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01-19-2005

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

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



RECC  
TK 102922209

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

<p><b>1. Name of conveying party(ies)/Execution Date(s):</b> Zerochaos Acquisition Company, LLC</p> <p><input type="checkbox"/> Individual(s)      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership      <input checked="" type="checkbox"/> Limited Partnership  <input type="checkbox"/> Corporation-State  <input type="checkbox"/> Other _____</p> <p>Citizenship (see guidelines) <u>USA (Florida)</u>  Execution Date(s) <u>November 30, 2004</u></p> <p>Additional names of conveying parties attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p><b>2. Name and address of receiving party(ies)</b>      <input type="checkbox"/> Yes  Additional names, addresses, or citizenship attached?      <input checked="" type="checkbox"/> No</p> <p>Name: <u>Harbinger Mezzanine Partners, L.P.</u>  Internal  Address: <u>Suite 500</u>  Street Address: <u>618 Church Street</u>  City: <u>Nashville</u>  State: <u>Tennessee</u>  Country: <u>USA</u>      Zip: <u>37219</u></p> <p><input type="checkbox"/> Association      Citizenship _____  <input type="checkbox"/> General Partnership      Citizenship _____  <input checked="" type="checkbox"/> Limited Partnership      Citizenship <u>USA (Delaware)</u>  <input type="checkbox"/> Corporation      Citizenship _____  <input type="checkbox"/> Other _____      Citizenship _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  (Designations must be a separate document from assignment)</p>
<p><b>3. Nature of conveyance:</b></p> <p><input type="checkbox"/> Assignment      <input type="checkbox"/> Merger  <input checked="" type="checkbox"/> Security Agreement      <input type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____</p>	

<p><b>4. Application number(s) or registration number(s) and identification or description of the Trademark.</b></p> <p>A. Trademark Application No.(s)  <u>76/475,873</u>  <del>78/464,511</del></p> <p>B. Trademark Registration No.(s)  <u>2,475,703; 2,455,103; 2,497,682</u></p> <p>Additional sheet(s) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
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C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

<p><b>5. Name &amp; address of party to whom correspondence concerning document should be mailed:</b>  Name: <u>Stephen J. Stark</u>  Internal Address: <u>Miller &amp; Martin PLLC</u>  <u>Suite 1000 Volunteer Building</u>  Street Address: <u>832 Georgia Avenue</u>  City: <u>Chattanooga</u>  State: <u>Tennessee</u>      Zip: <u>37402-2289</u>  Phone Number: <u>423.756.6600</u>  Fax Number: <u>423.785.8480</u>  Email Address: <u>sstark@millermartin.com</u></p>	<p><b>6. Total number of applications and registrations involved:</b>      <u>5</u></p> <p><b>7. Total fee (37 CFR 2.6(b)(6) &amp; 3.41)</b>      \$ <u>200.00</u></p> <p><input type="checkbox"/> Authorized to be charged by credit card  <input type="checkbox"/> Authorized to be charged to deposit account  <input checked="" type="checkbox"/> Enclosed</p> <p><b>8. Payment Information:</b></p> <p>a. Credit Card      Last 4 Numbers _____  Expiration Date _____</p> <p>b. Deposit Account Number _____  Authorized User Name _____</p>
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<p><b>9. Signature:</b> <u>J. Patrick Murphy</u>      <u>12/8/04</u>  Signature      Date</p> <p><u>J. PATRICK MURPHY</u>  Name of Person Signing</p>	<p>Total number of pages including cover sheet, attachments, and document: <u>18</u></p>
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Refund Ref: 01/19/2005 6TON11 0000141451  
CHECK Refund Total: \$60.00

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Agreement"), is made as of November 30, 2004, by ZEROCHAOS ACQUISITION COMPANY, LLC, a Florida limited liability company, in favor of HARBINGER MEZZANINE PARTNERS, L.P., a Delaware limited partnership (the "Agent"), as collateral agent for itself and Banyan Mezzanine Fund, L.P. (collectively with Agent, the "Lenders") pursuant to that certain Loan and Security Agreement of even date herewith by and among Grantor, Agent and the Lenders (as amended, extended, modified, restructured or renewed from time to time, the "Loan Agreement").

