

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

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|---------------------------|---|---------------------|-----------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | SECURITY INTEREST | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Neverfail Group Limited | | 08/08/2012 | CORPORATION: UNITED KINGDOM |
| RECEIVING PARTY DATA | | | |
| Name: | Clydesdale Bank PLC | | |
| Street Address: | 30 St. Vincent Place | | |
| City: | Glasgow, Scotland | | |
| State/Country: | UNITED KINGDOM | | |
| Postal Code: | G1 2HL | | |
| Entity Type: | COMPANY: UNITED KINGDOM | | |
| PROPERTY NUMBERS Total: 5 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 3474770 | NEVERFAIL | |
| Registration Number: | 3075090 | NEVERFÄIL | |
| Registration Number: | 3416485 | NEVERFAIL HEARTBEAT | |
| Registration Number: | 3720262 | CLUSTERPROTECTOR | |
| Registration Number: | 3214441 | | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 3122367516 | | |
| | <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i> | | |
| Phone: | 312-368-4000 | | |
| Email: | mary.wysocki@dlapiper.com | | |
| Correspondent Name: | Jennifer Lacroix | | |
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| ATTORNEY DOCKET NUMBER: | 375970-000001 | | |

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DOMESTIC REPRESENTATIVE

Name: Jennifer Lacroix
Address Line 1: P. O. Box 64807
Address Line 4: Chicago, ILLINOIS 60664-0807

| | |
|--------------------|--------------------|
| NAME OF SUBMITTER: | Jennifer Lacroix |
| Signature: | /Jennifer Lacroix/ |
| Date: | 08/20/2012 |

Total Attachments: 16
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INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Agreement"), is entered into as of July [___], 2012 by NEVERFAIL GROUP LIMITED, a company incorporated in England and Wales with registered number 02778794 (the "Grantor"), in favor of CLYDESDALE BANK PLC, a company incorporated in Scotland under the Companies Act (Company Number SC001111) (the "Secured Party").

WITNESSETH:

WHEREAS, the Grantor is party to a Debenture dated as of July [___], 2012 (as amended from time to time, the "Security Agreement") in favor of the Secured Party pursuant to which the Grantor is required to execute and deliver agreements to perfect and record security interests in favor of the Secured Party;

NOW, THEREFORE, in consideration of the foregoing premises and to induce the Secured Party to enter into the Security Agreement, the Grantor hereby agrees with the Secured Party as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement. In this Agreement, the following terms shall have the following meanings:

"Collateral Records" shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"Goods" means all "goods" as defined in Article 9 of the UCC.

"Governmental Authority" means any court, governmental department, commission, council, board, agency or other instrumentality of any country, or any state, county, municipality or local government.

"Software Embedded in Goods" means, with respect to any Goods, any computer program embedded in Goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the Goods in such a manner that it customarily is considered part of the Goods or (ii) by becoming the owner of the Goods a person acquires a right to use the program in connection with the Goods.

"Supporting Obligation" shall mean all "supporting obligations" as defined in the UCC.

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

SECTION 2. Grant of Security Interest in Collateral. To further secure the full and timely payment, performance and satisfaction of the Secured Amounts, the Grantor hereby pledges and grants to the Secured Party a lien on and a security interest in and to all of its right, title and interest in, to and under all of the following (all of which being hereinafter collectively referred to as the "*Collateral*"):

(a) (i) all inventions, including, without limitation, the patents for which registrations or applications for registration are listed on Schedule I attached hereto, including, without limitation, any filings, registrations and recordings of, and applications for, any thereof and (A) all reissues, reexaminations, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, (B) all income, royalties, damages and payments now and hereafter due or payable with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (C) the right to sue for past, present and future infringements thereof, and (D) all rights corresponding thereto throughout the world;

(ii) all United States and state copyrights owned by the Grantor, including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, now or hereafter in force throughout the world, all registrations and applications for any of the foregoing, all rights corresponding thereto throughout the world, all extensions and renewals of any thereof, the right to sue for past, present and future infringements of any of the foregoing, and all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit;

