



# The terms and conditions

This is your *agreement* with us for the *services* we offer. Your *Tracker agreement* is made up of five parts:

1. The *application*
2. These terms and conditions  
(<https://www.tracker.co.za/support/legal-and-compliance/ts-and-cs-my-home>)
3. The terms of use for the *Tracker website* and *Tracker mobile applications*
4. The *Tracker privacy policy*  
(<http://www.tracker.co.za/Pages/About-Us/Legal/PrivacyPolicy.aspx>)
5. Special terms and conditions applicable to each of the *services* you choose

Please make sure that you agree only after you have read and understood all the parts of the *agreement*.

The terms and conditions in boxes have important consequences for you.

Words in *italics* are defined on pages 3 and 4.

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## A Definitions

In the table below, the words and phrases in the left column have the meanings given in the right column. Defined terms are in *italics* in the *agreement*. There are guidelines to interpreting the *agreement* at the end of these terms and conditions.

<i>Affiliate</i>	means any member of <i>Tracker's</i> group of companies, including any holding company of <i>Tracker</i> , any subsidiary of <i>Tracker</i> and any subsidiary of <i>Tracker's</i> holding company. The terms 'group of companies', 'holding company' and 'subsidiary' have the meanings given to them in the Companies Act, 71 of 2008.
<i>Application</i>	means the application to install the <i>unit</i> and to receive the <i>services</i> , and if the <i>unit</i> is already installed, to receive the <i>services</i> , which you or your authorised insurer or broker on your behalf made by phone, online or by filling in a form.
<i>Breach</i>	means either to break <i>legal responsibility</i> under the <i>agreement</i> or a <i>legal responsibility</i> that has been broken.
<i>Damages</i>	means the amount of money claimed by someone or ordered to be paid to someone as compensation for a <i>loss</i> that they suffer.
<i>Early cancellation costs</i>	means the fees payable by you for ending the 36-month <i>agreement</i> before the end of its 36-month term.
<i>Fee</i>	means the monthly fee that you pay to us for the <i>service</i> .
<i>Home</i>	means the physical immovable property to which the <i>monitored device</i> is attached, the <i>unit</i> is installed and in relation to which the <i>services</i> are provided.
<i>Installation fee</i>	means the upfront fee that you pay to us for the <i>unit</i> and the installation if you do not enter into a 36-month <i>agreement</i> .
<i>Legal responsibility</i>	means a duty imposed on someone to do something whether imposed by the law or created by <i>agreement</i> . <i>Legally responsible</i> has a corresponding meaning.
<i>Loss</i>	means the disadvantage a person suffers because of an event beyond anyone's control (for example earthquake or flood) or the action or failure to act on the part of any person. It includes physical <i>loss</i> (for example, death, personal injury, or damage to property) and financial <i>loss</i> (for example, expenses, penalties, <i>loss</i> of income or <i>loss</i> of profits, and legal fees).
<i>Monitored device</i>	means the geyser or other device specified on the <i>application</i> to which the <i>unit</i> is fitted to enable the <i>services</i> .
<i>Risk</i>	means being exposed to harm or the possibility of harm, including: a) the <i>loss</i> or theft of, or physical damage to, any property; b) the financial <i>loss</i> someone might suffer.
<i>Services</i>	means both of the following: a) the <i>services</i> of <i>Tracker</i> that you chose in your <i>application</i> ; b) information and <i>services</i> on the <i>Tracker website</i> and any <i>Tracker mobile applications</i> .
<i>Supplier</i>	means any person or entity that is involved in providing <i>services</i> to us.
<i>Telematics</i>	means the area of technology that deals with sending digital information over long distances using wireless forms of communication.
<i>Terms of use of the Tracker website and Tracker mobile applications</i>	means the terms and conditions for using: a) the <i>Tracker website</i> and <i>Tracker mobile applications</i> (as amended from time to time); b) the website of any <i>suppliers</i> to access and use any of the <i>services</i> .
<i>Tracker</i>	means Tracker Connect (Pty) Ltd, Registration No. 2011/003946/07, a private company registered in the Republic of South Africa with its business address situated at Stonemill Office Park, 340 Republic Road, Darrenwood, 2194.



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<i>Tracker privacy policy</i>	means the privacy policy on the <i>Tracker website</i> accessible at: <a href="http://www.tracker.co.za/Pages/About-Us/Legal/PrivacyPolicy.aspx">http://www.tracker.co.za/Pages/About-Us/Legal/PrivacyPolicy.aspx</a> .
<i>Tracker website</i>	means the website at the address <a href="http://www.tracker.co.za">www.tracker.co.za</a> .
<i>Unit</i>	means the monitoring device that we use to provide the <i>services</i> . All <i>units</i> include a SIM card that provides <i>telematics</i> . Any reference to a <i>unit</i> shall include a reference to any accessories or peripherals used with the <i>unit</i> .
<i>Warrant, warranty</i>	means to make a promise that we or you are entitled to rely on. A <i>warranty</i> means a promise that the party receiving it is entitled to rely on.

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## B Introducing the *agreement*

### 1 Who the *agreement* is between (parties)

The parties to the *agreement* are:

- a) *Tracker*, referred to as 'we', 'us' and 'our' in this document;
- b) the customer named on the *application*, referred to as 'you' and 'your' in this document.

### 2 When the *agreement* starts

The *agreement* starts when we record the *unit* installed to the *monitored device* at the *home* and recorded against your name on the *Tracker* system. This may take up to 72 (seventy two) hours. Until we record the *unit* on the *Tracker* system against your name, we will not be able to provide the *services* or part thereof.

