

**APPENDIX 1**  
**Neverfail Global Support Services Agreement (“SSA”)**

This Support Services Agreement ("SSA"), made and entered into as of the Effective Date of the End-User License Agreement between the parties, is a legal agreement between Licensee and Neverfail (as those terms are defined in the EULA) and is an Appendix to the Neverfail End-User License Agreement (“EULA”). The SSA sets forth the terms and conditions under which Neverfail provides maintenance services for the Licensed Software to Licensee. This SSA is subject to the terms and conditions of the EULA between the parties. The terms in this SSA shall have the same meaning as in the EULA and as set forth herein.

If you click on the “I Accept Terms of the License Agreement” when you download or install the Licensed Software or sign a paper copy of the EULA, Licensee will be deemed to have read, understood, and are bound by all the terms of this SSA. If Licensee does not agree to and does not comply with the terms of this SSA and the EULA, Licensee is not eligible to receive Support Services.

**1. DEFINITIONS**

“**Business Day**” means any day (other than Saturday or Sunday) excluding holidays as set forth on the Neverfail Extranet.

“**Defect Repair**” means a correction of an Error.

“**Designated Support Contacts**” means an individual that Licensee has registered with Neverfail’s Online Support System as a contact person.

“**Documentation**” means explanatory and informational materials concerning the Licensed Software, in printed or electronic format. Documentation does not include software source or object code.

“**Effective Date**” means the Delivery Date or the date of the Purchase Order for the Licensed Software, whichever date is earlier.

“**End-User**” means the employees or independent contractors of Licensee who are authorized by Licensee to access or use the Licensed Software.

“**Error**” means any material error or defect in the Licensed Software that causes the Licensed Software not to substantially conform to the Documentation.

“**Extranet**” means Neverfail’s private network that uses the Internet to securely share support, documentation and other business information with Licensee.

“**License Fees**” means the Licensed Software fees charged by Neverfail or Partner to Licensee for the Licensed Software as listed in a Purchase Order.

“**Licensed Software**” means Neverfail’s proprietary high availability and disaster recovery software products in object code form made generally available for license, including Documentation and Updates.

“**On-line Support System**” means Neverfail’s Neverfail customer support website through which Licensee will submit Problem or Error reports to Neverfail.

“**Partner**” means an authorized Neverfail Licensed Software reseller or distributor.

“**Problem**” means any actual or perceived failure or function impairment, including but not limited to an Error, which causes reduced functionality to the Licensed Software.

“**Purchase Order**” means a written document, executed by the parties or by Licensee and Partner which identifies one or more of the following: the Licensed Software including Quantity, License and Support Fees, payment terms and other terms and conditions.

“**Resolution Goal**” means the assessment of the Error difficulty of reported Problems which affects the time required to resolve it.

“**Support Fees**” means the fees charged by Neverfail to Licensee for Support Services.

“**Support Period**” means any twelve (12) month period as measured from the Effective Date, or the anniversary of the Effective Date, of this Agreement during which Licensee will pay for and is then entitled to receive Support Services from Neverfail.

“**Support Services**” means support and maintenance services for the Licensed Software as set forth herein.

“**Updates**” means maintenance releases that are made generally available to licensees who are eligible to receive Support Services.

“**Use**” means (a) accessing, copying, installing or otherwise transferring any portion of any Licensed Software; (b) executing any portion of any Licensed Software, directly or indirectly, using a computer processor or (c) accessing any Designated Computer for the purpose of obtaining or preparing information or data created through the execution of the Licensed Software.

“**Workaround**” means a feasible change in procedures whereby an End-User can avoid any harmful effects of a Problem.

## 2. **SUPPORT SERVICES**

**On-line Technical Assistance.** Neverfail will provide the information needed to access Neverfail’s customer support web site and to submit support requests using an On-line Support System to Licensee’s Designated Support Contacts. For standard support, Neverfail customer support to assist the Designated Support Contacts is available via submission via an On-line Support System on regular Business Days between the hours of 7:00 a.m. and 7:00 p.m. local time or as set forth on the Extranet (“**Standard Business Hours**”). For enterprise support, On-line Support will be available twenty-four hours a day, seven days a week and three hundred and sixty-five days a year. Neverfail shall notify Licensee in writing or via the Extranet of any changes to call-in numbers and procedures for problem reporting.

**Emergency Telephone Call-back for Standard Support.** Emergency telephone call-back support for the Licensed Software is available twenty-four (24) hours a day, seven (7) days a week, and three hundred and sixty-five (365) days a year (“**Emergency Support**”). Emergency Support requests can be submitted by dialing Neverfail’s emergency support phone number as set forth on the Extranet. Emergency Support requests for Severity 1 Problems will receive a call-back within the response times set forth in Table 1 even if outside of Standard Business Hours. Emergency Support for Severity 1 Problems will focus on getting the Neverfail protected application operational. Once the Neverfail protected application is operational, any additional work required (including getting the Neverfail Licensed Software operational and root-cause analysis) will be deferred until Standard Business Hours. There is no charge for Emergency Support calls within Standard Business Hours or for Emergency Support calls for Severity 1 Problems outside of Standard Business Hours. However, outside of Standard Business Hours and if the Problem reported is not a Severity 1 Problem, a fee will be charged for the initial Emergency Support

response equivalent to one hour of professional services support and subsequent fees will be charged in 1/4 hour intervals at Neverfail's then-current support rates as set forth on the Extranet.