(iii) all Goods that constitute Software Embedded in Goods;

(iv) all United States and state trademarks, service marks, certification marks, collective marks, trade names, corporate names, d/b/as, business names, fictitious business names, internet domain names, trade styles, logos, other source or business identifiers, designs and general intangibles of a like nature, rights of publicity and privacy pertaining to the right to use names, likeness and biographical data, all registrations and applications for any of the foregoing owned by Grantor, the goodwill of the business symbolized by the foregoing, the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and all proceeds of the foregoing, including, without limitation, royalties, income, payments, claims, damages, and proceeds of suit;

(b) all goodwill associated with any and all of the foregoing;

(c) to the extent not otherwise included above, all Collateral Records and Supporting Obligations relating to any of the foregoing; and

(d) proceeds of any and all of the foregoing (collectively, the "Collateral").

Notwithstanding anything herein to the contrary, to the extent that the grant of a security interest in an intent to use trademark application would be prohibited under 15 U.S.C. §1060, the grant of a security interest hereunder shall not extend to, and the term "Collateral" shall not include, Restricted Intent to Use Trademark Applications during the Period of Restriction. Restricted Intent to Use Trademark Applications shall mean and refer to United States trademark applications filed based on intention to use under 15

U.S.C. §1051(b). The Period of Restriction shall mean and refer to the period before and for which a Statement of Use or Amendment to Allege Use has not been filed. After the Period of Restriction, however, each Restricted Intent to Use Trademark Application shall be deemed to be included as "Collateral" and shall be encompassed by the grant of the security interest. Grantor shall execute any and all instruments that may be required to perfect the security interest in the Restricted Intent to Use Trademark Applications.

SECTION 3. Security Agreement. The security interest granted pursuant to this Agreement is granted in conjunction with the security interest granted to the Secured Party pursuant to the Security Agreement, and the Grantor hereby acknowledges and affirms that the rights and remedies of the Secured Party with respect to the security interest in the patents and other Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control except as required by applicable law.

SECTION 4. Filing, Registering, Recording. This Agreement has been executed and delivered by the Grantor for, among other purposes, the purpose of recording the grant of the security interests herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents and Trademarks record this Agreement. The Secured Party is also authorized to file a financing statement (and any required continuation statements) in the appropriate UCC filing office to perfect by filing the Secured Party's security interest in the Collateral. The Grantor shall pay all of Secured Party's costs and expenses of filing, registering or recording this Agreement and any such financing statement.

SECTION 5. Representations, Warranties and Covenants of the Grantor.

(a) **Representations and Warranties.** The Grantor hereby represents and warrants, on the date hereof and on each Interest Payment Date, that:

(i) It owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral (except those items disposed of as permitted by the Security Agreement), in each case free and clear of any and all Liens, rights or claims of all other Persons other than those Liens permitted by the Security Agreement.

(ii) Grantor has been duly organized as a corporation, limited liability company or limited partnership solely under the laws of its jurisdiction of organization and remains duly existing as such. Grantor has not, as of the date of this Agreement, filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(iii) The execution and delivery of this Agreement by Grantor and the performance by it of its obligations under this Agreement are within its organizational powers and have been duly authorized by all necessary organizational action.

(iv) Upon the filing of UCC financing statements naming Grantor as debtor and the Secured Party as secured party and describing the Collateral in the filing office of the Washington D.C. Recorder of Deeds, except with respect to unregistered copyrights, the security interests granted to the Secured Party hereunder constitute valid and perfected first priority Liens in all of the Collateral as of the date hereof, subject in the case of priority only to Liens permitted pursuant to the Security Agreement.

(v) Other than the financing statements filed in favor of the Secured Party, no effective UCC financing statement or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (x) financing statements for which proper termination statements have been delivered to the Secured Party for filing and (y) financing statements filed in connection with Liens permitted under the Security Agreement.

