

NetAsset Terms and Conditions and Suretyship



1. INTRODUCTION

- 1.1 With effect from the date of signature of the schedule (the "effective date"), the client identified in the schedule ("the Licensee") appoints NetTrace (Pty) Ltd ("NetTrace"), to supply it with the Product/s and Service/s for the stipulated quantity of laptop computers ("PCs") as specified by the Licensee in the Schedule, from time to time to and/or on behalf of the Licensee in accordance with the provisions hereof.
- 1.2 The Licensee acknowledges that the signed schedule constitutes an offer by the Licensee, which may be accepted or refused by NetTrace in its sole discretion. The offer will be considered once received by NetTrace at NetTrace's premises, which premises will be the offices of NetTrace at the address as set out in Clause 17 hereof. Should NetTrace accept this offer, this Agreement shall become binding between NetTrace and the Licensee from the effective date, whether or not the Licensee was notified of the acceptance of the offer. The Licensee herewith expressly dispenses with notification of acceptance of the offer by NetTrace.
- 1.3 The Licensee acknowledges and NetTrace warrants that it is a licensed distributor of the Products and Services for Absolute Software Corp. ("Absolute").

2. DEFINITIONS

- 2.1 "Default Event" shall mean any of the following: (i) the application for, whether provisional or final, or adjudication in, bankruptcy of a party or similar events under the insolvency law of any jurisdiction; (ii) the insolvency, dissolution, or liquidation of a party under the law of any jurisdiction; (iii) an appointment of a receiver, trustee or other custodian for a party; (iv) execution of a composition Agreement or non-bankruptcy workout Agreement by a party; or (v) assignment for the benefit of creditors.
- 2.2 "Documentation" shall mean Product specifications, manuscripts, user guides, explanatory material, demonstration material and operating manuals, whether in electronic form or hard copy provided by NetTrace and/or Absolute with the Product, either upon initial delivery or as updated.
- 2.3 "Insurer" shall mean the insurance underwriter and/or insurance provider and/or any appointed agent and/or broker thereof that may be providing insurance cover for the PCs detailed in the schedule.
- 2.4 "Intellectual Property Rights" shall mean all intellectual property rights, including copyrights, patents, trade secrets, trademarks, and other proprietary rights that are owned by or licensed to NetTrace and/or Absolute and are now or in the future embodied in or used in connection with the Product or Documentation.
- 2.5 "Licensee" includes the applicant identified on the schedule and its affiliates, subsidiaries, joint ventures or other entities, provided Licensee has voting control over them.
- 2.6 "Product" shall mean the computer software products provided by NetTrace (or its licensor) to Licensee pursuant to this Agreement, as set out in the schedule and Appendices A and B, which are provided by NetTrace (or its licensor) to Licensee in object code form in any form or media, and all Updates and Upgrades (if accepted as per Clauses 7.1 and 7.2).
- 2.7 "Schedule" means the NetAsset On-line Application Form and any addenda thereto.
- 2.8 "Services" means the monitoring/asset tracking and loss control services detailed in Appendix A hereof, and any other services provided by any 3rd party/parties in the delivery of the asset tracking services.
- 2.9 "Services Agreement" shall mean the Schedule, NetAsset Terms and Conditions and Suretyship, and the Appendices that constitute this document, and which together shall be known as "this Agreement";
- 2.10 "Update" means a release of the Product that includes a feature change or minor improvement to the Product where the release is not accompanied by a change in the price of the Product (typically designated by NetTrace and/or Absolute as a change in the revision number, being the number to the right of the decimal point in the Product version number).
- 2.11 "Upgrade" means a release of the Product that includes an additional service feature being added to the Product where the release is accompanied by a change in the price of the Product (typically designated by NetTrace and/or Absolute as a change in the version number, being the number to the left of the decimal point in the Product version number).

