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Tab settings



U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

102183141

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Factory Logic Software, Inc.

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

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)

Name: TL Ventures V.L.P.

Internal

Address:

Street Address: 600 Congress, Suite 1700

City: Austin State: TX Zip: 78701

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

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

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

Execution Date: July 30, 2002

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2542218

Additional number(s) attached  Yes  No

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

Name: Mark Hartwell

Internal Address:

Brobeck, Phleger & Harrison LLP

Street Address: One Market, Spear Street Tower

City: San Francisco State: CA Zip: 94105

6. Total number of applications and registrations involved:

1

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Mark Hartwell

Name of Person Signing

Signature

8/1/02

Date

Total number of pages including cover sheet, attachments, and document: 22

08/08/2002 TBIAZ1 00000074 2542218

01 FC:481

40.00 DP

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

TRADEMARK  
REEL: 002557 FRAME: 0721

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Security Agreement"), dated as of July 30, 2002, is executed by Factory Logic Software, Inc., a Delaware corporation ("Debtor"), in favor of TL Ventures V L.P., a Delaware limited partnership ("Collateral Agent"), as Collateral Agent appointed pursuant to that certain Security Agreement, date as of the date hereof, among Debtor and the Secured Parties (collectively, the "Secured Parties").

## RECITALS

A. Debtor and the Secured Parties have entered into a Note and Warrant Purchase Agreement dated the date hereof and Debtor has executed a Subordinated Secured Convertible Promissory Note, each a "Note" and collectively, the "Notes") in favor of each Secured Party.

B. In order to induce each Secured Party to extend the credit evidenced by the Notes, Debtor has agreed to enter into this Security Agreement and to grant Collateral Agent the security interest in the Collateral described below.

## AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor hereby agrees with Collateral Agent as follows:

1. Definitions and Interpretation. When used in this Security Agreement, the following terms shall have the following respective meanings:

"Collateral" has the meaning given to that term in Section 2 hereof.

"Copyright Office" means the United States Copyright Office or any successor office or agency thereto.

"Copyrights" has the meaning given to that term in Attachment I hereto.

"Mask Works" has the meaning given to that term in Attachment I hereto.

"Obligations" means all loans, advances, debts, liabilities and obligations, howsoever arising, owed by Debtor to the Secured Parties of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of the Note Purchase Agreement or any of the other Transaction Documents, including all interest, fees, charges, expenses, reasonable attorneys fees and accountants fees chargeable to and payable by Debtor hereunder and thereunder.

"Patent and Trademark Office" means the United States Patent and Trademark Office or any successor office or agency thereto.

**“Patent Applications”** means all applications made by, or on behalf of, Debtor to the Patent and Trademark Office or to any similar office or agency of any foreign country or political subdivision thereof for the registration of Patents.

**“Patent Registrations”** means all Patents registered with the Patent and Trademark Office or with any similar office or agency of any foreign country or political subdivision thereof and all Patent Applications.

**“Patents”** has the meaning given to that term in Attachment I hereto.

**“Trade Secrets”** has the meaning given to that term in Attachment I hereto.

**“Trademarks”** has the meaning given to that term in Attachment I hereto.

**“UCC”** means the Uniform Commercial Code as in effect in the State of Texas from time to time.

Unless otherwise defined herein, all other capitalized terms used herein and defined in the Note Purchase Agreement have the respective meanings given to those terms in the Note Purchase Agreement, and all terms defined in the UCC have the respective meanings given to those terms in the UCC. The rules of construction set forth in Article 1 of the Note Purchase Agreement shall, to the extent not inconsistent with the terms of this Security Agreement, apply to this Security Agreement and are hereby incorporated by reference.

2. **Grant of Security Interest.** As security for the Obligations, Debtor hereby pledges and grants to Collateral Agent a security interest in all right, title and interest of Debtor in and to the property described in Attachment I annexed hereto (collectively and severally, the **“Collateral”**), which Attachment I is incorporated herein by this reference. The security interest granted pursuant to this Security Agreement shall continue until the conversion, repayment or other cancellation of the Notes, at which time it shall terminate.