(vi) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (i) the pledge or grant by Grantor of the Liens purported to be created in favor of the Secured Party hereunder or (ii) the exercise by Secured Party of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for filings required to perfect the Secured Party's Liens, (B) as may be required under laws pertaining to any intellectual property included in the Collateral, (C) as may be required, in connection with the disposition of any of the Collateral, by laws affecting the sale of businesses generally, and (D) as may be required under laws pertaining to personally identifiable data and under applicable privacy policies.

(vii) All actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Secured Party of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained, except for those described in clauses (A) through (D) of Section 5(a)(vi) above.

(viii) It has previously indicated to the Secured Party, as of the date of this Agreement: (v) the type of organization of Grantor, (w) the jurisdiction of organization of Grantor, (x) its organizational identification number, if any, (y) its tax identification number, if any, and (z) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date of this Agreement was, located.

(ix) The full legal name of Grantor, as of the date of this Agreement, is as set forth in the preamble hereto and it has not done in the last five (5) years prior to the date of this Agreement, and does not do as of the date of this Agreement, business under any other name (including any trade-name or fictitious business name).

(x) It has not changed its name, jurisdiction of organization or its organizational structure in any way (e.g. by merger, consolidation, change in

organizational form or otherwise) within the past five years prior to the date of this Agreement.

(xi) It has not, within the last five years prior to the date of this Agreement, become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another person or entity which has not heretofore been terminated (other than any such security agreement the security granted under which is permitted by the Security Agreement).

(xii) All written information supplied by Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects as of the date provided.

(xiii) (A) Schedule I sets forth a true and complete list of all United States patents and applications for patents owned by Grantor.

(B) All registrations and applications for copyrights and trademarks material to Grantor's business and the patents listed in Schedule (I) are currently registered for or applied for in the name of Grantor.

(C) Subject to grants and transfers in the ordinary course of business permitted by the Security Agreement, it is the sole and exclusive owner of the entire right, title, and interest in and to all trademarks and patents material to its business and the patents on Schedule I, and, as of the date of this Agreement, owns or has the valid right to use all other material intellectual property used in or necessary to conduct its business, free and clear of all Liens, except for Liens permitted by the Security Agreement.

(D) As of the date of this Agreement, to the knowledge of Grantor, the conduct of Grantor's business does not infringe upon any trademark, patent, copyright, trade secret or similar intellectual property right owned or controlled by a third party in a manner that could reasonably be expected to have a [Material Adverse Effect], and no claim is pending, or to the best of Grantor's knowledge, threatened, alleging that the conduct of Grantor's business or the use of any intellectual property owned or used by Grantor violates the asserted rights of any third party in a manner that could reasonably be expected to have a Material Adverse Effect.

(E) To the best of Grantor's knowledge, no third party is infringing upon any material intellectual property owned or used by Grantor.

(F) No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by Grantor that adversely affects Grantor's rights to own or use any material intellectual property.

(G) Grantor has not made any agreements to assign, sell, transfer or grant an option to sell, transfer or assign for any intellectual property that has not been terminated or released, other than any such agreements entered into in connection with transfers permitted by the Security Agreement. There is no effective

financing statement or other document or instrument now executed, or on file or recorded in any public office, granting a security interest in or otherwise encumbering any part of such intellectual property, other than in favor of the Secured Party (other than Liens permitted under the Security Agreement).

(b) **Covenants and Agreements.** Grantor hereby covenants and agrees that:

(i) Except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except for Liens permitted pursuant to the Security Agreement, and Grantor shall defend the Collateral against all persons or entities (other than the holders of such Liens) at any time claiming any interest therein.

(ii) It shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance issued to Grantor covering the Collateral.

(iii) Without limiting any prohibitions or restrictions on mergers in the Security Agreement, it shall not change Grantor's name, identity, corporate structure (e.g. by merger, consolidation, change in organizational form or otherwise), sole place of business or chief executive office, type of organization or jurisdiction of organization unless it shall have (a) notified the Secured Party in writing at least thirty (30) days prior to any such change, identifying such new proposed name, identity, organizational structure, sole place of business, chief executive office or jurisdiction of organization and providing such other information in connection therewith as the Secured Party may reasonably request and (b) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Secured Party's security interest in the Collateral granted or intended to be granted and agreed to hereby.