3. DURATION AND TERMINATION

- 3.1 Unless terminated earlier as provided below, this Agreement shall continue indefinitely, reckoned from the effective date, unless terminated by either party by the giving of 30 (thirty) days written notice of termination.
- 3.2 The Licensee shall have no claim of whatsoever nature and howsoever arising against NetTrace including no right to cancel this Agreement or to withhold payment of or set off or deduct any monies due in terms hereof should the Product temporarily or otherwise fail or malfunction or should any of the services provided by NetTrace and/or Absolute be temporarily unavailable and/or not result in the recovery of stolen or lost PCs.
- 3.3 NetTrace shall be entitled in its sole discretion to suspend, cancel, vary or terminate this Agreement or any part thereof, without NetTrace incurring any liability whatsoever in the event of non-availability of the Product and/or the services or if any Agreement giving NetTrace the right to distribute the Product and/or to render the services, or any part thereof, or giving NetTrace access to anything relating to the Product and/or the services, is suspended, cancelled, varied or terminated.
- 3.4 This Agreement may be terminated prior to the expiration of the applicable term by NetTrace upon material failure of the Licensee to perform its responsibilities and obligations, by submitting notice in writing to the Licensee of the material failure, provided that material failure has not been corrected within fourteen (14) days after receipt of such notice, or other such period reasonably agreed to by both parties.
- 3.5 This Agreement may be terminated immediately by NetTrace (without notice) should the payment of the fees not be received by NetTrace as detailed in the clauses under heading 9.
- 3.6 This Agreement may be terminated prior to the expiration of the applicable term by the Licensee upon material failure of NetTrace and/or Absolute to perform its responsibilities and obligations, by submitting notice in writing to NetTrace of the material failure, provided that material failure has not been corrected within sixty (60) days after receipt of such notice, or other such period reasonably agreed to by both parties.
- 3.7 The Licensee agrees that if for any reason any of the Agreements between Absolute and NetTrace are terminated so as to have the effect of NetTrace not being entitled to distribute the Product and/or render the services, all of the rights and obligations of NetTrace in terms of this Agreement may be assigned to any third party as may be approved of in writing by Absolute, which approval will not be unreasonably withheld or delayed forthwith upon the termination for whatever reason.
- 3.8 Without limiting the applicability of other terms and conditions of this Agreement, the terms of Clause 10 (Proprietary Data), Clause 11 (Confidential Information), Clause 12 (Warranties) and Clause 13 (Limitation of Liability) shall survive the expiration or termination of this Agreement for any reason.
- 3.9 In the event of death of the Licensee or in the event that either party is provisionally or finally liquidated, wound up or declared insolvent or in the event that either party enters into a scheme of arrangement or compromise with its creditors or allows a judgement to be entered against the name of the party and does not take steps for the rescission thereof within a period of 21 (twenty one) business days after the date of the judgement, then the other party shall be entitled immediately to terminate this Agreement.
- 3.10 Termination of this Agreement does not relieve the Licensee from the liability to pay fees for the minimum notice period.

4. LICENSES

- 4.1 **License Grant:** Subject to the terms of this Agreement, Licensee is hereby granted a non-exclusive, non-transferable license of NetTrace's licensor, Absolute Software Corp., attached as Appendix B.
- 4.2 **Restrictions and Information:** Licensee agrees to install that number of copies of the specified Product, set out in the schedule. Licensee may copy the Product into any machine-readable or printed form only as necessary to use it in accordance with this license or for backup purposes in support of Licensee's use of the Product.
- 4.3 **Relocation of License:** If the Licensee discontinues use of the Product on specific PCs on a specified site, and desires to continue use of the Product at another Licensee site or on other PCs of Licensee, it may do so provided the term of the Agreement has not expired and agrees to document the transfer in writing to NetTrace and include the new serial number, hardware description and other appropriate registration information.

5. INSTALLATION SERVICES

- 5.1 NetTrace, or its appointed agent, will provide off-site instruction to assist Licensee in its installation and use of the Product. Such services will be provided at no charge to Licensee. The Licensee hereby agrees that the Licensee or a person appointed by the Licensee will do the installation of the Product. To further streamline the installation process, NetTrace agrees to assist Licensee with software installation by providing the Licensee with the Computrace® Agent Installation Guide, at no additional charges, and Licensee agrees that NetTrace can forward the Computrace® Agent Installation Guide to the Licensee via electronic mail ("e-mail"), if requested to do so. If onsite installation service is requested, Licensee shall pay NetTrace's current Installation Engineering rate and if travel and subsistence charges are incurred, Licensee shall reimburse NetTrace for such expenses. Installation Services will be provided at a mutually agreed date and time.