Notwithstanding anything herein to the contrary, the term **“Collateral”** shall not include any Collateral now or hereafter held by Debtor as licensee (or licensor to the extent that such license agreement contains a non-assignment provision) or otherwise to the extent that (i) as a result of the grant of a security interest, Debtor’s rights in or with respect to any asset described in this clause would be forfeited or would become void, voidable, terminable or revocable or if Debtor would breach, violate or default the underlying license or agreement that governs such asset pursuant to the restrictions contained therein, and (ii) such restriction is effective and enforceable under applicable law; provided, however, that the security interest granted under this Security Agreement shall extend to, and the term **“Collateral”** shall include (y) any and all proceeds of the assets described in clause (c) above to the extent that the assignment or encumbering of such proceeds is not restricted and (z) upon any such licensor’s or licensee’s or other applicable party’s consent with respect to the granting of a security interest under this Security Agreement, thereafter such assets as well as any proceeds thereof shall be included in the term **“Collateral.”**

3. **Representations and Warranties.** Debtor represents and warrants to Collateral Agent that:

(a) Debtor is the owner of the Collateral (or, in the case of after-acquired Collateral, at the time Debtor acquires rights in the Collateral, will be the owner thereof) and that no other Person has (or, in the case of after-acquired Collateral, at the time Debtor acquires rights therein, will have) any right, title, claim or interest (by way of Lien or otherwise) in, against or to the Collateral other than Permitted Liens (as defined in the Security Agreement dated of even date herewith by and between Factory Logic Software, Inc.,

a Delaware corporation, as debtor, and TL Ventures V L.P., a Delaware limited partnership, as collateral agent);

(b) Upon the filing of appropriate documents with the Copyright Office or the Patent and Trademark Office and financing statements with the appropriate filing offices, Collateral Agent has (or in the case of after-acquired Collateral, at the time Debtor acquires rights therein, will have) a perfected security interest in the Collateral;

(c) Debtor has full corporate power and authority to grant the security interest herein granted;

(d) Debtor does not own any Patents, Trademarks, Copyrights or Mask Works registered in, or the subject of pending applications in, the Patent and Trademark Office or the Copyright Office or any similar offices or agencies in any other country or any political subdivision thereof, other than those described in Schedules A - F to Attachment I hereto;

(e) Debtor has:

(i) except for Permitted Liens, the sole, full and unencumbered right, title and interest in and to the Trademarks shown on Schedule A to Attachment I and the goods and services covered by the registrations thereof and, to the extent registered, such registrations are valid and enforceable and in full force and effect;

(ii) except for Permitted Liens, the sole, full and unencumbered right, title and interest in and to each of the Patents shown on Schedule B to Attachment I and the registrations thereof are valid and enforceable and in full force and effect;

(iii) except for Permitted Liens, the sole, full and unencumbered right, title and interest in and to each of the registered Copyrights shown on Schedule E to Attachment I and according to the records of the Copyright Office, each of said registered copyrights is valid and enforceable and in full force and effect;

(iv) except for Permitted Liens, the sole, full and unencumbered right, title and interest in and to the Mask Works shown on Schedule F to Attachment I and according to the records of the Copyright Office, each of said Mask Works is valid and enforceable and in full force and effect;

(f) To Debtor's knowledge, there is no claim by any third party that any Patents, Trademarks, Copyrights or Mask Works are invalid and unenforceable or do or may violate the rights of any Person;

(g) All licenses of Patents, Trademarks, Copyrights, Mask Works and Trade Secrets which Debtor has granted to any Person, other than licenses granted in the ordinary course of business, are set forth in Schedule G to Attachment I hereto;

(h) All licenses of Patents, Trademarks, Copyrights, Mask Works and Trade Secrets which any Person has granted to Debtor are set forth in Schedule H to Attachment I hereto;

(i) Debtor has obtained from each employee who may be considered the inventor of patentable inventions (invented within the scope of such employee's employment) an assignment to Debtor of all rights to such inventions, including Patents; and

(j) Debtor has taken all reasonable steps necessary to protect the secrecy and the validity under applicable law of all material Trade Secrets; and

(k) Except for the Silicon Valley Bank Documents (as such term is defined in the Note) and any license agreements containing non-assignment provisions (all of which have been disclosed in writing to Collateral Agent), Debtor is not a party to, nor is bound by, any license or other agreement that prohibits or otherwise restricts Debtor from granting a security interest in any Collateral.