You must not allow the *unit* to be installed on the *monitored device* or in the *home* if you do not agree to the *agreement*.

### 3 When the *agreement* ends

Your *application* shows whether you chose a month-to-month *agreement* or a 36-month *agreement*.

#### 3.1 The month-to-month *agreement*

If you have a month-to-month *agreement*, the *agreement* continues indefinitely until either you or we end it in terms of section B4 or J1 of the *agreement*.

#### 3.2 The 36-month *agreement*

If you have a 36-month *agreement*, the *agreement* continues for 36 months unless:

- a) either you or we end it in terms of section B4 or J2 of the *agreement*; or
- b) it is extended in terms of section F5.2.

At the end of the 36 months, the *agreement* will continue indefinitely until either you or we end it by giving one calendar month's written notice.

### 4 If you change your mind (cooling-off) – direct marketing only

You have the right to change your mind if you entered into the *agreement* as a result of direct marketing but if you allow the *unit* to be installed on the *monitored device* within the cooling-off period, you give up your right to end the *agreement* in this time period as the *unit* is then attached to the *monitored device*.

If you did not enter into the *agreement* as a result of direct marketing, you do not have a cooling-off right.



## C The *unit*

The *unit* is the communications /monitoring equipment that we use to provide the *services* in relation to the *monitored device*.

### 1 Installing the *unit* at an agreed time:

- 1.1 You must arrange with us for a technician to install the *unit* at the *home* address at which the *monitored device* is located, at an agreed time.
- 1.2 There might be a call-out fee. Please ask us about the fee before you ask for a technician to come to you.
- 1.3 Once we have agreed the time to install the *unit*, you must provide the technician with access to the *monitored device*.
- 1.4 If you do not provide access to the *monitored device* at the agreed time, you will be charged a no-show fee.
- 1.5 Our technician has the right to refuse to install the *unit* if they believe that doing so would be in contravention of relevant Occupational Health and Safety laws, or invalidate the Electrical Certificate of Compliance, or contravene any other laws or regulations relating thereto.

### 2 *Warranty* for defective *units*

#### 2.1 *Warranty* period to fix or replace defective *units*

The *unit* has a limited *warranty* period of 5 years, excluding the internal battery (if applicable) which has a limited 12-month *warranty*, starting from the date that we install the *unit*. (We refer to this as the *warranty* period.)

#### 2.2 When the *warranty* applies

The *warranty* covers repairs to the *unit* if it stops working properly because of defective parts, workmanship or design. We will fix or replace the *unit* at no cost to you.

#### 2.3 When the *warranty* does not apply

The *warranty* does not apply in any of the following circumstances:

- a) Anyone tampered with or changed the *unit* or the way it was installed;
- b) Someone that we did not authorise repaired or tried to repair the *unit* or the way it was installed;
- c) The problem was caused by damage from water;
- d) The problem was caused by abuse of the *unit*;
- e) The problem was caused by an external event, such as power surge resultant from lightning or load shedding or overloading;
- f) If the defect in the *unit* was not caused by us, or by the manufacturer, importer, distributor or retailer;
- g) If the defect happened or was reported to us after the *warranty* period ended.

If the *warranty* does not apply, you accept that you are legally responsible for the costs of having a *unit* repaired or replaced. We charge a standard call-out fee, and you will be charged the standard rates for repairs. You should contact us for a quote before asking us to repair or replace a *unit*.



- 3 If the *unit* or its installation affects the operation of or damages the *monitored device* or the *home* to which the *monitored device* is fitted.

We fix problems that the *unit* or its installation causes to the *monitored device* or the *home* at our own cost but only if all five of the following conditions are met:

- a) The *unit* or installation damages or causes a problem to the *home's* electrical wiring, in contravention of relevant regulations published under the Occupational Health and Safety Act. We have the right to appoint an expert at our cost to investigate the problem;
- b) The *unit* or its installation has not been changed, tampered with or repaired by anyone who does not have our authority;
- c) There has not been abuse of the *unit*;
- d) There has not been damage by water to the *unit*;
- e) There has not been interference with the *unit* by an additional telematics device (for example, a third-party geyser control system);
- e) The problem was not caused by electrical surge (for example, a lightning strike or load shedding).

If you report a fault in the *unit* to us and we have agreed the time for the technician to attend thereto you must make the *monitored device* available at the agreed time. If you do not make the *monitored device* available at the agreed time and place, you will be charged a no-show fee.

If you report a fault in the *unit* to us and ask us to send a technician, and the technician reports that the problem is not due to the *unit* or its installation, you are legally responsible to pay the costs of the technician. This includes any call-out fees and other costs. At the time of reporting the fault, you can ask us for the costs and fees that will apply at the time.

If we damage your *home* or the *monitored device* during installation of the *unit*, we have the right to inspect the damage and if we agree that the damage was caused during the installation, we have the right to fix such damage through a *Tracker* appointed *supplier*. If you choose a different supplier, you will be liable for any costs of repair.

## D The services

### 1 The services we provide

We provide the following *services*:

- a) The *services* provided by *Tracker* that you chose in your *application* and that you pay for;
- b) Information and *services* on the *Tracker* website ([www.tracker.co.za](http://www.tracker.co.za)) and any *Tracker* mobile applications.