**Emergency Telephone Call-back for Enterprise Support.** Emergency Support is free of charge for all problems no matter what their severity for customers who select enterprise support.

**Licensed Software Problem Reporting and Customer Obligations.** Licensee agrees to submit reports concerning suspected Errors through its Designated Support Contacts. In order to diagnose Problems most effectively, the Designated Support Contacts will confirm that all supporting systems (internal network, Internet, server hardware, and the like) are functioning properly before contacting Neverfail customer support. The Designated Support Contacts will use commercially reasonable efforts to provide Neverfail with the following information: Neverfail Licensed Software product and version, date and time of the incident and system hardware and third party software versions, configurations and log files. If the servers were previously working normally, the Designated Support Contacts should also advise what system changes, if any, have been applied to the system prior to when the Problem incident was observed. In addition, Neverfail customer support will need a clear description of the Problem or question and any error codes or messages. If necessary, the Designated Support Contacts will be responsible for providing Neverfail with data or other information concerning Licensee's operations that Neverfail reasonably requests in order to reproduce operating conditions similar to those present when the reported Problem or Error was discovered or to otherwise provide the Support Services. Neverfail customer support may redefine problem reporting procedures as needed and post such updated procedures on its customer support web site. In order for Neverfail to be able to achieve the Resolution Goals set forth in Table 1, Licensee will make off-site access via a remote Internet connection available to Neverfail so that Neverfail may provide support and diagnose Problems and Errors.

**Defect Repairs.** Neverfail will investigate each suspected Error reported by the Designated Support Contacts and determine whether in Neverfail's judgment the reported problem is, in fact, an Error, and whether such Error is in the Licensed Software or in the Documentation. If Neverfail determines that there is an Error in the Licensed Software or in the Documentation, Neverfail will use commercially reasonable efforts to provide an avoidance procedure, a Workaround, or a Defect Repair in accordance with the response guidelines set forth in Section 3.7 below. In the event that a Severity 1 Error is not corrected through off-site support or through off-site access via a remote connection to Licensee's system, Neverfail will consider on-site service if deemed appropriate by Neverfail. Neverfail will have discretion as to the method and manner of maintenance and support efforts.

**Licensed Software Updates.** As permanent solutions are developed for known Errors in the Licensed Software, they will be incorporated from time to time in planned Updates. Neverfail will make such Updates available to Licensee as they are released. Neverfail will also provide instructions and/or documentation that Neverfail considers reasonably necessary to assist in the installation of the Update and a smooth transition to use the Update. In the event Neverfail, in its discretion, revises the appropriate Documentation, Neverfail will make such Update available to Licensee at no additional charge in electronic form via Neverfail's on-line knowledge base as it becomes available. Neverfail will provide on-line access to the on-line knowledge base to Designated Support Contacts throughout all Support Periods for which Licensee has paid Support Fees.

### 3. **CONDITIONS AND LIMITATIONS OF SERVICES**

**Problems Caused By Third Party Products, Errors In Use of the Licensed Software and Modifications to the Licensed Software.** Neverfail will have no obligations or responsibilities of any kind hereunder with respect to problems caused in the use or functioning of the Licensed Software by any hardware or software product (including but not limited to operating systems, networks, and third party software not provided to Licensee by Neverfail) other than the Licensed Software, by any Error in the use of the Licensed Software inconsistent with the Documentation, or by any modification of the Licensed

Software by any person or entity other than one authorized by Neverfail. If Support Services hereunder are rendered for any Problem caused by any of the foregoing or for troubleshooting with respect to any of the foregoing, or if Neverfail's Support Service efforts are increased as a result, Neverfail reserves the right to impose charges at its then standard commercial time and materials rates for all such services, including reasonable travel and per diem expenses. A Neverfail customer service engineer will notify a Designated Support Contact as soon as the billable status of the call is determined. Such Designated Support Contact may then terminate the call at that time without charge.

**Maintenance of Current Releases of the Licensed Software.** Licensee should promptly install Updates to maintain the Licensed Software in the most current revision level. Support Services will be provided only for the most current released version through the previous two major releases after the current major version becomes generally available ("**Supported Release(s)**") subject to the end of availability of any product. If Neverfail announces the end of availability of a product, Neverfail will then support the then current release for an additional eighteen months after the end of availability date. Neverfail will have no obligation to support Licensee where Licensee is using a version of the Licensed Software that is not a Supported Release so long as Neverfail has made a currently Supported Release of the Licensed Software available to Licensee.

**Access to Licensee's Facilities.** Licensee may need to supply Neverfail with access to and use of all information and facilities reasonably necessary for Neverfail to render these services, subject to any security requirements or other company procedures of Licensee. Neverfail may also reasonably request the use of a specific remote access software package. If Neverfail is not permitted or is unable to access the Licensed Software, it may result in slower resolution times or inhibit Neverfail's ability to resolve a problem and Licensee will incur additional costs if Neverfail should have to resolve the problem onsite at Licensee's facilities.