## RECITALS:

WHEREAS, pursuant to the Loan Agreement, Lenders have agreed to make loans in the aggregate principal amount of \$9,000,000 (the "Loan") to Grantor evidenced by Secured Promissory Notes of even date herewith in the aggregate original principal amount of the Loan and executed by Grantor payable to the order of Lenders respectively (collectively referred to herein, together with any amendments, extensions, modifications and/or renewals thereof and/or any promissory notes given in payment thereof, the "Notes"); and

WHEREAS, it is a condition precedent to the obligation of Lenders to make the Loan to Grantor under the Loan Agreement, that Grantor execute and deliver this Agreement to Lender.

## AGREEMENT:

NOW, THEREFORE, in consideration of the premises and to induce Lenders to enter into the Loan Agreement and to induce Lenders to make the Loan to Grantor under the Loan Agreement, Grantor hereby agree with Agent, as follows:

1. **Defined Terms.** Unless otherwise defined herein, terms which are defined in the Loan Agreement and used herein are so used as so defined, and the following terms shall have the following meanings:

"Agreement" means this Intellectual Property Agreement, as amended, supplemented or otherwise modified from time to time.

"Collateral" has the meaning assigned to it in Section 2 of this Agreement.

"Copyrights" means all types of protective rights granted (or applications therefor) for any work that constitutes copyrightable subject matter, including without limitation, literary works, musical works, dramatic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings, architectural works, in any country of the world and including, without limitation, any works referred to in Schedule A hereto.

**"Copyright License"** means any agreement material to the operation of Grantor's businesses, whether written or oral, providing for the grant by or to Grantor of any right to reproduce a copyrighted work, to prepare derivative works based on a copyrighted work, to distribute copies of a copyrighted work, to perform a copyrighted work or to display a copyrighted work, or to engage in any other legally protected activity with respect to a copyrighted work including, without limitation, any thereof referred to in Schedule A hereto.

**"Intellectual Property"** means all Patent Applications, Patents, Patent Licenses, Trademark Applications, Trademarks, Trademark Licenses, Copyrights, Copyright Licenses, Trade Secrets, Inventions, Know-how and other proprietary property or technology, and agreements relating thereto, including, without limitation, any and all improvements and future developments material to the operation of Grantor's businesses, as defined herein and/or referred to in Schedule A hereto.

**"Invention"** means any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof that is material to the operation of Grantor's businesses and developed by Grantor, its employees or agents, whether or not the subject of Patent(s) or Patent Application(s).

**"Know-how"** means any knowledge or information that is material to Grantor's business and that enables Grantor to operate its business with the accuracy, efficiency or precision necessary for commercial success.

**"Obligations"** means (a) loans to be made concurrently or in connection with this Agreement or the Loan Agreement by Lenders to Grantor as evidenced by the Notes, (b) the full and prompt payment and performance of any and all other indebtedness and other obligations of Grantor to Lenders or Agent, direct or contingent (including but not limited to obligations incurred as endorser, guarantor or surety), however evidenced or denominated, and however and whenever incurred, including but not limited to indebtedness incurred pursuant to any present or future commitment of Lenders to Grantor and (c) all future advances made by Lenders or Agent for taxes, levies, insurance and preservation of the Collateral and all attorneys' fees, court costs and expenses of whatever kind incident to the collection of any of said indebtedness or other obligations and the enforcement and protection of the security interest created under this Agreement.

**"Other Proprietary Property"** means all types of protectable intangible property rights other than Patents, Trademarks and Copyrights, including without limitation, Trade Secrets, Know-how, computer software and the like.