### 2 You must use the services for valid and legal reasons only

You must use the *services* for valid and legal reasons only. An example of a reason that is not valid is utilising the *unit* in a manner that deprives a person, legally entitled, from beneficial usage of the *monitored device* (for example by wrongfully disabling a tenant's geyser).

**You accept that neither we nor our *suppliers* or *affiliates* are *legally responsible* to you if you use the *services* for invalid or illegal reasons. This means you do not have the right to claim against any one or more of us for *loss* or *damages* that you or anyone else suffers as a result of using the *services* for invalid or illegal reasons.**

If you use the *services* for invalid or illegal reasons, you will be committing a *breach* of the *agreement*.



**We then have the right to take steps against you as set out in section J4 below, 'Ending the agreement for breach'.**

### 3 When the *services* might be interrupted or delayed

We will do our best to maintain the availability of the *services* to you. However, the *services* might be interrupted or delayed in any of the following circumstances:

- a) A technical failure outside our control. This includes the unavailability, interruption or suspension of any communications networks or other *services* that we use or rely on to provide the *services*;
- b) If the communications network or a *service* provider that we use does not make the network or *services* available to us, or if they stop operating;
- c) If we have informed you by SMS or another way that there may be a fault with the *unit*, and you have not yet made the *unit* available to us to check and repair (or replace) the *unit*;
- d) If a government or regulatory authority requires us to change or stop the *services*;
- e) If there are other circumstances beyond our control, for example power failure, fire or flood;
- f) If there are strikes or other industrial action.

This interruption or delay might apply to all or part of the *services*.

**If we interrupt or delay the *services* in any of the above circumstances, we do not have any legal responsibility to you. You accept that:**

- a) **we will not be able to provide the *services*;**
- b) **you are not entitled to any refund of any *fees*;**
- c) **you must continue to pay the *fees*.**

We will do our best to restore any interruption to the *services* and to shorten any delay.

If there is an interruption or delay to the *services* because of the circumstances referred to above (except for D3c), and we cannot restore availability within 30 days, we will notify you in writing. You then have the right to end the *agreement* (see section J).

### 4 It is your responsibility to understand how your *unit* works and what *services* you pay for

It is your responsibility to understand what features are included in the *service* that you pay for (<https://www.tracker.co.za/my-home#!Smart-Geyser-menu-item|My-Home>), and any special terms and conditions applicable to such *services*, which are set out at the end of this document.

It is your responsibility to understand how the *unit* works and what *services* you pay for. You can get information on this on the *Tracker website* or by calling us on 0860 66 66 66.

## E Fees and charges

### 1 Payment for the *service*

How you pay for the *service* depends on the type of *agreement* you have chosen.



### 1.1 If you have the 36-month agreement

Use this table only if you have a 36-month agreement:

If you have a 36-month contract, you do not pay the upfront *installation fee*.

	How much you must pay	When you must pay
<i>fee/s</i>	Refer to your <i>application</i> for the amount. The first month's <i>fee</i> will be pro-rated from the date the <i>unit</i> is installed.	<b>Monthly:</b> You pay in advance. We will debit your bank account with the <i>fee</i> at the end of the previous month or on the first day of the month for which you have to pay.
<i>Early cancellation costs</i>	You pay a fair, fixed amount if you cancel in the first year, second year or third year of the <i>agreement</i> .	Last debit order date or date of last payment to us after cancelling

### 1.2 If you have a month-to-month agreement

Use this table only if you have a month-to-month agreement:

If you do not want to enter into a 36-month agreement but a month-to-month agreement, you have to pay the *installation fee*.

	How much you must pay	When you must pay
<i>installation fee</i>	Refer to your <i>application</i> for the amount.	<b>Upfront:</b> You must pay <i>the installation fee</i> upfront.
<i>fee/s</i>	Refer to your <i>application</i> for the amount. The first month's <i>fee</i> will be pro-rated from the date the <i>unit</i> is installed in the <i>vehicle</i> .	<b>Monthly:</b> You pay in advance for the <i>service</i> . We will debit your bank account with the <i>fee</i> at the end of the previous month or on the first day of the month for which you have to pay.

## 2 Charges for specific items

Name of charge	When it applies
No-show charge	If you do not show up or if the <i>monitored device</i> is not available at the agreed time and place for installation or repair of the <i>unit</i> or accessory or peripherals
Re-installation or removal charge	If we have to re-install or remove a <i>unit</i> we are not <i>legally responsible</i> for the cost
Call-out/Service request (SR) charge	If a <i>unit</i> is damaged or defective where the fault or damage occurs after the <i>warranty</i> period or was not caused by <i>Tracker</i> or by the manufacturer, importer, distributor or retailer of the <i>unit</i>

These charges are calculated at our standard rate at the time. We have the right to increase these charges when we choose to. To find out what the rates are at any time, you can call our contact centre on 0860 66 66 66.

**You give us permission to collect these charges from your bank account. See section E for how to pay.**





### 3 Increases to fees

We increase the *fees* and charges on 1 October every year. The annual increase will not be higher than 10% unless the most recent Consumer Price Index in the last completed calendar year is higher than 10%. In that case, the increase will be the most recent Consumer Price Index.

The Consumer Price Index is the index published by Statistics South Africa of the yearly change in prices consumers pay for retail goods and other items. The index is used to measure the rate of inflation in South Africa.

If you are paying discounted monthly *fees* as shown in section E4 below, you will receive a higher annual increase.

We will notify you in writing 30 days before any increases become effective.