6. SERVICES AVAILABLE

- 6.1 **Services Purchased:** Subject to the Products/s and Service/s purchased by the Licensee, as specified in the schedule, the following services shall be provided to the Licensee:
- 6.1.1 **Monitoring Services:** Absolute shall provide the computer-monitoring services set out in Appendix A, to Licensees via Internet Protocol ("IP") only. Licensee will provide NetTrace and Absolute with such information relating to the installation of the Product as is necessary to permit NetTrace to fulfil its monitoring service obligations.
- 6.1.2 **Recovery Services:** In case of theft, appropriate registration and theft recovery information provided by Licensee to NetTrace and other parties will be used to assist in the recovery of the stolen computer. NetTrace will provide IP addresses and caller identification ("caller ID") information (if available) for the recovery of lost or stolen PCs. NetTrace coordinates with, and relies upon, local South African Police Service ("SAPS") Officials to recover any stolen computers. NetTrace neither guarantees the recovery of any stolen computer nor the condition of any recovered computer. Furthermore, as NetTrace's theft recovery personnel principally co-ordinate recoveries only in South Africa, NetTrace may not be able to facilitate a recovery outside of this country.
- 6.1.3 **Technical Support Services:** NetTrace shall provide the technical support services set out in Appendix A and support and assist the Licensee in the solving of problems or inquiries that may arise through or in the use of the Product.
- 6.2 **Authorised Licensee Personnel:** Licensee will provide NetTrace with a list of all employees who have the authority to contact NetTrace regarding technical support issues for the Products and who have the authority to utilise the Services. NetTrace will only be obligated to act if it receives instructions from such authorised personnel. Any changes to these personnel will be provided to NetTrace by the Licensee in writing and authorised by the appropriate signing authority.

7. UPDATES AND UPGRADES

- 7.1 **Updates:** Updates will be made available to Licensee at no additional charge. Licensee may, in its/their sole discretion, elect to accept or reject any or all Updates.
- 7.2 **Upgrades:** Upgrades will be made available to Licensee for an additional charge, if applicable. Licensee may, in its/their sole discretion, elect to accept or reject any or all Upgrades.
- 7.3 **Restrictions on Technical Support:** Notwithstanding whether or not the rejection of an Update or Upgrade by Licensee occurs, NetTrace and/or Absolute will not be obligated to provide technical support or maintain any of the services set out in Clause 6 under the Agreement for any version of the Product other than its three most recent releases.
- 7.4 **Notification:** NetTrace will inform the Licensee as soon as practicable after the release of any Upgrades or Updates.

8. FEES

- 8.1 The Licensee shall pay to NetTrace:
- 8.1.1 **Recurring Service Fees:** The fees for licensing the Product and the provision of the Services are payable in advance as per the schedule; and
- 8.1.2 **Recovery Fees:** A recovery fee of R 1 500.00 (excl. V.A.T.) per computer, for the successful recovery of any stolen or lost PCs by NetTrace through NetTrace's standard recovery process, is payable to NetTrace by the insurer on delivery of the recovered item to the owner of the PC, legal ownership of which shall be determined by the insurer. Should the Licensee wish to pursue any other legal action, whether civil or criminal against any party allegedly involved in the theft or unauthorised removal of any PC's then all and any costs associated in such process shall borne by the Licensee; and
- 8.1.3 **Miscellaneous Service Fees:** Monthly in arrears any other fees payable in respect of any additional services requested by the Licensee or other fees levied by NetTrace from time to time; and
- 8.1.4 **Travel Expenses:** NetTrace shall be reimbursed monthly in arrears for travel and subsistence expenses incurred by NetTrace and/or Absolute for work done for the Licensee, as described in Clause 5.1; and
- 8.1.5 **Value Added Tax:** At the applicable rate on all vat-able fees and services. All fees, unless otherwise stated exclude value added tax; and
- 8.1.6 **Debit Order Fees:** Should the Licensee elect to pay NetTrace by debit order, then the cost of such debit order shall be paid by the Licensee.
- 8.2 The Licensee agrees that the above fees payable to NetTrace shall be based on the minimum quantities as reflected in the schedule. Should the Licensee install more copies of the Product than agreed to in this Agreement the Licensee must immediately notify NetTrace and pay to NetTrace the above fees for the additional Product copies, and Licensee shall be bound by all Terms and Conditions of this Agreement for the additional Product copies.
- 8.3 The fees payable by the Licensee to NetTrace shall be stipulated in any notice, directive, promotion or applicable tariff plan issued or derived by NetTrace from time to time and the contents of such notice, directive, promotion or tariff plan including the fees stipulated therein shall be deemed to be incorporated in this Agreement as if specifically set out herein.
- 8.4 The Licensee agrees that the Recurring Service Fees payable are linked directly to the South African Rand ("ZAR") / US Dollar ("USD") exchange rate, and that the Recurring Service Fees payable shall be reviewed on a quarterly basis by NetTrace, each quarter ending on the last business day of the months March, June, September and December of each year. The ZAR / USD exchange rate shall be determined by NetTrace at NetTrace's close of business on the last business day of each said quarter. The Licensee agrees that the Recurring Service Fees payable shall be increased by the same number of percentage points as the ZAR has depreciated against the USD in the preceding quarter, or part thereof if the date of signature hereof falls during a quarter as defined above.
- 8.5 The Licensee agrees that NetTrace shall be entitled from time to time to increase or vary the fees payable by the Licensee to NetTrace, e.g. an adverse change in exchange rates. NetTrace shall endeavour to give the Licensee prior notice of any such increases or variations but gives no undertaking in this regard.