4. Covenants of Debtor. Debtor hereby agrees:

(a) Debtor will perform all acts and execute all documents, including notices of security interest for each relevant type of intellectual property in forms suitable for filing with the Patent and Trademark Office or the Copyright Office, as applicable, substantially in the form of Attachment II (appropriately revised) annexed hereto, that may be necessary or desirable to record, maintain, preserve, protect and perfect Collateral Agent's interest in the Collateral, the Lien granted to Collateral Agent in the Collateral and the priority of such Lien;

(b) Except to the extent that Collateral Agent gives its prior written consent or as otherwise permitted under the Notes:

(i) Debtor (either itself or through licensees) will continue to use the Trademarks in connection with each and every trademark class of goods or services applicable to its current line of products or services as reflected in its current catalogs, brochures, price lists or similar materials in order to maintain the Trademarks in full force and effect free from any claim of abandonment for nonuse, and Debtor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated;

(ii) Debtor will not do any act or omit to do any act whereby the Patent Registrations may become abandoned or dedicated to the public domain or the remedies available against potential infringers weakened and shall notify Collateral Agent immediately if it knows of any reason or has reason to know that any Patent Registration may become abandoned or dedicated;

(iii) Debtor will not do any act or omit to do any act whereby the Copyrights or Mask Works may become abandoned or dedicated to the public domain or the remedies available against potential infringers weakened and shall notify Collateral Agent immediately if it knows of any reason or has reason to know that any Copyright or Mask Work may become abandoned or dedicated to the public domain; and

(iv) Debtor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or Lien upon, encumber, grant an exclusive or non-exclusive license (except in the ordinary course of business), or otherwise dispose of any of the Collateral, and nothing in this Security Agreement shall be deemed a consent by Collateral Agent to any such action except as expressly permitted herein;

(c) Debtor will promptly notify Collateral Agent upon the filing, either by Debtor or through any agent, employee, licensee or designee, of (i) an application for the registration of any Patent, Trademark, Copyright or Mask Work with the Patent and Trademark Office or the Copyright Office or any similar office or agency in any other country or any political subdivision thereof, (ii) any assignment of any Patent or Trademark, which Debtor may acquire from a third party, with the Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, or (iii) any assignment

of any Copyright or Mask Work, which Debtor may acquire from a third party, with the Copyright Office or any similar office or agency in any other country or any political subdivision thereof. Upon the reasonable request of Collateral Agent, Debtor shall execute and deliver any and all assignments, agreements, instruments, documents and papers as Collateral Agent may request to evidence Collateral Agent's security interest in such Patent, Trademark (and the goodwill and general intangibles of Debtor relating thereto or represented thereby), Copyright or Mask Work, and Debtor authorizes Collateral Agent to amend an original counterpart of the applicable notice of security interest executed pursuant to Section 4(a) of this Security Agreement without first obtaining Debtor's approval of or signature to such amendment and to record such document with the Patent and Trademark Office or Copyright Office, as applicable;

(d) Debtor will keep the Collateral free of all Liens, except Permitted Liens;

(e) Debtor will take all necessary steps in any proceeding before the Patent and Trademark Office, the Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to diligently prosecute or maintain, as applicable, each application and registration of the Patents, Trademarks, Copyrights and Mask Works, including filing of renewals, affidavits of use, affidavits of incontestability and appropriately responding to opposition, interference and cancellation proceedings initiated by third parties (except to the extent that dedication, abandonment or invalidation is permitted hereunder);