### 4 Discounts on *fees* are for a limited time only

If you are paying discounted monthly *fees* because of the relationship between us and your insurance company or other third party, or because of a special offer, the annual increase to our *fees* is not limited to 10% or the Consumer Price Index. (See section E3 above.)

The discount will stop in either of the following circumstances:

- a) The *home* is no longer insured by that insurance company, even if you move to another insurance company that we have a similar relationship with;
- b) The relationship between us and the insurance company or third-party ends.

**You accept that if the discount stops, you will get a higher annual increase, unless we agree differently in writing. If you have the 36-month contract and you choose to end the *agreement* at this time, you must pay *early cancellation costs*.**

## F Invoices and how to pay

### 1 Receiving invoices

You can choose to receive your monthly invoices by email.

#### **You must pay by debit order**

You must pay by debit order from your bank account each month. You give us permission to collect all amounts that you owe to us from your bank account on the date given in your *application*. However:

- a) if the debit order is returned unpaid, we have the right to try to collect the money until we are paid by using a method we choose;
- b) if no date is given in your *application*, we will collect the money from your bank account on any day of the month that we choose.

### 2 You must make sure we have updated bank details

You must give us the correct details of the bank account from which we must deduct the payment. You must also tell us if your banking details change.

### 3 You agree that we can ask other parties for your bank details

**You agree that we have the right to request and obtain your bank details from your insurance company or from any other party that has the right to have them.**

The use of your bank details will be according to the *Tracker privacy policy*.



## 4 If an insurance company pays us on your behalf

### 4.1 The payments remain your *legal responsibility*

You accept that if we allow an insurance company (or another entity) to pay the *fee* or any other amounts on your behalf, it is still your *legal responsibility* to ensure that we are paid according to this *agreement*.

You accept that if we do not receive payment by the due date, we have the right to deduct any due amounts from your bank account by using a method we choose.

### 4.2 When the insurance policy ends

You accept that you are *legally responsible* to continue paying us even if the *home* is no longer insured by the insurance company or if the insurance policy ends. We have the right to deduct any amounts due from your bank account.

You accept that we are not *legally responsible* for any charges or *loss* or *damages* that you might suffer because we did not receive the monthly *fee* on time or at all.

## 5 If we do not receive your payment in time

### 5.1 We have the right to suspend the *services*

It is your *legal responsibility* to ensure that there is enough money in your bank account to pay us.

We have the right to suspend the *services* if you do not pay your *fees*. We will start providing the *services* again as soon as reasonably possible after we receive confirmation from our bank that you have paid the amount due to us at that date. It will take up to seven business days to restore the *services*.

You accept that if the *services* are suspended because you have not paid the *fees*:

- a) we will not provide the *services* (including *remote monitoring services*); and
- b) we are not *legally responsible* for any *loss* or *damages* you suffer from the *services* being suspended.

### 5.2 You must pay additional amounts

If we do not receive payment on time, you agree to pay the following amounts on demand:

- a) Legal costs on an attorney-and-own-client scale, related to the demand and recovery of the outstanding or overdue amounts;
- b) Other collection charges and commissions that we incur in recovering any outstanding or overdue amounts. These include bank charges if a debit order is returned unpaid or only partly paid; and
- c) Any costs associated with re-instating your account if the *services* were suspended.

You accept that you are *legally responsible* to pay us these additional amounts and we have claims against you if:

- a) you do not pay us on time or at all;
- b) you do not have enough money in your bank account to pay us;
- c) you give us the wrong bank details;
- d) you do not tell us about changes to your bank details on time or at all;
- e) you do not tell us that your bank has stopped payment; or



f) you stop the payment.

We may also be able to end the *agreement* and claim additional amounts from you if any of these things happen.

If you have a 36-month *agreement* and you do not pay your monthly instalment in any one or more months, then we have the right to extend the 36-month period by one month for each month that you do not pay.

## 6 It is your responsibility to ensure that the amount we deduct from your bank account is correct

We will do our best to ensure that the amount that we deduct from your bank account is according to the *agreement*. However, you also have a *legal responsibility* to check your invoices and bank statements. If you believe that you have been charged an incorrect *fee*, you must tell us immediately but no later than 12 months from the transaction date. We will refund the amount only if you show us proof that the amount charged to you was not according to the *agreement* or any other payment arrangement that you hold with us.

If you can prove that the *fee* was wrongly charged, we will refund it. You accept that it is your *legal responsibility* to check your invoices and bank account regularly. For this reason, you accept that the most we will refund you is for a maximum of the last 12 months of incorrect charges.

# G About personal and other information

This section contains terms and conditions relating to the following information:

- a) Personal information, usage data, anonymised data and any other information we get from the *unit* installed on your *monitored device*;
- b) Credit information;
- c) Intellectual property;
- d) *Tracker* materials

Any words in italics that are not defined in the definition section of this document are defined on the *Tracker website*.

## 1 Personal information, usage data and anonymised data

The *Tracker privacy policy* is published on the *Tracker website*. It governs the way we and our *suppliers* use and share your personal information, usage data, anonymised data and any other data we get from the *unit* installed on your *monitored device*, in accordance with the provisions of the Protection of Personal Information Act (explanations of these terms can be found in the *Tracker privacy policy*).

The *Tracker privacy policy* forms a part of the *agreement*.

You *warrant* that the information that you give to us is true. You accept that we have the right to treat the statements you make as true. This means that you cannot later claim that the statements you made are not true.

### 1.1 You *warrant* that you accept the *Tracker privacy policy*

You *warrant* that you have read, understood and agree to the *Tracker privacy policy*.