- 8.6 NetTrace's monthly statement of fees shall be prima facie proof of the amounts owed by the Licensee to NetTrace in terms hereof and of the other facts stated therein, and should the Licensee dispute the amount charged by NetTrace, then the Licensee shall bear the onus of proving that NetTrace's statement is incorrect in such a respect.

9. PAYMENT

- 9.1 The Licensee agrees to supply NetTrace with such information, documentation and signatures that NetTrace may reasonably require at the time that this Agreement is concluded in order to give effect to the payment arrangements of this Agreement. Any subsequent changes that affect the information supplied to NetTrace, such as bank account details, must be brought to the immediate attention of NetTrace. The Licensee agrees to hold NetTrace harmless in the event of an error being made on any information handed to NetTrace by the Licensee.
- 9.2 The Licensee agrees that all payments shall be made by debit order, unless otherwise directed by NetTrace, and hereby authorises NetTrace, or any agent appointed by NetTrace, to draw against the Licensee's bank account, the details of which appear in the schedule, or any other Bank or Branch to which the Licensee may transfer the banking account, commencing on the effective date of this Agreement/Authority. This Authority may be cancelled by the Licensee giving thirty (30) days notice in writing, sent by prepaid registered post, but the Licensee shall not be authorised to any refund of amounts which NetTrace or its appointed agent may have withdrawn while this Authority was in force if such amounts were legally owing to NetTrace. Cancellation of this debit order in no way invalidates any other clause or clauses of this Agreement or in no way whatsoever releases the Licensee from the Licensee's obligation/s in terms of this Agreement. The Licensee agrees to pay any Bank charges relating to this debit order instruction and receipt of this instruction by NetTrace will be regarded as receipt thereof by the Licensee's bank.
- 9.3 The Licensee agrees that payment shall only have been made to NetTrace when the monies remitted by the Licensee have been received into NetTrace's bank account.
- 9.4 All monies payable by the Licensee to NetTrace in terms hereof shall be paid timeously on due date, free of deduction or set-off to NetTrace's principal place of business.
- 9.5 All payments shall be effected on receipt of invoice or where payment is effected by debit order then such payment shall be effected on NetTrace's direct debit date. Non-receipt of invoices by the Licensee will not be considered as a valid basis for late or non-payment.
- 9.6 Should any debit order or cheque payment of the Licensee be returned unpaid or stopped or be rejected for whatsoever reason or should NetTrace exercise its right to suspend the provision of the software and/or the services due to late or non-payment of any monies due in terms hereof by the Licensee, then the Licensee shall pay an administration charge as may be levied by NetTrace from time to time for each such non-payment, suspension or any other breach of this Agreement which amount shall be payable upon demand and recoverable by NetTrace.
- 9.7 All arrear payments shall attract interest at a rate of 2% (two per centum) per annum above the prime lending rate of The Standard Bank of South Africa Limited as it may be from time to time, calculated from due date to date of payment.
- 9.8 The Licensee agrees and acknowledges that a certificate given under the hand of a financial manager or controller of NetTrace whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle NetTrace to apply for judgement against the Licensee and to obtain summary judgement or provisional sentence, as the case may be.