**"Patents"** means all types of exclusionary or protective rights granted (or applications therefor) for inventions in any country of the world (including, without limitation, letters patent, plant patents, utility models, breeders' right certificates, inventor's certificates and the like), and all reissues and extensions thereof and all provisionals, divisions, continuations and continuations-in-part thereof, including, without limitation, all such rights referred to in Schedule A hereto.

**"Patent License"** means any agreement material to the operation of Grantor's business, whether written or oral, providing for the grant by or to Grantor of any right to manufacture, use

or sell any Invention covered by a Patent, including, without limitation, any thereof referred to in Schedule A hereto.

"Proceeds" means "proceeds," as such term is defined in Section 9-102(64) of the UCC and, to the extent not included in such definition, shall include, without limitation, (a) any and all proceeds of any insurance, indemnity, warranty, guaranty or letter of credit payable to Grantor, from time to time with respect to any of the Collateral, (b) all payments (in any form whatsoever) paid or payable to Grantor from time to time in connection with any taking of all or any part of the Collateral by any governmental authority or any Person acting under color of governmental authority), (c) all judgments in favor of Grantor in respect of the Collateral and (d) all other amounts from time to time paid or payable to or received or receivable as consideration for any loss sustained by Grantor in the Collateral.

"Trade Secret" means any scientific or technical information, design, process, pattern, procedure, formula or improvement which is secret and of value.

"Trademarks" means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other sources of business identifiers used in any country in the world, whether registered or unregistered, and the goodwill associated therewith, now existing and material to the businesses of Grantor or hereafter acquired, and (b) all registrations, recordings and renewals thereof, and all applications in connection therewith, issued by or filed in a national, state or local governmental authority of any country, including, without limitation, all such rights referred to in Schedule A hereto.

"Trademark License" means any agreement, material to the businesses of Grantor, written or oral, providing for the grant by or to Grantor of any right to use any Trademark, including, without limitation, any thereof referred to in Schedule A hereto.

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of Tennessee.

2. **Grant of Security Interest.** As collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations and any and all other covenants and obligations of Grantor under the Loan Documents, Grantor hereby assigns and grants to Agent for the benefit of Lenders a security interest in all of Grantor's right, title and interest in and to the Intellectual Property now owned or at any time hereafter acquired by Grantor or in which Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"), that are material to the business of Grantor, including all Proceeds and products of any and all of the Intellectual Property, whether or not included in Schedule A.

3. **Representations and Warranties Concerning the Intellectual Property.** Grantor represents and warrants that:

(a) Schedule A hereto include all Intellectual Property and Other Proprietary Property owned by Grantor that are material to the business of Grantor as of the date hereof.

(b) Grantor is the sole legal and beneficial owner of the entire right, title and interest in and to the Intellectual Property and the Other Proprietary Property, and/or has the unrestricted right to use all such Intellectual Property and Other Proprietary Property pursuant to a valid license or other agreement.

(c) To the best knowledge of Grantor, Grantor's rights in and to the Intellectual Property are valid, subsisting, unexpired, enforceable and have not been abandoned.

(d) All licenses, franchise agreements and other agreements conveying rights in and to the Intellectual Property and Other Proprietary Property are identified on Schedule A hereto and are in full force and effect. To the best knowledge of Grantor, Grantor is not in default under any such agreement, and no event has occurred which might constitute a default by Grantor under any such agreement.

(e) Except as set forth in Schedule A, all of the Intellectual Property is free and clear of any and all liens, security interests, options, licenses, pledges, assignments, encumbrances and/or agreements of any kind other than Permitted Liens, and Grantor has not granted any release, covenant not to sue, or non-assertion assurance to any third party with respect to any of the Intellectual Property.

(f) All prior transfers and assignments of the interests of any and all predecessors in the Intellectual Property of Grantor were duly and validly authorized, executed, delivered, recorded and filed as required to vest Grantor with complete, unrestricted ownership rights therein.