(f) During the term of the Notes, Debtor shall (i) make application to the Patent and Trademark Office (and assign such application to Collateral Agent as security) to register any material unpatented but patentable inventions developed by Debtor or its employees (within the scope of their employment), unless Debtor, in the exercise of its prudent business judgment, deems any such Patent not to have significant commercial value or determines that its rights thereunder are better preserved as a Trade Secret; and (ii) make application to the Patent and Trademark Office to register any registerable but unregistered material Trademarks used by Debtor in connection with its products or services;

(g) Debtor shall (i) use proper statutory notice in connection with its use of the Patents, Trademarks, Copyrights and Mask Works, (ii) maintain consistent standards of quality in its manufacture of products sold under the Trademarks or provision of services in connection with the Trademarks, and (iii) take reasonable steps necessary to protect the secrecy and the validity under applicable law of all material Trade Secrets;

(h) Debtor agrees that if it or any Affiliate, learns of any use by any Person of any term or design likely to cause confusion with any Trademark, Debtor shall promptly notify Collateral Agent of such use and of all steps taken and to be taken to remedy any infringement of any Trademark;

(i) Debtor shall maintain with each employee who may have access to the Trade Secrets of Debtor an agreement by which such employee agrees not to disclose such Trade Secrets and with each employee who may be the inventor of patentable inventions (invented within the scope of such employee's employment) an invention assignment agreement requiring such employee to assign all rights to such inventions, including patents and patent applications, to Debtor and further requiring such employee to cooperate fully with Debtor and its counsel in the prosecution of any patent application or in any litigation involving the invention, whether such cooperation is required during such employee's employment with Debtor or after the termination of such employment, and Debtor will take all steps necessary to cause such employee to cooperate with Debtor's successors in interest, including Collateral Agent, and their counsel in connection with any such prosecution or litigation;

(j) Debtor shall at all times keep at least one complete set of its records concerning the Collateral at its chief executive office and shall make such records available for inspection by Collateral Agent at such times as Collateral Agent may reasonably request;

(k) Debtor shall take such commercially reasonable steps as Collateral Agent may request to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for any property described on Attachment I hereto to constitute Collateral and for Collateral Agent to have a security interest in such property that might otherwise be prohibited by law or by the terms of the applicable license or other agreement; and

(l) Debtor shall not become bound by any license or other agreement that would require consent or waiver for the rights or other property subject thereto to constitute Collateral which is reasonably likely to have a material impact on Debtor's business or financial condition without having taken such commercially reasonable steps as Collateral Agent shall request to obtain such waiver or consent.

5. Authorized Action by Collateral Agent.

(a) Collateral Agent may, in its reasonable discretion, pay any amount or do any act required of Debtor hereunder or requested by Collateral Agent to preserve, defend, protect, maintain, record or enforce Debtor's obligations contained herein, the Obligations, the Collateral, or the right, title and interest granted Collateral Agent by this Security Agreement, and which Debtor fails to do or pay, and any such payment shall be deemed an advance by Collateral Agent to Debtor and shall be payable on demand together with interest at the highest rate then payable on the Obligations.

(b) Debtor agrees to execute and deliver to Collateral Agent three originals of a Special Power of Attorney in substantially the form of Attachment III to this Agreement for the implementation of the recording, giving of notice, preservation, assignment, sale or other disposal of the Collateral pursuant to Sections 2, 4(a), 5(a) and 7(a).

(c) Debtor hereby grants to Collateral Agent and its employees and agents the right to visit, at reasonable times and upon reasonable notice, Debtor's business facilities at which Debtor manufactures products or provides services, which products or services are sold under or provided in connection with any of the Trademarks, and to inspect such products and the quality control records relating thereto or observe the provision of such services.

(d) Debtor shall execute and deliver to Collateral Agent concurrently with the execution of this Agreement, and Debtor hereby authorizes Collateral Agent to file (with or without Debtor's signature), at any time and from time to time thereafter, all financing statements, assignments, continuation financing statements, termination statements and other documents and instruments, in form reasonably satisfactory to Collateral Agent, and take all other action, as Collateral Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the security interest of Collateral Agent in the Collateral and to accomplish the purposes of this Security Agreement.