You accept that by agreeing to the *Tracker privacy policy* you are giving up some of your rights to privacy and giving us the right to use your personal information according to the *Tracker privacy policy*. You accept that you do not have the right to take legal action against us for any *loss or damages* you suffer from us processing your personal information according to the *Tracker privacy policy*.

### 1.2 You warrant that you can give us personal information

You warrant that:

- a) you are properly authorised and allowed to give us personal information;
- b) you will tell us in writing or by phone on 0860 66 66 66 when there is any change or update to any of your personal information or, if you are representing someone else in the *agreement*, the personal information of the person who you represent.

By giving this *warranty*, you accept that we may have claims against you for *loss or damages* that we suffer if you do not have authority to give us personal information and a third party brings a legal claim against us because we used the personal information you gave us.

### 1.3 You warrant that information you give is true and correct

You warrant that all information, including personal information that you or somebody representing you gives to us is true and correct.

### 1.4 You warrant that you have consent for us to process information

If you enter the *agreement* on behalf of another person or juristic (legal) entity, including the owner of the *monitored device*, you warrant that you have received the relevant consent for us to process personal information, usage data, anonymised data and any other data we get from the *unit* installed on your *monitored device* according to the *Tracker privacy policy*.

Examples of a juristic entity include a company, a trust and a partnership.

### 1.5 You warrant that you have informed those with the right to know

You warrant that you have informed all people or entities who have the right to be informed (including the owner and other users of the *monitored device*) about:

- a) the installation of the *unit* on the *monitored device*;
- b) your *agreement* with us for the *services*;
- c) your confirmation that we may process your personal information, usage data and anonymised data according to the *agreement*.

You accept that if any of the statements above are not true, we have claims against you for *loss or damages* we might suffer because we relied on your *warranties*. Our claims could include amounts and *damages* that we must pay to other people or any regulatory authority because these statements are, in fact, not true. For example, if the owner or user of the *monitored device* claims against us for *loss or damages* because they did not give permission for a *unit* to be installed on the *monitored device* where their permission was required, you will have to pay us the amounts of these claims.

## 2 Credit information

You agree that as far as the law allows:

- a) we have the right to carry out a credit enquiry with any registered credit bureau;
- b) we have the right to share your details with any registered credit bureau. This includes your personal information and payment history;



- c) the credit bureau as well as the credit provider that obtains your information from the credit bureau has the right to share your details for any purpose allowed by the National Credit Act, no. 34 of 2005.

### 3 Intellectual property rights

#### 3.1 Meaning and scope of intellectual property in *the agreement*

The intellectual property mentioned in the *agreement* includes all content and information related to the *unit*, the *services*, the *Tracker website*, the *Tracker mobile application* or given by us in any form whatsoever (for example, correspondence). Intellectual property mentioned in the *agreement* also includes the following:

- a) All products and goods, including any materials that might be placed in the *unit* or be used together with the *unit*. For *units*, this includes the SIM card that comes with the *unit* and information that is or can be derived from the SIM card;
- b) Data, information, databases, compilations of data, usage data (as defined in the *Tracker privacy policy*);
- c) Computer programs and software, software documentation, firmware, interfaces (including API interfaces), hardware, servers, computers, platforms, computer code, tools;
- d) Designs, circuit designs, algorithms, specifications;
- e) Trade names, logos, trademarks;
- f) Icons, links, graphics, photographic images;
- g) Sound clips, music, sound and television broadcasts;
- h) Text, literature, reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, records, published editions;
- i) Derivative works, authored works;
- j) Modules, components;
- k) Methodologies, policies, procedures, techniques, models, configurations, protocols, routines; and
- l) Improvements to any of the above items.

#### 3.2 We own or have the right to use the intellectual property

We own or have the right to use the intellectual property. This includes intellectual property that we have licensed from a third party, that we license, or that we give right of use for to our *suppliers* so that they are able to provide the *services*.

We remain the owner or licensee of the intellectual property. This includes the SIM card that is used in the *unit*, where applicable.

#### 3.3 You do not have or acquire any intellectual property rights

You do not have or acquire any intellectual property rights during the *agreement* or after it ends except for those intellectual property rights we expressly give to you in the *agreement*. You do not have the right to use the intellectual property in a way we do not expressly allow in the *agreement*.

#### 3.4 We have the right to improve the intellectual property

We have the right to change the intellectual property without giving you notice.

## H Embedded Value-added services

From time to time, we may provide value-added services. We have the right to change, remove or add these value-added services, whenever we choose to, after notifying you.



We do not have a *legal responsibility* to provide any value-added services. Adding, removing or replacing value-added services does not constitute a change to the *agreement* according to section I.

**You do not have the right to end the *agreement* because we add, remove or change a value-added service during your *agreement* with us. We are not *legally responsible* to you for any *loss* or *damages* you suffer because of these changes.**

The value-added *services* may be provided by third-party *suppliers* that we contract with. We have the right to change these *suppliers* whenever we choose to. Changing a *supplier* does not constitute a change to the *agreement* according to section I.

**You do not have the right to end the *agreement* because we change a *supplier*. We are not *legally responsible* to you for any *loss* or *damages* you suffer because we change a *supplier*.**

There might be conditions and limits that apply to the value-added *services*, for example, costs that apply. These are set out on the *Tracker website*.