(iv) Upon Grantor or any officer of Grantor obtaining knowledge thereof, it shall promptly notify the Secured Party in writing of any event that may materially and adversely affect the value of the Collateral or any material portion thereof, the ability of Grantor or the Secured Party to dispose of the Collateral or any material portion thereof, or any material adverse effect on the rights and remedies of the Secured Party in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any material portion thereof.

(v) Except for actions permitted by the Security Agreement and as otherwise contemplated by this Agreement, it shall not take or permit any action which could reasonably be expected to impair the Secured Party's rights in the Collateral.

(vi) It shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except for transfers permitted by the Security Agreement.

(vii) Except for intellectual property that is not in use and has no reasonable commercial value, Grantor shall not do any act, or omit to do any commercially reasonable act, whereby any of the intellectual property which is material

to the business of Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein.

(viii) It shall promptly notify the Secured Party if it knows or has reason to know that any material item of the intellectual property owned by Grantor that is in use or has reasonable commercial value is likely to become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable, or (c) subject to any materially adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court, arbitral, tribunal or regulatory agency, other than ex parte proceedings by governmental intellectual property office examiners as part of the application process.

(ix) It shall take all commercially reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each material trademark and copyright owned by Grantor and the patents listed in Schedule I except for those pertaining to intellectual properties that are no longer in use or have no reasonable commercial value.

(x) In the event Grantor becomes aware that any intellectual property owned by or exclusively licensed to Grantor is infringed, misappropriated, or diluted by a third party, Grantor shall promptly take commercially reasonable actions in accordance with its good faith business judgment to stop such infringement, misappropriation, or dilution and protect its exclusive rights in such intellectual property, which may include, but not be limited to, the initiation of a suit for injunctive relief and to recover damages.

(xi) It shall maintain the level of the quality of products sold and services rendered under any trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and Grantor shall take all steps necessary to insure that licensees of such trademarks use such standards of quality.

(xii) It shall take all steps commercially reasonably necessary to protect the secrecy of all material trade secrets, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents.

(xiii) Within thirty (30) days after execution of this Agreement, it shall ensure that all Assignments evidencing its ownership of the United States patents and applications for patents have been recorded in the United States Patent and Trademark Office with respect to each patent and application for patent to which it pertains.

(xiv) In accordance with the terms of the Security Agreement, it shall promptly report to the Secured Party (i) the filing of any application to register any intellectual property which it owns in whole or in part with the United States Patent and

Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by Grantor or through any agent, employee, licensor, licensee, or designee thereof), (ii) the registration of any such intellectual property by any such office, or (iii) the acquisition of any such application or registration and, in each case, shall execute and deliver to the Secured Party a pledge supplement in form and substance acceptable to the Secured Party reflecting such new applications and registrations and all other United States, state and foreign registrations of and applications for patents, trademarks, and copyrights owned by Grantor, together with all schedules thereto reflecting such new applications and registrations.

(xv) Grantor shall not sell, assign, transfer, grant any option to sell, assign or transfer, or create or suffer to exist any Lien upon or with respect to, the intellectual property owned by Grantor, except for transfers and the Lien created by and under this Agreement and other Liens permitted by the Security Agreement.

(xvi) It shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that would impair or prevent the creation of a security interest in, or the assignment of, Grantor's rights and interests in any intellectual property acquired under such contracts.

(xvii) It shall, to the extent commercially reasonable, use proper statutory notice in connection with its use of any of the intellectual property.