10. PROPRIETARY DATA

- 10.1 Intellectual Property Rights: No title to or ownership of software licensed or marks or other intellectual property used under the Agreement is transferred to the Licensee. Notwithstanding any provision of the Agreement to the contrary, Absolute owns and retains all title and ownership of all Intellectual Property Rights in the Product and Service and marks or other intellectual property, which are acquired, produced or shipped by NetTrace under the Agreement, and all modifications to and derivative works from software acquired under the Agreement made by the Licensee, NetTrace or any third party, unless otherwise agreed to in writing by the parties.
- 10.2 No Reverse Engineering: The Licensee will make no attempt to reverse compile, reverse engineer, disassemble or to obtain source code to the Product, except by written Agreement with Absolute.
- 10.3 Competition: During the term of this Agreement, the Licensee will make no attempt to replicate the functionality of the Product for the purpose of competing with Absolute or its affiliates, and will not otherwise, directly or indirectly, compete with NetTrace or its affiliates in the development, distribution or sale of a software-based theft recovery service or any other software-based service of Absolute and/or NetTrace made available to the Licensee and accepted for sale under the terms of this Agreement.

11. CONFIDENTIAL INFORMATION

- 11.1 Protection: Each party agrees to protect the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind but in no case less than reasonable care. Access to Confidential Information shall be restricted to employees and consultants of either party who have a need to know such information. At the request of either party, the parties will execute a separate confidentiality Agreement.
- 11.2 Confidential Information: In this Agreement, "Confidential Information" means any information which the receiving party knows or has reason to know is the confidential or proprietary information of the disclosing party including, without limitation, the following information: technical and business information relating to inventions or products, research and development information, production manufacturing and engineering processes, costs, profit or margin information, employee skills and salaries, finances, customers, marketing, and production and future business plans.
- 11.3 SAPS Crime Statistics: The Licensee hereby authorises NetTrace, at its sole discretion, to forward any information pertaining to the theft/loss of Licensee's PCs, and any information pertaining to the recovery of such PCs, including that obtained through NetTrace's Standard Recovery Process, to the South African Police Service (SAPS) and/or appointed representative/s, for the purposes of crime statistical analysis and/or crime trend analysis.
- 11.4 Divulgence: The Licensee hereby authorises NetTrace to supply any information available to the Licensee through the Services to the insurer on request by the insurer.

12. WARRANTIES

- 12.1 Product and Documentation Warranty: NetTrace and Absolute warrants that (i) the Product shall conform to and operate in accordance with the technical, operational and functional specifications in the Documentation, subject to the limitations in the Documentation with respect to compatibility issues with other software and hardware systems; (ii) the media on which the Product is delivered shall be free from any material defects in workmanship; (iii) the Documentation provided by NetTrace and/or Absolute will include accurate instructions regarding installation, use and operations of the Product as provided by NetTrace and/or Absolute.
- 12.2 Intellectual Property Warranty: NetTrace warrants that it has sufficient title or distribution rights to the Product and related Documentation and Intellectual Property Rights therein and has the right to grant the licenses granted hereunder to the Licensee.
- 12.3 No Other Warranties: EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE PRODUCTS.

13. LIMITATION OF LIABILITY

- 13.1 Neither NetTrace, Absolute nor any affiliate will be liable under any circumstances whatsoever for any loss or damage of any nature including loss of profits, loss of business, loss of use or of data, interruption of business, or for indirect, special, incidental or consequential damages of any kind whether under this Agreement or otherwise, even if NetTrace, Absolute or an affiliate has been advised of the possibility of such damages, which the Licensee or any other person may suffer whether as a result of any breach by NetTrace and/or Absolute of any of its obligations to the Licensee, or whether caused directly or indirectly by the Licensee's equipment or the use thereof.

14. BREACH

- 14.1 Should the Licensee breach any provision of this Agreement, including failing to pay NetTrace any monies due in terms of hereof on due date, then NetTrace shall be entitled without prejudice to any of its other rights arising out of this Agreement forthwith without notice and without any liability towards the Licensee to suspend its provision to the Licensee of the Product and/or the Services in whole or in part.
- 14.2 Any breach will entitle NetTrace to recover from the Licensee upon demand as liquidated damages hereby agreed to by the Licensee an amount equal to the aggregate of all of the recurring fees due until the expiry of the initial period plus notice period.