## I Changes to the *agreement*

### 1 We have the right to make changes to the *agreement*

We have the right to make changes to the *agreement* from time to time. We will tell you about the changes at least 40 calendar days before the changes come into effect if such changes impact on your rights. We have the right to inform you of changes in a shorter period in any of the following circumstances:

- a) If the change is required by law;
- b) If it is reasonable to give less than 40 calendar days' notice, having regard to the nature or content of the change.

## J Ending the *agreement*

### 1 If you have a month-to-month *agreement*

You have the right to end the *agreement* by giving us one calendar month notice. A calendar month is from the first day of a month to the last day of a month. This means we must receive your notice on or before the first day of the month to end the *agreement* at the end of that month.

### 2 If you have a 36-month *agreement*

The *agreement* does not automatically end on the last day of the 36 months from the start date. If you want to end the *agreement* before the end of its 36-month term, you can do so by giving us one calendar month notice to end. You will be *legally responsible* to pay *early cancellation costs*. If you do not cancel the *agreement* at the end of the 36 months, the *agreement* will continue until you give us a calendar month notice. A calendar month is from the first day of a month to the last day of a month. This means we must receive your notice on or before the first day of the month to end the *agreement* at the end of that month.

### 3 If the *home* or *monitored device* is sold, destroyed or repossessed

The *agreement* does not end automatically if you sell the *home* or terminate your lease agreement or if there is *loss* or *damage* to the *unit* or the *monitored device* that it is fitted to. If the *home* is sold, destroyed or repossessed, or if you terminate your lease agreement you must tell us immediately. If



you sell the *home* or terminate the lease agreement, you must tell us at least three days before the new owner or tenant takes occupation of the *home*.

**Until the *agreement* is cancelled in the way allowed in this section, you accept that you remain legally responsible for all fees for the remainder of the *agreement*. For this reason, we recommend that you insure the *unit*.**

### 3.1 If you sell the *home* or cancel your lease or vacate the premises (36-month *agreement*)

If you cancel your lease or vacate the premises or sell the *home* to which the *monitored device* is permanently affixed before the end of the *agreement*, you can transfer the *agreement* to your next *home* to be installed on a *monitored device* affixed to your next *home*. If you choose to do this, we will need certain information from you (for example, details of your next *home* and the date of purchase or lease). We will install a new *unit* in the new home. There is a charge for installing a new *unit* in your new *home* and you will continue with your existing *agreement* or cancel the existing *agreement* (and pay the applicable early termination fee) and enter into a new *agreement*. Before you ask to transfer the *agreement*, please ask us what charge applies at the time.

If you cancel your lease or vacate the premises or sell the *home* before the end of the *agreement*, you can choose to end the *agreement* (*early cancellation costs* apply), or you can continue to pay the monthly *fee* until the end of the contract period.

### 3.2 If the *home* is destroyed

If the *home* is destroyed, the *agreement* will end at the end of the month after the month in which the *home* was destroyed, and *early cancellation costs* will apply.

**For this reason, we recommend that you insure the *unit*.**

### 3.3 If the *home* is repossessed

If you can no longer afford the home and you are in breach of the home loan agreement and the *home* is repossessed by the financing company, you can cancel the *agreement*. If you have a 36-month contract, you will have to pay *early cancellation costs*. If we ask, you must give us proof that the *home* has been repossessed.

**For this reason, we recommend that you insure the *unit*.**

**If you end the *agreement* because the *home* is sold, destroyed or repossessed, or your lease agreement terminates or you vacate the premises, you accept that you are legally responsible to pay *early cancellation costs*.**

## 4 If you *breach* the *agreement*

### 4.1 When we can end the *agreement* immediately

We have the right to end the *agreement* immediately if you use the *services* in any way or for any purpose that is invalid or illegal.

If we are entitled to end the *agreement* immediately, we do not need to give you time to comply and correct your *breach*.

### 4.2 When we will give you time to correct your *breach*

If you *breach* any term of the *agreement* or break any of your *warranties* for reasons other than those given above, you must correct your *breach* within 14 business days after we have notified you of the *breach*.



If we end the *agreement* immediately or you do not correct your *breach* within 14 calendar days, you accept that we have the right to do any one or more of the following:

- a) Suspend the *services*;
- b) End the *agreement*;
- c) Claim from you any amounts you still owe to us, including the *fees* that you would have had to pay if the *agreement* had continued until the end of the initial 36 month term. You must pay these amounts immediately that we demand them.

#### 4.3 Other rights if you *breach* the *agreement*

These rights do not affect any other rights we might have in the *agreement* or in law.

If the *breach* by you is not a material *breach*, we will only exercise our rights in sections L4.1 and L4.2 where it is reasonable for us to do so.

#### 4.4 Your *legal responsibility* if you *breach* the *agreement*

If you *breach* the *agreement*, you agree:

- a) to pay us and our *affiliates* and *suppliers* the value of all *loss* or *damages* that we or our *affiliates* or *suppliers* suffer as a result of you *breaching* the *agreement*;
- b) to pay us and our *affiliates* and *suppliers* the value of all *loss* or *damages* we suffer from claims that are brought against us or our *affiliates* or *suppliers* as a result of you *breaching* the *agreement*;
- c) to pay all legal costs reasonably incurred by us on the scale as between attorney-and-own-client if we have to take legal steps against you;
- d) to pay collection costs reasonably incurred by us while trying to collect any amounts that you owe to us.

If you *breach* the *agreement* (which includes breaking your *warranties* or *undertakings*), you accept that you are required to take on the *legal responsibility* for *loss* and *damages* that we or our *affiliates* or *suppliers* might suffer or be required to pay.