(xviii) It shall continue to collect, at its own expense, all amounts due or to become due to Grantor in respect of any intellectual property owned by Grantor, except, if no Event of Default shall have occurred and be continuing, as Grantor otherwise deems prudent in its good faith business judgment. In connection with such collections, Grantor shall take such action as Grantor or, upon the occurrence and the continuation of an Event of Default, the Secured Party may deem reasonably necessary or advisable to enforce collection of such amounts. Notwithstanding the foregoing, upon the occurrence and the continuation of an Event of Default, the Secured Party shall have the right at any time, to notify, or require Grantor to notify, any obligors with respect to any such amounts of the existence of the security interest created hereby.

SECTION 6. Further Assurances. Grantor agrees that from time to time, at the expense of Grantor, it shall promptly authenticate, execute and deliver all further instruments and documents, and take all further action, that the Secured Party may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing or its obligations under Section 4, Grantor shall:

(a) File such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as the Secured Party may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby.

(b) At the Secured Party's reasonable request, take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Collateral with any intellectual property registry in which said Collateral is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, any state agencies and the foreign counterparts on any of the foregoing.

(c) Upon request by the Secured Party and upon reasonable notice but no less than two weeks' notice (but not more than once in any twelve month period, unless an event of default shall have occurred and be continuing), exhibit the Collateral to and allow inspection of the Collateral by the Secured Party, or persons designated by the Secured Party.

(d) At the Secured Party's request, except as otherwise contemplated by this Agreement, appear in and defend any action or proceeding that may affect Grantor's title to or the Secured Party's security interest in all or any part of the Collateral.

(e) Grantor hereby authorizes the filing of any financing statements or continuation statements, and amendments to financing statements, or any similar document in any jurisdictions and with any filing offices as the Secured Party may determine, in its sole discretion, are necessary or advisable to perfect or otherwise protect the security interest granted to the Secured Party herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Secured Party may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Secured Party herein. Grantor shall furnish to the Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Secured Party may reasonably request, all in reasonable detail.

SECTION 7. SECURED PARTY APPOINTED ATTORNEY-IN-FACT, IRREVOCABLE POWER OF ATTORNEY. Grantor hereby irrevocably appoints the Secured Party (such appointment being coupled with an interest) as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, the Secured Party or otherwise, from time to time in the Secured Party's discretion to take any action and to execute any instrument that the Secured Party may deem reasonably necessary or advisable to accomplish the purposes of this Agreement as follows:

(a) Upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by Grantor or paid to the Secured Party pursuant to this Agreement or the Security Agreement.

(b) Upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral.

(c) Upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above.

(d) Upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Secured Party with respect to any of the Collateral.

(e) To prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the intellectual property in the name of Grantor as assignor.

(f) To take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, actions to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral (other than any such taxes being contested in accordance with the Security Agreement and any such Liens permitted pursuant to the Security Agreement), the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Secured Party in its reasonable discretion, any such payments made by the Secured Party to become obligations of Grantor to the Secured Party, due and payable immediately without demand.

(g) Upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do, at the Secured Party's option and Grantor's expense, at any time or from time to time upon the occurrence and during the continuance of any Event of Default, all acts and things that the Secured Party deems reasonably necessary to protect, preserve or realize upon the Collateral and the Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

SECTION 8. Miscellaneous.

(a) **Notices.** Unless otherwise specifically provided herein, any notice or other communications provided for herein shall be in writing and shall be delivered in the manner, and with the effect, provided in clause 21 of the Security Agreement as if references to the "Bank" and the "Mortgagor" therein were references to the "Secured Party" the "Grantor" respectively.

(b) **Amendments and Waivers.**

(i) **Secured Party's Consent.** No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by the Grantor therefrom, shall in any event be effective without the written concurrence of both the Grantor and the Secured Party.

(ii) **No Waiver; Remedies Cumulative.** No failure or delay on the part of the Secured Party in the exercise of any power, right or privilege hereunder or under the Security Agreement shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights, powers and remedies existing under this Agreement and the Security Agreement are cumulative, and not exclusive of, any rights or remedies otherwise available. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

(c) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns including all persons who become bound as debtor to this Agreement. The Grantor shall not, without the prior written consent of the Secured Party, assign any right, duty or obligation hereunder.