15. LEGAL COSTS

- 15.1 Should NetTrace and/or Absolute instruct their attorneys to enforce any of NetTrace's or Absolute's rights arising from this Agreement or to institute action against the Licensee, then the Licensee shall be liable for all legal costs on attorney and own client scale including any collection incurred by NetTrace and/or Absolute and the Licensee shall upon demand pay such costs.

16. UNDERTAKING AS CO-PRINCIPAL DEBTOR ON BEHALF OF THE LICENSEE BY THE SIGNATORY

- 16.1 If the Licensee as identified on the face hereof is a company, close corporation, trust or a division or entity thereof or any other entity with juristic personality, then the signatory hereto who signs on behalf of the Licensee ("the signatory") warrants that he/she is duly authorised to enter into this Agreement on behalf of the Licensee and if applicable, to sign the debit order authorisation on the Licensee's bank account. By his/her signature hereto, the signatory hereby binds himself/herself as co-principal debtor for the Licensee unto and in favour of NetTrace for the due and punctual fulfilment of all of the Licensee's obligations to NetTrace and/or Absolute arising out of this Agreement including the payment of all charges, fees, penalties and liquidated damages. The signatory as co-principal debtor hereby renounces and waives the benefits of the legal defences excussion, division and cession of actions and hereby acknowledges that he/she understands the full meaning of such defences and the effect of such renunciation and waiver.

17. DOMICILIUM

- 17.1 The parties choose as domicilium citandi et executandi ("domicilium") the addresses set out below.
- 17.1.1 NetTrace: 34 Monte Carlo Crescent, Kyalami Business Park, Kyalami;
- 17.1.2 Licensee: The physical or residential address specified in the schedule.
- 17.2 Either party shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa, which is not a post office box or poste restante.
- 17.3 The Licensee hereby acknowledges and agrees that acceptance of this Agreement, the services provided by NetTrace and/or Absolute to the Licensee in terms hereof and payment of all monies due to NetTrace by the Licensee in terms hereof, take place at and/or are rendered from NetTrace's chosen domicilium. The Licensee hereby waives any right that he may have to deny, question or dispute that the whole cause of any action which NetTrace and/or Absolute may have instituted against the Licensee arose within the jurisdiction of the Magistrates court which has jurisdiction in respect of NetTrace's and/or Absolute's said chosen domicilium.

18. GENERAL

- 18.1 Severability: If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions shall be deemed modified to the extent necessary in the court's opinion to render such terms or provisions enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and Agreements of the parties herein set forth.
- 18.2 Waiver: Either party's failure to exercise a right available to it by reason of the other party's breach shall be taken as an isolated instance and shall not be deemed to be a permanent waiver of such right.
- 18.3 Force Majeure: Neither party shall be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, riots, insurrections, fires, floods, storms, explosions, earthquakes, acts of God, war, governmental action, or any similar cause that is beyond the reasonable control of such party. If any force Majeure event occurs, the party delayed or unable to perform shall give notice to the other party.
- 18.4 Headings: Headings appearing in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions hereof.
- 18.5 Publicity: NetTrace may not use the name or trademarks of Licensee in any advertisement or press release without prior written consent of Licensee. Notwithstanding the foregoing, nothing herein will be considered to restrict the ability of any party to make any public disclosure required to be made by them, or their affiliates, in connection with any applicable public company reporting obligation.
- 18.6 Creditworthiness: The Licensee hereby consents to NetTrace conducting an investigation into the creditworthiness of the Licensee utilising the information contained in the schedule, which information the Licensee warrants is true and correct and such information forms the basis of this Agreement. The Licensee agrees that should such information turn out not to be correct in all respects, NetTrace shall be entitled immediately and without prejudice to any other rights that NetTrace may have to terminate this Agreement and the Licensee agrees to hold NetTrace and Absolute harmless in such an event.
- 18.7 Credit Information Bureau: The Licensee hereby agrees that NetTrace may, in addition to any of its other rights in terms of this Agreement or otherwise, list any default information on the Licensee with any credit information bureau and the Licensee agrees to the disclosure by NetTrace to any third party, of any information pertaining to the Licensee or the Agreement, to the extent that such disclosure is necessary for the conduct of NetTrace's business, or is required by any relevant statute, regulation or license.
- 18.8 Assignment & Binding Effect: Each party agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of the other party, which will not be conditioned, withheld or delayed unreasonably. No such consent shall be required for a transfer for value of all or substantially all of either party's assets, whether such transfer is effected by asset sale, merger, stock sale or otherwise; provided that such party provides the other party with a prior written notice of any such transfer. Any attempted assignment in violation of the provisions of this Clause will be void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties thereto, their successors and assigns.
- 18.9 Governing Law: This Agreement, excluding the Computrace License Agreement as set out in Appendix B, will be governed and construed in accordance with the laws of the Republic of South Africa and the courts of the Republic of South Africa shall have exclusive jurisdiction of any legal proceeding regarding this Agreement, and the parties expressly submit to the jurisdiction of said courts.
- 18.10 Authorised Representative: Where any duly authorised representative represents NetTrace his/her authority need not be proved.