You accept that this might also lead to us having claims against you and to you being *legally responsible* to us for extra amounts, including any costs or *damages* we must pay to our *affiliates* or *suppliers*.

You accept that you are also *legally responsible* to pay:

- a) any legal costs that we pay to our lawyers. These costs are calculated at a higher rate than the courts normally apply;
- b) any amounts that we pay in trying to collect or get you to pay money that you owe to us.

## 5 If we *breach* the *agreement*

If we *breach* any term of the *agreement*, you must give us 14 business days to correct the *breach*. If we do not correct the *breach* within that time, you have the right to cancel the *agreement*. You must give us 20 business days' notice after the 14-day period ends.

If we *breach* the *agreement*, we will pay the following when you ask us to:

- a) Legal costs on an attorney-and-client scale related to our *breach*;
- b) Other collection charges and commissions incurred by you related to our *breach*.





## K Sending notices under the *agreement*

### 1 Address where we agree to accept notices, including legal notices

Any notices you send to us under the *agreement*, including legal notices (for example, a letter of demand), must be delivered to us at any one of the following addresses:

#### **By hand**

Tracker Connect (Pty) Ltd  
Stonemill Office Park  
340 Republic Road  
Darrenwood 2194

#### **For attention**

Customer Service Operations Manager

#### **By email**

[home@tracker.co.za](mailto:home@tracker.co.za)

(These addresses are known in law as *domicilium citandi et executandi*.)

For any questions, concerns or complaints, you can contact us at the Contact Centre on 0860 66 66 66.

To update or change your bank details or any of the information that you gave us in your *application*, you can contact us by:

- a) phoning the contact centre on 0860 66 66 66;
- b) emailing us at: [home@tracker.co.za](mailto:home@tracker.co.za);
- c) logging into your account on the *Tracker website* and updating the information in the way we request on the *Tracker website*.

Please note that only you personally (or your bank on your behalf) have the right to update or change your bank details or any of the information that you gave us in your *application*.

### 2 Address where you agree to accept notices, including legal notices

Any notices we send to you under the *agreement*, including legal notices (for example, a letter of demand), will be delivered to you at the address you gave on the *application* or any later address you have given us proper notice about. If you chose email as your preferred method of communication on the *application*, you agree that we may deliver notices, including legal notices, to your email address. (This address is known in law as *domicilium citandi et executandi*.)

You must tell us about any change of address on the *Tracker website* or through the contact centre on 0860 66 66 66. If you change address but you do not tell us on the *Tracker website* or through the contact centre, you agree that you will accept notices, including legal notices, at the address you gave to us in your *application*.

### 3 Time periods for notices, including legal notices

For both parties, any notice delivered under the *agreement* is treated as being received:

- a) on the date of delivery, if delivered by hand to the physical address;
- b) on the first business day after sending an email;
- c) at 9am on the first business day after sending an SMS to your cell phone number.

When we treat a notice as if you have received it by a certain date and time, it means we do not have to prove that you did receive it then. If you claim that you did not receive the notice by that date and time, then you will have to prove it.



## 4 Notices by SMS, WhatsApp or email

We have the right to send you notices about the following issues by SMS, WhatsApp or email:

- a) Confirmation of your entering into this *agreement*;
- b) Increases to *fees*;
- c) Defective *units* or *units* that are not reporting;
- d) Not receiving your payments in time or at all;
- e) Notices that we intend to suspend the *services* to you.

You choose your preferred contact method (SMS, WhatsApp or email or any two of them) in your *application*. Unless a particular paragraph says differently, we will send all communications and notices to you by your preferred contact method. If we cannot contact you by your preferred contact method, we have the right to decide to use another contact method.

## L Our legal responsibility to you is limited

As far as the law and the *agreement* allow, we are not *legally responsible* for:

- a) any *loss* or *damages* that you might suffer where there is any delay, suspension or interruption in the *services* because of any of the events or circumstances referred to in section D3;
- b) any *loss* or *damages* that you might suffer because of our, our *suppliers'* or our *affiliates'* negligence. This excludes gross negligence or wilful misconduct. Gross negligence is a serious lack of care in performing a legal duty owed to you under the *agreement*. Wilful misconduct is deliberately doing something that should not be done or deliberately not doing something that should be done, knowing that someone might suffer *loss* or *damages* as a result. We will accept liability for gross negligence and wilful misconduct;
- c) any delay, breakdown, failure or *loss* that you might suffer because of a defect or deficiency in the intellectual property;
- d) any failure, delay or interruption in your use of the *Tracker service* or the *Tracker website*, including:
  1. system and server crashes;
  2. system errors;
  3. computer malfunctions;
  4. *unit* or software faults;
  5. security breaches;
  6. theft;
  7. incompatibility issues;
  8. power failure or power surge;
  9. fire, flood, pandemic, epidemic or any other event referred to as an "Act of God";
  10. war, civil disturbances;
  11. international restrictions, embargoes;
  12. any lost, corrupted or undelivered data or information, regardless of the cause;
  13. any *loss* of profits, business or revenue that you suffer;
  14. any indirect *loss* or indirect *damages* that you suffer.



You accept that there are certain types of *loss or damages* that you may suffer that you cannot claim from us at all. This includes the *loss and damages* listed in this clause above, and *loss or damages* that result from any of the events listed in this clause above.

You use the *services* and the *unit* knowing and accepting these *risks*.