(g) Grantor has not, within the three months prior to the date of execution of this Agreement, executed and/or delivered any assignment, transfer or conveyance of any of the Intellectual Property, recorded or unrecorded.

(h) No proceedings have been instituted or are pending or, to Grantor's knowledge, threatened that challenge Grantor's rights to use the Intellectual Property or Other Proprietary Property, or to register or maintain the registration of the Intellectual Property. No holding, decision or judgment has been rendered by any governmental authority which would limit, cancel or question the validity of any of the Intellectual Property. No action or proceeding is pending (i) seeking to limit, cancel or question the validity of any of the Intellectual Property or Grantor's ownership thereof or (ii) which, if adversely determined, would reasonably be likely to have a material adverse effect on the value of any of the Intellectual Property.

(i) To the best of Grantor's knowledge, the current conduct of Grantor's business and Grantor's rights in and to all of the Intellectual Property and Other Proprietary Property do not conflict with or infringe any proprietary right of any third party in any way which adversely affects the business, financial condition or business prospects of Grantor. Further, except as set forth in Schedule A, Grantor is not aware of any claim by any third party that such conduct or such rights conflict with or infringe any valid proprietary right of any third party in any way which affects the business, financial condition or business prospects of Grantor. To the best knowledge of Grantor, Grantor is not making and has not made use of any confidential information of any third party except pursuant to express agreement of such third party.

(j) Grantor is unaware of any infringement by any other party upon its Intellectual Property rights. Grantor has heretofore exerted, continues and affirmatively covenants that it will hereafter continue to exert its commercially reasonable judgment regarding whether to exert efforts to prevent infringement by third parties of Grantor's Intellectual Property rights or theft of Grantor's Other Proprietary Property at Grantor's sole cost.

(k) All past and present employees of Grantor and/or parties with whom Grantor (including any predecessor-in-interest of Grantor) had any contractual relationship ("contractors"), whose employment (or contractual) functions included or affected research and development or other material aspects of Intellectual Property have executed agreements requiring them to disclose to Grantor any and all inventions created or developed during and within the scope of their employment by or contractual relationship with Grantor and obligating them to assign all of their respective right, title and interest in and to all such inventions to Grantor.

**4. Covenants.** Grantor covenants and agrees with Agent that, from and after the date of this Agreement until the Obligations are paid in full:

(a) From time to time, upon the written request of Agent, and at the sole expense of Grantor, Grantor will promptly and duly execute and deliver such further instruments and documents and take such further action as Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the UCC in effect in any jurisdiction with respect to the liens created hereby. Grantor also hereby authorizes Agent to file any such financing or continuation statement without the signature of Grantor to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

(b) Grantor will not create, incur or permit to exist, will take all commercially reasonable actions to defend the Collateral against, and will take such other commercially reasonable action as is necessary to remove, any lien or claim on or to the Collateral, other than the Permitted Liens and the liens created hereby, and other than as permitted pursuant to the Loan Agreement.

(c) Grantor will not sell, transfer, license or sub-license or otherwise dispose of any of the Collateral, or attempt, offer or contract to so do.

(d) Grantor will advise Agent promptly, in reasonable detail, at its address set forth in the Loan Agreement, (i) of any lien (other than liens created hereby or permitted under the Loan Agreement) on, or claim asserted against, Collateral and (ii) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the liens created hereunder.

(e) (i) Grantor (either itself or through licensees) will, except with respect to any Trademark that Grantor shall reasonably determine is of immaterial economic value to it or otherwise reasonably determines not to so do, (1) continue to use each Trademark on each and every trademark class of

goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (2) maintain as in the past the quality of products and services offered under such Trademark, (3) use reasonable efforts to employ such Trademark with the appropriate notice of registration, (4) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless within 30 days after such use or adoption Lender, for its benefit, shall obtain a perfected security interest in such mark pursuant to this Agreement, and (5) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated.