**Backup Procedures.** Licensee is responsible for maintaining procedures external to the Licensed Software for reconstruction of lost or altered files, data, or programs to the extent it deems necessary, and for actually reconstructing any lost or altered files, data, or programs. Neverfail will not be responsible for any lost or altered files, data or programs.

**Technical Support Level. "Level"** means a certain type of service. Definitions are as follows:

**Level 1.** Problem verification and determination. First call support and specialist level technical support, as required. Technical support staff (i) responds to technical inquiries regarding the Licensed Software, installations, configurations, and (ii) provides Problem diagnostics services for identifying Problems and generic application faults, analysis, and where possible, Problem resolution. If specialist level technical support is required, then Licensee's technical support staff (i) performs Problem isolation, replication and interoperability testing, (ii) provides remote diagnostics services, and (iii) implements a resolution for a Problem that is not the result of an Error.

**Level 2.** Problem resolution. Senior level technical support. Escalation resource to Level 2. Technical support staff (i) performs on-site troubleshooting at Licensee site, if required, (ii) isolates a Problem/Error and (iii) implements a resolution, including development of a Workaround, which restores operations. In the case of an Error, the staff will attempt to identify the source of the Error, create a reproducible test, and document the details of the Error for escalation.

**Level 3.** Backup engineering and technical support. Staff isolates a Problem or Error and implements a resolution, including, but not limited to, Error correction.

**Severity Levels and Service Levels. "Severity"** means the classification of a certain type of problem as set forth in Table 1. Neverfail offers two different service levels for its support program: Enterprise and Standard Support with response times as set forth in Table 1.

**Response Guidelines.** Table 1 below outlines Neverfail's customer support response and resolution goals by Severity levels and the service level for the support program purchased by Licensee. The Problem's

Severity along with the support level will determine the speed of Neverfail’s response. The initial response is an e-mail or telephone acknowledgement by Neverfail of the Problem reported by Licensee’s Designated Support Contacts. For the purposes of this SSA, Problems are assigned a Severity classification at the time of Licensee’s Problem report to Neverfail. The Severity level classification of a Problem may change based upon new information.

<b>Severity</b>	<b>Problem Severity Level Description</b>	<b>Enterprise Service Level Response Times</b>	<b>Standard Service Level Response Times</b>	<b>Resolution Goal</b>
<b>Severity 1 (S1)</b> Critical Impact (Emergency Support)	Problems that seriously interrupt or prevent the customer from performing regular business operations in which the Neverfail-protected application is down	30 minutes or less	1 hour	Immediately assist Licensee to get the Neverfail-protected application operational.
<b>Severity 2 (S2)</b> Serious Impact	Major product issues that do not severely impede customer operations and the Neverfail-protected application is functioning however Neverfail is not replicating	30 minutes	2 hours	Problem fixes will be developed and made available on a priority basis. An acceptable workaround and/or a mutually agreed upon action plan will be provided no later than ten business days after Neverfail customer support reproduces the problem.
<b>Severity 3 (S3)</b> Moderate Impact	An unexpected operation has occurred but the Neverfail-protected application and Neverfail are running with non-critical issues	2 hours or less	4 hours	Problem fixes are candidates for a future product release. An acceptable workaround and/or a mutually agreed upon action plan will be provided no later than four weeks after Neverfail customer support reproduces the problem.
<b>Severity 4 (S4)</b> Low Impact	Request for enhancement or minor issue not related to product or Neverfail-protected application functionality, such as documentation or product enhancement requests	4 hours or less	Next business day	Problem fixes are candidates for a future product release. An acceptable workaround and/or a mutually agreed upon action plan will be provided no later than three months after Neverfail customer support reproduces the problem.

**TABLE 1: SEVERITY LEVELS, RESPONSE TIMES AND RESOLUTION GOALS**

#### 4. MISCELLANEOUS

**Termination.** Neverfail may terminate the SSA in accordance with the terms and conditions of the EULA, including but not limited to, breach of the EULA by Licensee or the non-payment of License Fees or Support Fees.

**Support Fees.** Support Fees are due and payable in advance of the applicable Support Period in accordance with the payment terms of the EULA. Thereafter, Support Services will be automatically renewed by Neverfail for subsequent annual periods in an amount equal to the Support Fees then in effect, unless either party cancels by giving the other party ninety (90) days written notice prior to the commencement of any new Support Period. If Licensee cancels the Support Services, Licensee may

reinstate them at a later time by paying the Support Fees then in effect and an additional fee equal to the current monthly maintenance charges multiplied by the number of months during which Support Services were interrupted. Support Services do not cover hardware, operating systems, networks, or third party software.

**Entire Agreement.** This SSA, the EULA (which is incorporated into the SSA and made a part hereof for all purposes) constitute the entire agreement of the parties with regard to the matters referred to herein, and supersede all prior oral and written representations and agreements, if any, of the parties in respect hereto.

**Neverfail**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_