## M Indemnity

As far as the law allows, you agree to reimburse us, our *affiliates* and our *suppliers* against any *loss* we or they may suffer from a claim brought against any one or more of us, where the claim results from:

- a) your *breach* of your *legal responsibilities* under the *agreement*;
- b) your use of the intellectual property other than allowed under the *agreement*;
- c) any deliberate or unlawful act that you commit or failure to act.

The *legal responsibilities* set out in this section N will survive the end of the *agreement*.

You accept that this clause requires you to take on *risk* and *legal responsibility* for claims, *loss* and *damages* that we, our *affiliates* and our *suppliers* might suffer. We are not *legally responsible* to you or anyone else for any claims made against us, our *affiliates* or our *suppliers* as a result of the above.

You accept that this clause may also lead to us, our *affiliates* or our *suppliers* having claims against you and to you being *legally responsible* to us for additional amounts, including for any costs or *damages* we, our *affiliates* or *suppliers* are required to pay.

## N The right to sub-contract *services* and administration

We have the right to sub-contract to our *affiliates* or *suppliers*:

- a) some or all of the *services*;
- b) any of the operational, technical and administrative activities we perform to carry out the *agreement*.

Any *agreement* to sub-contract does not release us from our *legal responsibility* to you under the *agreement*.

## O Transfer of rights and legal responsibilities

We have the right to at any time transfer all or some of our rights in terms of the *agreement* to any third party without your permission. This transfer of rights is known as a cession. We do not have to inform you if we cede the rights to any of our *affiliates* or to any sub-contractors we appoint.

As far as the law allows, we have the right to transfer all or some of our *legal responsibilities* under the *agreement* to any third party without your permission. This transfer of *legal responsibilities* is known as a delegation. We do not have to inform you if we delegate the *legal responsibilities* to any of our *affiliates* or to any sub-contractors we appoint.



## P Neither you nor we give up rights

If you do not enforce or exercise your rights in the *agreement*, this does not mean that you have given up these rights. You may still enforce your rights in the *agreement*.

If we do not enforce or exercise our rights you have against us in terms of the *agreement*, this does not mean that we have given up these rights. We may still enforce our rights in the *agreement*.

## Q Each provision is separate

Each provision in the *agreement* is separate. Parts of a provision are also separate. If any provision or part of a provision is or becomes illegal, invalid or unenforceable for any reason, it must be treated as if it had not been included in the *agreement*. This does not make the rest of the provisions illegal, invalid or unenforceable.

## R South African law applies

These terms and conditions are governed by and must be interpreted under the laws of the Republic of South Africa. This applies even if one or both of the following apply:

- a) You do not live in the Republic of South Africa;
- b) You agreed to these terms and conditions outside the Republic of South Africa.

## S Guidelines to interpreting the *agreement*

### a) **Headings**

Headings are aids to reading and understanding. They are not terms or conditions themselves. Headings do not limit or extend the meaning or application of the terms or conditions.

### b) **Singular and plural**

Words in the singular include the plural. Words in the plural include the singular

### c) **Forms of words**

Words used in one form have their corresponding meaning when used in another form. For example, to claim, claiming, claimed.

### d) **The word including**

The word 'including' must be interpreted as introducing an example list and not limiting the list or excluding additions to it.

### e) **General words are not limited**

Where there is a list of specific things that belong together to describe a general word or phrase, the general word or phrase can have other meanings and can include other things. The general word or phrase must not be interpreted to only apply to those specific things or things similar to those specific things.

### f) **Calculating days**

Where a number of days is given, the days must be counted to exclude the first day and include the last day.



g) **Text in boxes**

Text in boxes is intended to bring your attention to parts of the *agreement* that have important legal consequences for you. They explain the fact, nature and effect of terms and conditions that limit or exclude our *legal responsibility* to you, and terms and conditions where you take on *legal responsibility or risk*. The text in boxes does not limit the meaning or application of the *agreement*.

h) **Reference to laws**

When there is reference to a law or to a section of a law, we mean that law or section of that law as amended, repealed or replaced.

## Services That You Have Subscribed To

Please ensure that you understand what features are included in your *service* by accessing the Tracker consumer brochure at:

<https://www.tracker.co.za/-/media/Tracker/pdfs/my-home/Tracker-Smart-Geyser-Brochure.pdf>

You can view or download a copy of the Tracker Home Service terms and conditions at:

<https://www.tracker.co.za/support/legal-and-compliance/ts-and-cs-my-home>

## T Tracker Home Service

### 1 What you must do:

- 1.1. Ensure that you have the latest version of the Tracker Smart Home App on your smartphone.
- 1.2. Ensure that the Tracker Home App is paired with the *home unit*.

### 2 What the *service* includes:

- 2.1 Remote control of heating schedule and water temperature;
- 2.2 Real-time temperature and energy consumption monitoring;
- 2.3 Blown element detection;
- 2.4 Over-temperature detection;
- 2.5 Leak- and rupture detection with immediate isolation from the water supply;
- 2.6 Tight electronic control of water temperature; and
- 2.7 Immediate notification of fault conditions.

In the event of any one of the above incidents, an alert will be triggered at Tracker's helpdesk, which will perform a series of diagnostic tests and contact you to confirm the nature of the problem and assist in addressing it.

If the problem cannot be resolved remotely from Tracker's side, such as in the case of a burst water pipe or an interrupted or broken electrical connection to or from the *monitored device*, Tracker will attend to the problem by dispatching a technician. If the problem still cannot be resolved, you must immediately escalate to your insurer.