(ii) Grantor will not knowingly, except with respect to any Patent that Grantor shall reasonably determine is of immaterial economic value to it or otherwise reasonably determine so to do, do any act, or omit to do any act, whereby any Patent may become abandoned or dedicated. Without the prior written consent of Majority Lender (as defined in the Loan Agreement), Grantor shall not knowingly abandon any right to file a patent application, or abandon any pending patent application or patent if such abandonment would have a material adverse effect on the business of Grantor.

(iii) Grantor will promptly notify Agent if it knows, or has reason to know, that any application relating to any Patent, Trademark or Copyright may become abandoned or dedicated, or of any adverse determination or material development (excluding office actions, advisory actions and notices of allowance received during prosecution of such applications but otherwise including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark office or any court or tribunal in any country) regarding Grantor's ownership of any Patent, Trademark or Copyright, or its right to register the same or to keep and maintain the same.

(iv) Whenever Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for any Patent or for the registration of any Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other country or any political subdivision thereof, Grantor shall report such filing to Agent within five business days after the last day of the fiscal quarter in which such filing occurs. Upon request of Agent, Grantor shall execute and deliver any and all reasonably necessary agreements, instruments, documents, and papers as Agent may request to evidence Agent's security interest in any newly filed Patent, Copyright or Trademark and the goodwill and general intangibles of Grantor relating to such Trademark or represented thereby, and Grantor hereby constitutes Agent its attorney-in-fact to execute and file all such writings for the foregoing purposes, such power being coupled with an interest is irrevocable until the Obligations are paid in full.

(v) Grantor, except with respect to any Patent, Trademark or Copyright Grantor shall reasonably determine is of immaterial economic value to it or it otherwise reasonably determines not to so do, will take all reasonable and necessary steps, including, without limitation, in any proceedings before any tribunal, office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration or Patent) and to maintain each Patent and each registration of Trademarks and Copyrights, including, without limitation, filing of applications, applications for reissue, renewal or extensions, the payment of maintenance fees, participation in reexamination, opposition and infringement proceedings, and the filing of renewal applications, affidavits of use and affidavits of incontestability, when appropriate. Any expenses incurred in connection with such activities shall be paid by Grantor.

(vi) In the event Grantor knows or has reason to know that any Patent, Trademark or Copyright included in the Collateral is infringed, misappropriated or diluted by a third party, Grantor shall promptly notify Agent after it learns thereof and shall, unless Grantor shall reasonably determine that such Patent, Trademark or Copyright is of immaterial economic value to Grantor or shall reasonably determine that suit is not commercially justified which determination Grantor shall promptly report to Agent, promptly sue for infringement, misappropriation or dilution, or take such other actions as Grantor shall reasonably deem appropriate under the circumstances to protect such Patent, Trademark or Copyright.

(vii) Grantor will furnish to Agent each year, on the anniversary date of the execution of this Agreement, statements, schedules and an inventory identifying and describing the Collateral, including without limitation, all Intellectual Property acquired subsequent to the date of this agreement and not identified on Schedule A, all transfers, assignments, licenses or sub-licenses of the Collateral by Grantor, and such other information in connection with the Collateral as Agent may reasonably request, all in reasonable detail. Any such Intellectual Property shall automatically become part of the Collateral.

## **5. Lender's Appointment as Attorney-in-Fact.**

(a) Grantor hereby irrevocably constitutes and appoints Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or in its own name, from time to time after the occurrence, and only during the continuation of, an Event of Default in Agent's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, Grantor hereby grants Agent the power and right, on behalf of Grantor without notice to or assent by Grantor, to do the following:

(i) at any time when any Event of Default shall have occurred and is continuing, to take possession of and endorse, in the name of Grantor or its own name, or otherwise and collect any checks, drafts, notes, acceptances or other



instruments for the payment of moneys due under, or with respect to, any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Agent for the purpose of collecting any and all such moneys due with respect to such Collateral whenever payable;