6. Litigation and Other Proceedings

(a) Debtor shall have the right and obligation to commence and diligently prosecute such suits, proceedings or other actions for infringement or other damage, or reexamination or reissue proceedings, or opposition or cancellation proceedings as are reasonable to protect any of the Patents, Trademarks, Copyrights, Mask Works or Trade Secrets. No such suit, proceeding or other actions shall be settled or

voluntarily dismissed, nor shall any party be released or excused of any claims of or liability for infringement, without the prior written consent of Collateral Agent, which consent shall not be unreasonably withheld.

(b) Upon the occurrence and during the continuation of an Event of Default, Collateral Agent shall have the right but not the obligation to bring suit or institute proceedings in the name of Debtor or Collateral Agent to enforce any rights in the Collateral, including any license thereunder, in which event Debtor shall at the request of Collateral Agent do any and all lawful acts and execute any and all documents reasonably required by Collateral Agent in aid of such enforcement. If Collateral Agent elects not to bring suit to enforce any right under the Collateral, including any license thereunder, Debtor agrees to use all reasonable measures, whether by suit, proceeding or other action, to cause to cease any infringement of any right under the Collateral by any Person and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing necessary to prevent such infringement.

## 7. Default and Remedies.

(a) Debtor shall be deemed in default under this Security Agreement upon the occurrence of an Event of Default, as that term is defined in the Notes. Upon the occurrence and during the continuation of any such Event of Default, Collateral Agent may, at its option, and (except if otherwise specified below) without notice to or demand on Debtor, and in addition to all rights and remedies available to Collateral Agent under the Note Purchase Agreement or the other Transaction Documents, do any one or more of the following:

(i) upon ten (10) days' prior notice to Debtor, direct Debtor not to make any further use of the Patents, the Trademarks (or any mark similar thereto), the Copyrights (or any work deriving therefrom), or the Mask Works for any purpose;

(ii) at any time and from time to time, upon ten (10) days' prior notice to Debtor, license, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Patents, Trademarks, Copyrights or Mask Works, throughout the world for such term or terms, on such conditions, and in such manner, as Collateral Agent shall in its reasonable discretion determine;

(iii) at any time and from time to time, enforce (and upon notice to Debtor have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Debtor in, to and under any one or more license agreements with respect to the Collateral (without assuming any obligations or liability thereunder), and take or refrain from taking any action under any thereof;

(iv) at any time and from time to time, upon ten (10) days' prior notice to Debtor, assign, sell, or otherwise dispose of, the Collateral or any of it, either with or without special or other conditions or stipulations, with power to buy the Collateral or any part of it, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which Collateral Agent shall, in its reasonable discretion, deem appropriate or proper; and

(v) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral pursuant to clause (a)(iv) hereof, Collateral Agent may, at any time, pursuant to the authority granted in the Power of Attorney executed pursuant to Section 5(b) hereof, execute and deliver on behalf of Debtor, one or more instruments of assignment of the Patents, Trademarks, Copyrights or Mask Works (or any application or registration thereof), in form suitable for filing, recording or registration in any country.



(b) Debtor agrees to pay when due all reasonable costs incurred in any such transfer of the Patents, Trademarks, Copyrights or Mask Works, including any taxes, fees and reasonable attorneys' fees and expenses, and all such costs shall be added to the Obligations. Collateral Agent may apply the proceeds actually received from any such license, assignment, sale or other disposition to the reasonable costs and expenses thereof, including reasonable attorneys' fees and all reasonable legal, travel and other expenses which may be incurred by Collateral Agent, and then to the Obligations, in such order as to principal or interest as Collateral Agent may desire; and Debtor shall remain liable and will pay Collateral Agent on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid. Nothing herein contained shall be construed as requiring Collateral Agent to take any such action at any time. In the event of any such license, assignment, sale or other disposition of the Collateral, or any of it, after the occurrence or continuation as hereinabove provided of an Event of Default, Debtor shall supply its know-how and expertise relating to the manufacture and sale of the products bearing or in connection with which the Trademarks, Patents, Copyrights or Mask Works are used, and its customer lists and other records relating to the Trademarks, Patents, Copyrights or Mask Works and to the distribution of products or the provisions of services, to Collateral Agent or its designee.

