in the exercise, of any right or power under this Agreement, shall preclude other or further exercise of the rights and powers under this Agreement. The unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder of this Agreement. This Agreement constitutes the entire agreement of Borrower and Bank with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be effective unless the same shall be in writing and signed by Borrower and an authorized officer of Bank. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

5.14 Borrower's chief executive office and its principal place of business is located and shall be maintained at

6504 International Parkway, Suite 2000  
STREET ADDRESS

Plano Texas 75093  
CITY STATE ZIP CODE COUNTY

If Collateral is located at other than the address specified above, such Collateral is located and shall be maintained at

STREET ADDRESS

CITY STATE ZIP CODE COUNTY

Collateral shall be maintained only at the locations identified in this Section 5.14.

5.15 A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement under the Uniform Commercial Code and may be filed by Bank in any filing office.

5.16 This Agreement shall be terminated only by the filing of a termination statement in accordance with the applicable provisions of the Uniform Commercial Code, but the obligations contained in Section 2.13 of this Agreement shall survive termination.

5.17 Borrower agrees to reimburse the Bank upon demand for any and all costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside counsel is used, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in enforcing or attempting to enforce this Agreement or in exercising or attempting to exercise any right or remedy under this Agreement or incurred in any other matter or proceeding relating to this Security Agreement.

5.18 Bank agrees not to disclose, and not to use for any purpose other than protecting its rights hereunder, any trade secrets or other confidential or proprietary documents or information of Borrower, provided that Bank may disclose such documents or information (a) to the extent required by law or court order, (b) if such documents or information becomes publicly available through no action or fault of Bank or its affiliates, or (c) such documents or information is obtained by Bank from a source other than Borrower or its affiliates who has the right to disclose the same to Bank.

6. BORROWER AND BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.

7. THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.



8. Special Provisions Applicable to this Agreement. (\*None, if left blank)

Borrower

NETENSITY, INC.

Borrower NAME TYPED/PRINTED

By: 

SIGNATURE OF CRAIG M. SCOTT

Its: Chief Operating Officer

TITLE

Bank

Comerica Bank Texas, a Texas banking association

By: 

SIGNATURE OF STEVEN MOILES

Its: Vice President

TITLE

EXHIBIT A  
TO SECURITY AGREEMENT

COPYRIGHTS

Any and all copyrightable materials, copyright rights, copyright applications, copyright registrations and like protections now or hereafter owned by Debtor.

EXHIBIT B  
TO SECURITY AGREEMENT

PATENTS

NONE.

EXHIBIT C  
TO SECURITY AGREEMENT

TRADEMARKS

1. Trademark NETENSITY, (Words only), Serial No.: 76/035449, Filing Date: April 24, 2000, Status: Pending.
2. Trademark NETENSITY, (Words and design), Serial No.: 76/024514, Filing Date: October 10, 2000, Status: Pending.

017104 010057 Dallas 1224762.1

RECORDED: 12/20/2000

TRADEMARK  
REEL: 002199 FRAME: 0788