(ii) to pay or discharge taxes and liens levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or part of the premiums therefor and the costs thereof; and

(iii) (1) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to Agent or as Agent shall direct, (2) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (3) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral, (4) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral, (5) to defend any suit, action or proceeding brought against Grantor with respect to any Collateral, (6) to settle, compromise or adjust any suit, action or proceeding described in the preceding clause and, in connection therewith, to give such discharges or releases as Agent may reasonably deem appropriate, (7) to assign any Trademark or Copyright (along with goodwill of the business to which such Trademark or Copyright pertains), throughout the world for such term or terms, on such conditions, and in such manner, as Agent shall in its sole discretion determine, and (8) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes, and to do, at Agent's option and Grantor's expense, at any time, or from time to time, all acts and things which Agent deems necessary to protect, preserve or realize upon the Collateral and the liens of Agent thereon and to effect the intent of this Agreement, all as fully and effectively as Grantor might do. Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable (although it shall only be effective during the period described above).

(b) Each Grantor also authorizes Agent, at any time and from time to time, to execute, in connection with the sale provided for in Section 8 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(c) The powers conferred on Agent hereunder are solely to protect the interests of Agent in the Collateral and shall not impose any duty upon Agent to exercise any such powers. Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its partners, officers, directors, employees

or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct or failure to comply with mandatory provisions of applicable law.

6. **Performance by Lender of Grantor's Obligations.** If Grantor fails to perform or comply with any of its agreements contained herein and Agent, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, then the expenses of Agent incurred in connection with such performance or compliance, together with interest thereon at the highest default rate provided in the Note, shall be payable by Grantor to Agent on demand and shall constitute Obligations secured hereby.

7. **Proceeds.** It is agreed that if an Event of Default shall occur and be continuing, then (a) all Proceeds received by Grantor consisting of cash, checks and other cash equivalents shall be held by Grantor in trust for Agent, segregated from other funds of Grantor, and shall, forthwith upon receipt by Grantor, be turned over to Lender in the exact form received by Grantor (duly endorsed by Grantor to Agent, if required), and (b) any and all such Proceeds received by Agent (whether from Grantor or otherwise) shall promptly be applied by Agent against, the Obligations (whether matured or unmatured), such application to be in such order as set forth in the Loan Agreement.

8. **Remedies Upon Default.** Upon an Event of Default under and as defined in the Loan Agreement, Agent may pursue any or all of the following remedies, without any notice to Grantor except as required below:

(a) Agent may give written notice of default to Grantor, following which Grantor shall not dispose of, conceal, transfer, sell or encumber any of the Collateral (including, but not limited to, cash proceeds) without Agent's prior written consent, even if such disposition is otherwise permitted hereunder in the ordinary course of business. Any such disposition, concealment, transfer or sale after the giving of such notice shall constitute a wrongful conversion of the Collateral. Agent may obtain a temporary restraining order or other equitable relief to enforce Grantor's obligation to refrain from so impairing Agent's Collateral.

(b) Agent may take possession of any or all of the Collateral. Grantor hereby consents to Agent's entry into any of Grantor's premises to repossess Collateral, and specifically consents to Agent's forcible entry thereto as long as Agent causes no significant damage to the premises in the process of entry (drilling of locks, cutting of chains and the like do not in themselves cause "significant" damage for the purposes hereof) and provided that Agent accomplishes such entry without a breach of the peace.

(c) Agent may dispose of the Collateral at private or public sale. Any required notice of sale shall be deemed commercially reasonable if given at least 10 days prior to sale. Agent may adjourn any public or private sale to a different time or place without notice or publication of such adjournment, and may adjourn any sale either before or after offers are received. The Collateral may be sold in such lots as Agent may elect, in its sole discretion. Agent may take such action as it may deem necessary to repair, protect, or maintain the Collateral pending its disposition.