(d) **Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of an Event of Default if such action is taken or condition exists.

(e) **Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made herein shall survive the execution and delivery hereof.

(f) **Marshaling; Payments Set Aside.** The Secured Party shall not be under any obligation to marshal any assets in favor of the Grantor or any other person or entity or against or in payment of any or all of the Secured Obligations.

(g) **Severability.** In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(h) **Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

(i) **APPLICABLE LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL, EXCEPT TO THE EXTENT THAT FEDERAL LAW OR LAWS OF ANOTHER STATE APPLY TO THE PATENTS OR ANY PART THEREOF, BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

(j) **CONSENT TO JURISDICTION.** ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST THE GRANTOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OF THE SECURED AMOUNTS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, THE GRANTOR, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE GRANTOR AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 5(a); AGREES THAT SUCH SERVICE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE GRANTOR IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND AGREES THAT THE SECURED PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST THE GRANTOR IN THE COURTS OF ANY OTHER JURISDICTION.

(k) **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER US GUARANTY DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE OTHER US GUARANTY DOCUMENTS, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 5(k) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(l) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

(m) **Effectiveness.** This Agreement shall become effective upon the execution and delivery of a counterpart hereof by each of the parties hereto.

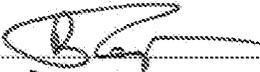
(n) **Entire Agreement.** This Agreement and the Security Agreement to which the Grantor is a party embody the entire agreement and understanding between the Grantor and the Secured Party and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, none of the foregoing may be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized officers as of the date first set forth above.

GRANTOR

NEVERFAIL GROUP LIMITED

By: 
Name: D.A. TAYLOR
Title: GROUP CFO.

By: _____
Name: _____
Title: _____

SECURED PARTY

CLYDESDALE BANK PLC

By: 
Name: CHRIS BONE
Title: ASSOCIATE DIRECTOR, GROWTH FINANCE

Schedule I

| <u>Patent</u> | <u>U.S. Application/Registration Number</u> |
|---|--|
| Fault-tolerant networks | Applications Serial No. 10/478960 Patent No. 7,409,577 |
| Fault-tolerant networks | Applications Serial No. 12/146,778 Patent No. 7,788,524 |
| Methods and apparatus for providing continuous availability of applications | Applications Serial No. 12/365893 |
| Method and apparatus for compression and network transport of data in support of continuous availability of applications | Applications Serial No. 12/687964 |
| Method and apparatus for scalable automated cluster control based on service level objectives to support applications requiring continuous availability | Applications Serial No. 12/840288 |
| Method and apparatus for implementing virtual proxy to support heterogeneous systems management | Application Serial No. 13/149884 |

| <u>Trademark</u> | <u>Registration or Application Number</u> |
|-------------------------|---|
| NEVERFAIL | U.S. Trademark Registration No. 3474770 |
| NEVERFAIL (DESIGN MARK) | U.S. Trademark Registration No. 3075090 |
| NEVERFAIL (DESIGN MARK) | CTM Registration No. 3235025 |
| NEVERFAIL (DESIGN MARK) | UK Trade Mark Registration No. 2319802A |
| NEVERFAIL HEARTBEAT | U.S. Trademark Registration No. 3416485 |
| NEVERFAIL HEARTBEAT | CTM Registration No. 3235009 |
| HEARTBEAT | UK Trade Mark Registration No. 2319801 |
| CLUSTERPROTECTOR | U.S. Trademark Registration No. 3720262 |

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| CLUSTERPROTECTOR | CTM Registration No. 7466428 |
| DESIGN MARK (THREE DOTS) | CTM Registration No. 3235033 |
| DESIGN MARK (BLACK & WHITE - THREE DOTS) | UK Registration No. 2319802B |
| DESIGN MARK (COLOR THREE DOTS) | UK Registration No. 2319802C |
| DESIGN MARK (THREE DOTS) | U.S. Trademark Registration No. 3214444 |