(c) In furtherance of Collateral Agent's rights hereunder, Debtor hereby grants to Collateral Agent an irrevocable, non-exclusive license (exercisable without royalty or other payment by Collateral Agent, but only in connection with the exercise of remedies hereunder) to use, license or sublicense any patent, trademark, trade name, copyright or other intellectual property in which Debtor now or hereafter has any right, title or interest together with the right of access to all media in which any of the foregoing may be recorded or stored.

#### 8. Indemnification and Release.

(a) Debtor assumes all responsibility and liability arising from the use of the Patents, Trademarks, Copyrights and Mask Works, and Debtor hereby indemnifies and holds Collateral Agent and its directors, officers, employees, agents and any of their respective Affiliates ("Indemnitees") harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees and expenses) arising out of or in connection with any alleged infringement of any patent, trademark, service mark, trade name, trade secret, copyright or mask work of a third party or alleged defect in any product manufactured, promoted or sold by Debtor (or any Affiliate of Debtor) in connection with any Patent, Trademark, Copyright or Mask Work or out of the manufacture, promotion, labeling, sale or advertisement of any product or service by Debtor (or any Affiliate of Debtor). Debtor agrees that Collateral Agent does not assume, and shall have no responsibility for, the payment of any sums due or to become due under any agreement or contract included in the Collateral or the performance of any obligations to be performed under or with respect to any such agreement or contract by Debtor, and Debtor hereby agrees to indemnify and hold each Indemnitee harmless with respect to any and all claims by any Person relating thereto.

(b) Debtor agrees to indemnify and hold each Indemnitee harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys fees and expenses) arising out of or in connection with (i) any claim, suit or proceeding instituted by or against Debtor, (ii) any action taken or omitted to be taken by Collateral Agent pursuant to Section 6(b), or (iii) any action taken or omitted to be taken by Collateral Agent pursuant to clause 7(a)(iii) hereof with respect to any license agreement of Debtor; provided, however, that Debtor shall not be required to indemnify any Indemnitee to the extent such liability arises from the willful misconduct or gross negligence of such Indemnitee. **THE INDEMNIFICATION PROVIDED FOR UNDER THIS SECTION 8(b) INCLUDES INDEMNIFICATION FOR INDEMNITEE'S OWN NEGLIGENT ACTS.**

(c) Debtor hereby releases each Indemnitee from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Indemnitees, or any of them, under the powers of attorney granted under the Special Power of Attorney executed pursuant to Section 5(b) herein, other than actions taken or omitted to be taken through the gross negligence or willful misconduct of such Indemnitees.

(d) Debtor agrees to cause Collateral Agent to be named as an additional insured with respect to any policy of insurance held by Debtor from time to time covering product liability or intellectual property infringement risk.

9. Miscellaneous.

(a) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Collateral Agent or Debtor under this Security Agreement or the other Transaction Documents shall be in writing and telecopied, mailed or delivered to each party at its telecopier number or address set forth in the Note Purchase Agreement (or to such other telecopier number or address for any party as indicated in any notice given by that party to the other party). All such notices and communications shall be effective (a) when sent by Federal Express or other overnight service of recognized standing, on the Business Day following the deposit with such service; (b) when mailed by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery; and (d) when telecopied, upon confirmation of receipt.

(b) Nonwaiver. No failure or delay on Collateral Agent's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Security Agreement may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by Debtor and Collateral Agent. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Security Agreement shall be binding upon and inure to the benefit of Collateral Agent and Debtor and their respective successors and assigns; provided, however, that Debtor may not sell, assign or delegate rights and obligations hereunder without the prior written consent of Collateral Agent.