(d) Agent may exercise its lien upon and right of setoff against any monies, items, credits, deposits or instruments that Agent may have in its possession and that belong to Grantor or to any other person or entity liable for the payment of any or all of the Obligations.

(e) Agent may exercise any right that it may have under any other document evidencing or securing the Obligations or otherwise available to Agent at law or equity.

9. **Limitation on Duties Regarding Preservation of Collateral.** Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Agent would deal with similar property for its own account. Neither Agent nor any of its partners, directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Grantor or otherwise.

10. **Powers Coupled with an Interest.** All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

11. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. **Section Headings.** The section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

13. **No Waiver: Cumulative Remedies.** Agent shall not by any act (except by a written instrument pursuant to Section 14 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Agent of any right or remedy hereunder on any occasion shall not be construed as a bar to any right or remedy which Agent would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

14. **Waivers and Amendments; Successors and Assigns; Interpretation.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Grantor and Agent, provided that any provision of this Agreement may be waived by Agent in a written letter or agreement executed by Agent or by facsimile transmission from Agent. This Agreement shall be binding upon the successors and assigns of Grantor and shall inure to the benefit of Agent and its successors and assigns. When used herein, the singular shall include the plural, and vice versa, and the use of any gender shall include all other genders, as appropriate.

15. **Notices.** Any and all notices, elections or demands permitted or required to be made under this Agreement shall be made in accordance with the notice provisions of the Loan Agreement.

16. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Tennessee applicable to contracts to be wholly performed in such State, or to the extent required, by federal law.

17. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties to this Agreement 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.

18. **Consent to Jurisdiction; Exclusive Venue.** Grantor hereby irrevocably consents to the jurisdiction of the United States District Court for the Middle District of Tennessee and of all Tennessee state courts sitting in Davidson County, Tennessee, for the purpose of any litigation to which Agent may be a party and which concerns this Agreement or the Obligations. It is further agreed that venue for any such action shall lie exclusively with courts sitting in Davidson County, Tennessee, unless Agent agrees to the contrary in writing.

19. **Waiver of Trial by Jury.** AGENT AND GRANTOR HEREBY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COUNSEL WAIVE TRIAL BY JURY IN ANY ACTIONS, PROCEEDINGS, CLAIMS OR COUNTER-CLAIMS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE LOAN DOCUMENTS.

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

**GRANTOR:**

ZEROCHAOS ACQUISITION COMPANY,  
LLC, a Florida limited liability company

By: *Scotty Alburne*  
Title: *Manager*

**AGENT:**

HARBINGER MEZZANINE PARTNERS,  
L.P., a Delaware limited partnership

By: Harbinger Mezzanine GP, LLC, its  
General Partner

By: Harbinger Mezzanine Manager, Inc.,  
its Manager

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

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

**GRANTOR:**

ZEROCHAOS ACQUISITION COMPANY,  
LLC, a Florida limited liability company

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

**AGENT:**

HARBINGER MEZZANINE PARTNERS,  
L.P., a Delaware limited partnership

By: Harbinger Mezzanine GP, LLC, its  
General Partner

By: Harbinger Mezzanine Manager, Inc.,  
its Manager

By: *Shawn C. Harris*  
Title: *Director*

## SCHEDULE A

Mark	ZEROCHAOS
Owner Name	ZeroChaos, Inc., by assignment
Current/Previous Owner Address	111 W. Jefferson Street, Suite 100, Orlando, Florida 32801 (Assignee) 1411 Edgewater Drive, Suite 203, Orlando, Florida 32804 (Applicant)
Application Date	July 14, 2000
Serial (Application) No.	76/088,775
Registration Date	August 7, 2001
Registration No.	2,475,703
Status	Registered

Mark	E-CONTRACTOR
Owner Name	ZeroChaos, Inc., by assignment
Current/Previous Owner Address	111 W. Jefferson Street, Suite 100, Orlando, Florida 32801 (Assignee) 111 W. Jefferson Street, Suite 100, Orlando, Florida 32810 (Applicant) [note: incorrect zip on application, should be 32801]
Application Date	December 17, 2002
Serial (Application) No.	76/475,873
Registration Date	n/a
Registration No.	n/a
Status	Abandoned Sept 8, 2004, for failure to respond to Office Action (PTO error); as of Closing, trademark counsel for ZeroChaos, Inc. is attempting to file reinstatement with the United States Patent and Trademark Office.