- 18.11 **Notice:** Any notice, request, authorisation, directive or other communication ("notice") to be given by either party to the other in terms of this Agreement shall be given in writing addressed to the latter at the address as set out in Clause 17, and shall either be delivered by hand or be forwarded by pre-paid registered post, by telegram, e-mail or fax. The Licensee agrees to be bound by the provisions contained in any such notice issued or derived by NetTrace from time to time. Unless and until the contrary is proved, a notice:
- 18.11.1 sent by pre-paid registered post shall be deemed to have been received on the fourteenth calendar day after posting;
 - 18.11.2 sent by telegram shall be deemed to have been received on the second calendar day after lodgement with the post office (excluding Saturdays, Sundays and Public Holidays);
 - 18.11.3 sent by fax or e-mail shall be deemed to have been received on the first business day following that on which it was sent;
 - 18.11.4 delivered by hand will be deemed to have been received at the moment of delivery directly to the parties to this Agreement.
- 18.12 **Scanning:** The Licensee agrees that this Agreement may be scanned and the paper version destroyed and hereby agrees to the scanned version and waives his/her right to dispute the authenticity of the scanned version.
- 18.13 **Entire Agreement:** This Agreement and its appendices set forth the entire understanding between the parties hereto and supersede all prior Agreements, arrangements, and communications, whether oral or written, with respect to the subject matter hereof. No alteration, variation, or addition to this Agreement or this clause shall be of any force or effect unless reduced to writing and signed by the Licensee and a director of NetTrace. This document contains the sole and entire record of the Agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other shall in any way preclude the grantor from exercising any of its rights in the future.

Appendix A

A Computrace® Technology Platform

Absolute Software Corp.'s Computrace® Technology Platform is based on a client/server architecture comprised of Absolute's patented Computrace® Agent (the "tracking agent") and the Absolute Monitoring Centre (the "Monitoring Centre"). The tracking agent is a thin client (the Product as previously defined) that is installed onto the hard drive of PCs, where it performs a number of tasks to avoid detection. This is why the tracking agent is described as "stealthy". Once installed, the tracking agent automatically contacts the Monitoring Centre on a regular basis transmitting the PC's location and additional auto-discovered data points. Ongoing communication between the tracking agent and the Monitoring Centre requires no user intervention and is maintained via an Internet connection. As long as the computer is turned on and has access to the Internet (through an Internet Service Provider ("ISP") or through a company network), the tracking agent will be able to report to the Monitoring Centre. When the tracking agent has transferred data such as IP address, electronic serial number and asset information, the Monitoring Centre sends the next scheduled call time and date to the tracking agent.

B Loss Control

The Loss Control service is based on the Computrace Technology Platform.

NetTrace follows a standard recovery process for the recovery of missing or stolen computers. If a tracking agent-equipped PC is reported lost or stolen to NetTrace, the tracking agent will be instructed to contact the Monitoring Centre more frequently as soon as it is connected to the Internet, and contact a Theft Recovery Server (the "Recovery Server") in South Africa when plugged into a phone line. Once the missing computer contacts the Monitoring Centre and/or the Recovery Server, NetTrace captures the IP address and/or the Caller Line Identification (CLI), and liaises with the Licensee and local SAPS officials to facilitate the recovery process.

C Technical Support Service

NetTrace's technical support services are available from 8:30 am to 5:00 pm (GMT+2), Monday through Friday, such technical support services including, without limitation, the following:

- NetTrace will provide Licensee with all Updates and Upgrades, if accepted as per Clause 7, of the Products and Documentation.
- NetTrace will provide Licensee with telephone technical support during NetTrace's normal business hours.

Appendix B

COMPUTRACE® LICENSE

Please read carefully the following legal agreement.

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