(e) Cumulative Rights, etc. The rights, powers and remedies of Collateral Agent under this Security Agreement shall be in addition to all rights, powers and remedies given to Collateral Agent by virtue of any applicable law, rule or regulation of any Governmental Authority, the Note Purchase Agreement, any other Transaction Document or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Collateral Agent's rights hereunder. Debtor waives any right to require Collateral Agent to proceed against any Person or to exhaust any Collateral or to pursue any remedy in Collateral Agent's power.

(f) Payments Free of Taxes, Etc. All payments made by Debtor under this Security Agreement shall be made by Debtor free and clear of and without deduction for any and all present and future taxes, levies, charges, deductions and withholdings. In addition, Debtor shall pay upon demand any stamp or other taxes, levies or charges of any jurisdiction with respect to the execution, delivery, registration, performance and enforcement of this Security Agreement. Upon request by Collateral Agent, Debtor shall

furnish evidence satisfactory to Collateral Agent or such Collateral Agent or Collateral Agent's designee that all requisite authorizations and approvals by, and notices to and filings with, governmental authorities and regulatory bodies have been obtained and made and that all requisite taxes, levies and charges have been paid.

(g) Partial Invalidity. If any time any provision of this Security Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Security Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(h) Expenses. Each of Debtor and Collateral Agent shall bear its own costs in connection with the preparation, execution and delivery of, and the exercise of its duties under, this Security Agreement and the other Transaction Documents. Debtor shall pay on demand all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Collateral Agent with respect to any amendments or waivers hereof requested by Debtor or in the enforcement or attempted enforcement of any of the Obligations or in preserving any of Collateral Agent's rights and remedies (including, without limitation, all such fees and expenses incurred in connection with any "workout" or restructuring affecting the Transaction Documents or the Obligations or any bankruptcy or similar proceeding involving Debtor or any of its Subsidiaries). As used herein, the term "reasonable attorneys' fees" shall include, without limitation, allocable costs of Collateral Agent's in-house legal counsel and staff, if any.

(i) Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to conflicts of law rules (except to the extent governed by the UCC).

(j) Waiver of Jury Trial. EACH OF DEBTOR AND COLLATERAL AGENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT.

IN WITNESS WHEREOF, Debtor has caused this Security Agreement to be executed as of the day and year first above written.

**Debtor**

Factory Logic Software, Inc.

By: 

Name: ALLEN WILSON

Title: CEO

**Collateral Agent**

TL Ventures V L.P.

By: TL Ventures V Management L.P.,  
its General Partner

By: TL Ventures V LLC,  
its General Partner

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

Name: \_\_\_\_\_

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

SIGNATURE PAGE TO FACTORY LOGIC SOFTWARE, INC.  
INTELLECTUAL PROPERTY SECURITY AGREEMENT

IN WITNESS WHEREOF, Debtor has caused this Security Agreement to be executed as of the day and year first above written.

**Debtor**

Factory Logic Software, Inc.

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

Name: \_\_\_\_\_

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

**Collateral Agent**

TL Ventures V L.P.

By: TL Ventures V Management L.P.,  
its General Partner

By: TL Ventures V LLC,  
its General Partner

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

Name: MARK J. DENING

Title: MANAGING DIRECTOR

SIGNATURE PAGE TO FACTORY LOGIC SOFTWARE, INC.  
INTELLECTUAL PROPERTY SECURITY AGREEMENT

**ATTACHMENT I**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

(a) All copyrights in software, products or services, including (i) all original works of authorship fixed in any tangible medium of expression, all right, title and interest therein and thereto, and all registrations and recordings thereof, including all applications, registrations and recordings in the Copyright Office or in any similar office or agency of the United States, any state thereof, or any foreign country or any political subdivision thereof, all whether now owned or hereafter acquired by Debtor, including those described on Schedule E to this Attachment I annexed hereto, which Schedule E is incorporated herein by this reference, and (ii) all extensions or renewals thereof and all licenses thereof (collectively, the "Copyrights");