Mark	EK and Design
Owner Name	ZeroChaos, Inc., applicant
Owner Address	111 W. Jefferson Street, Suite 100, Orlando, Florida 32801
Application Date	August 9, 2004
Serial (Application) No.	78/464,511
Registration Date	n/a
Registration No.	n/a
Status	Pending

Mark	ZEROCHAOS.COM and Design
Owner Name	ZeroChaos, Inc., by assignment
Current/Previous Owner Address	111 W. Jefferson Street, Suite 100, Orlando, Florida 32801 (Assignee) 1411 Edgewater Drive, Suite 203, Orlando, Florida 32804 (Applicant)
Application Date	March 20, 2000
Serial (Application) No.	76/004,358
Registration Date	May 29, 2001
Registration No.	2,455,103
Status	Registered

Mark	ZEROCHAOS.COM
Owner Name	ZeroChaos, Inc., by assignment
Current/Previous Owner Address	111 W. Jefferson Street, Suite 100, Orlando, Florida 32801 (Assignee) 111 W. Jefferson Street, Suite 100, Orlando, Florida 32804 (Applicant) [note: incorrect zip on application, should be 32801]
Application Date	November 16, 1999
Serial (Application) No.	75/849,094
Registration Date	October 16, 2001
Registration No.	2,497,682
Status	Registered

### Licensed Computer Software

Seller licenses, and will either transfer or provide a credit to Buyer at Closing, the following:

- Microsoft CRM server software and client software
- Microsoft BizTalk
- Adobe Photoshop 5.5 (1 license)
- Adobe Acrobat 6 (4 licenses)
- Paint Shop Pro 6 (1 license)
- Crystal Reports Standard Edition (6 licenses)
- ScanSoft OmniForm 4 (1 license)
- Macromedia Fireworks 4 (1 license)
- Macromedia Director Shockwave Studio 8 (1 license)
- Macromedia Dreamweaver 4 (1 license)
- Microsoft Visio Standard 2002 (1 license)
- Microsoft Project (2 licenses)
- Microsoft Exchange Client Licenses (35) (transferable on or before 3/1/05)
- Client Access Licenses (35) (transferable on or before 3/1/05)
- Microsoft operating systems as loaded upon the desktops and laptops listed on schedule 1.1(a) II

Seller will additionally provide licenses, or at the parties' mutual agreement credits for purchase of same in an amount equal to the aggregate price of "box product" licenses, for Microsoft Office software sufficient to cover the desktops and laptops listed on schedule 1.1(a) II

#### Internally Developed Computer Software

Seller has developed, is the owner of all right, title and interest in, and will transfer to Buyer at Closing the following:

1. ZC Web – The primary web site that provides functionality for ZC contractors/members, including web enrollment, time and expense collection, and employee self service access. Originally released April 1, 2000 and revised on an ongoing basis.
2. ZC Accounting Integration – Integrations developed to transfer information from ZC Web and Ultimate into Great Plains accounting software for invoicing and gross profit reporting. Developed in winter 2004.
3. ZC Web to CRM Integration – Integration developed to transfer employee data from Ultimate payroll software to Microsoft CRM. Developed in 2004.
4. VRM Independent Contractor Assessment tool – Program designed to help ZeroChaos clients determine whether a contingent worker should be classified as an employee or an independent contractor under federal common law and agency tests. Developed Summer 2002 and updated Winter 2004.