(b) All patentable inventions, patent rights, shop rights, letters patent of the United States or any other country, all right, title and interest therein and thereto, and all registrations and recordings thereof, including (i) all Patent Registrations and recordings in the Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any foreign country or political subdivision thereof, all whether now owned or hereafter acquired by Debtor, including those described in Schedules B and D to this Attachment I annexed hereto, which Schedules B and D are incorporated herein by this reference, and (ii) all reissues, continuations, continuations-in-part or extensions thereof and all licenses thereof (collectively, the "Patents");

(c) All trademarks, trade names, trade styles and service marks, and all prints and labels on which said trademarks, trade names, trade styles and service marks have appeared or appear, and all designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all right, title and interest therein and thereto, all registrations and recordings thereof, including (i) all applications, registrations and recordings in the Patent and Trademark Office or in any similar office or agency of the United States, any state thereof, or any foreign country or any political subdivision thereof, all whether now owned or hereafter acquired by Debtor, including those described in Schedules A and C to this Attachment I, which Schedules A and C are incorporated herein by this reference, and (ii) all reissues, extensions or renewals thereof and all licenses thereof (collectively, the "Trademarks");

(d) All goodwill of Debtor's business symbolized by the Trademarks and all customer lists and other records of Debtor relating to the distribution of products or provision of services bearing or covered by the Trademarks;

(e) All mask works including all series of related images, however fixed or encoded, in final or intermediate form, having or representing the predetermined, three dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product, in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product, and all right, title and interest therein and thereto, and all registrations and recordings thereof, including all applications, registrations and recordings in the Copyright Office or in any similar office or agency of the United States, any state thereof, or any foreign country or any political subdivision thereof, all whether now owned or hereafter acquired by the Debtor, including those described on Schedule F to this Attachment I annexed hereto, which Schedule F is incorporated herein by this reference, and (ii) all extensions or renewals thereof and all licenses thereof (collectively, the "Mask Works").

(f) All information, including formulas, patterns, compilations, programs, devices, methods, techniques or processes, that derives independent economic value, actual or potential, from not being

generally known to, and not being readily ascertainable by proper means by other Persons who can obtain economic value from its disclosure or use, all whether now owned or hereafter acquired by the Debtor (collectively, the "Trade Secrets").

(g) All claims by Debtor against any Person for past, present or future infringement of the Patents, Trademarks, Copyrights, Mask Works or Trade Secrets;

(h) All proceeds of the foregoing (including whatever is receivable or received when Collateral or proceeds is (are) sold, collected, exchanged, licensed or otherwise disposed of, whether such disposition is voluntary or involuntary, including rights to payment and return premiums and insurance proceeds under insurance with respect to any Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Collateral).

**SCHEDULE A TO ATTACHMENT I  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**TRADEMARKS**

<b>Factory Logic</b>	<b>United States</b>	<b>2/26/2002</b>	<b>2542218</b>



**SCHEDULE B TO ATTACHMENT I  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**PATENTS**

[REDACTED]			

**SCHEDULE C TO ATTACHMENT I  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**APPLICATIONS FOR TRADEMARKS**

**SCHEDULE D TO ATTACHMENT I  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**PATENT APPLICATIONS**

Method and System for Managing the Manufacture of Customized Goods	United States	7/13/2000	09/615,197

**SCHEDULE E TO ATTACHMENT I  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**REGISTERED COPYRIGHTS**

**Registration No.**

**Jurisdiction**

**Date**

**SCHEDULE F TO ATTACHMENT I  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**MASK WORKS**

**Registration No.**

**Jurisdiction**

**Date**

NONE

**SCHEDULE G TO ATTACHMENT I**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**LICENSES GRANTED BY DEBTOR TO THIRD PARTIES**

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**TRADEMARK**  
**REEL: 002557 FRAME: 0742**

**SCHEDULE H TO ATTACHMENT I**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**LICENSES GRANTED BY THIRD PARTIES TO DEBTOR**

1.

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RECORDED: 08/08/2002

TRADEMARK  
REEL: 002557 FRAME: 0743