



## FONE YAM DEVICE RENTAL TERMS AND CONDITIONS

Please carefully read these terms and conditions and pay special attention to the following terms:

### **Clause 6 – Risk, Damage and Loss.**

Which specifies that all risk in the Device will pass to You on delivery and that You will be liable for all damage to and/or loss or destruction of the Device.

### **Clause 7 – Insurance.**

Insurance of the Device will be Your sole choice and responsibility and You will remain liable to Us despite not having insurance or having a claim rejected by Your insurance.

### **Clause 8 – Defective Equipment.**

We will be responsible for repairs only as provided for in clause 8.

### **Clause 9 – Use and enjoyment of Device.**

By entering into the Agreement You Agree to the Device Software being installed on the Device identified through Your Device IMEI number.

### **Clause 12 – What will happen if You are in breach?**

In the event that You are in default of any payment or a part thereof or insert a new SIM card without Our prior approval, We will have the right to use the Device Software to lock the Device until payment has been brought up to date, the original SIM card is reinserted or approval for a new SIM card is obtained.

### **Clause 13 – Limitation of Liability.**

We will not be liable to You, or any third party, for any losses that may be suffered as a result of the Device being locked due to default by You or where You are unable to use the Device as a result of a defect in or malfunction of the Device.

### **Clause 15 – Personal Information.**

Your consent to use Your personal information for the purposes as provided therein. You agree that We may sell the Device when You return it to Us in the condition as returned and You must therefore ensure You delete all Personal Information on the Device before returning it to Us.

## 1 INTRODUCTION

You hereby rent from Us the Device for the Rental Period and against payment of the amount(s) as provided for in the Rental Schedule.

## 2 DEFINITIONS AND INTERPRETATIONS

- 2.1 In this Agreement, the following words and phrases will, unless the contrary intention appears, have the following meanings:
- 2.1.1 **"Agreement"** means this agreement, incorporating the Rental Schedule;
- 2.1.2 **"Business Day"** means any day other than a Saturday, Sunday or official South African public holiday in South Africa;
- 2.1.3 **"Commencement Date"** means the date on which this Agreement shall commence as specified in the Rental Schedule;
- 2.1.4 **"CPA"** means the Consumer Protection Act 68 of 2008 and the regulations promulgated thereunder, as amended from time to time;
- 2.1.5 **"Device"** means the specific cell phone and accessories thereto, if any, as more fully described in the Rental Schedule;
- 2.1.6 **"Device Software"** means the software installed onto the Device by Us which will enable Us to lock the device for reasons set out in this Agreement;
- 2.1.7 **"Due Date(s)"** means the different due dates for payment of the Initial Payment and Rental Payments, each as specified in the Rental Schedule;
- 2.1.8 **"Initial Payment"** means the upfront payment payable by You prior to delivery of the Device and the first payment payable within 7 (seven) days as specified in the Rental Schedule;
- 2.1.9 **"Rental Payment"** means the periodic amounts payable by You in respect of rental of the Device as specified in the Rental Schedule as amended from time to time;
- 2.1.10 **"Rental Period"** means the rental period as specified in the Rental Schedule as amended from time to time;
- 2.1.11 **"Rental Schedule"** means the written schedule that, amongst other, identifies You, describes the Device and specify the Rental Period, Initial Payment, Rental Payment and Due Dates, as may be amended by written agreement from time to time or by Us as provided for in clause 12.1.1 and 12.1.2 hereof;
- 2.1.12 **"RICA"** means the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002 and the regulations promulgated thereunder, as amended from time to time;
- 2.1.13 **"SIM"** means the Subscriber Identity Module which is inserted into the Device and linked to your cell phone number to allow you access to a network;
- 2.1.14 **"VAT"** means value added tax payable by You in accordance with the Value Added Tax Act 89 of 1991, as amended;
- 2.1.15 **"We", "Us" and "Our"** unless the context indicates otherwise, means Tenacity Financial Services, a division of Pepkor Trading (Pty) Ltd. (registration number: 1958/003362/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa with business address at 31 Industrie Street, Kuils River, 7580 and includes Our successors in title; and
- 2.1.16 **"You" or "Your"** means the person who rents the Device from Us and whose full particulars appears in the Rental Schedule.
- 2.2 Reference to –
- 2.2.1 one gender includes all the genders;
- 2.2.2 the singular form of a word includes the plural;
- 2.2.3 the plural form of a word includes the singular; and
- 2.2.4 a law or regulation means that law or regulation on the date You accept this Agreement.
- 2.3 If there is a conflict between the terms and conditions of the Rental Schedule and these terms and conditions, the terms and conditions of the Rental Schedule will prevail.

## 3 COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the Commencement Date on receipt of the upfront portion of the Initial Payment and shall endure for the Rental Period, during which period either You or Us shall be entitled to terminate this Agreement subject to the provisions of clause 10 or clause 12.5. At least 40 (Forty) but not more than 80 (Eighty) Business days before expiration of this Agreement We shall notify You in writing of the impending expiry date, the end options available to You as well as any material changes applicable after the expiry date.

## 4 PAYMENTS

- 4.1 The Initial Payment shall be due as follows:
- 4.1.1 the upfront portion thereof shall be payable on the Commencement Date prior to delivery of the Device to You; and
- 4.1.2 the first payment portion thereof shall be payable within 7 (seven) days of the Commencement Date, on the date as specified in the Rental Schedule.
- 4.2 Each of the Rental Payments shall be due on their respective Due Date(s).
- 4.3 Each Rental Payment shall include VAT at the then prevailing rate.

- 4.4 Should You pay an amount in excess of the Initial Payment or Rental Payment due, any excess paid shall be credited to the next payment due date.

## **5 OWNERSHIP**

- 5.1 The Device is, and shall for the duration of the Rental Period, remain Our sole and exclusive property. At no stage during the Rental Period will You, or any person acting on Your behalf, acquire ownership of the Device.
- 5.2 You shall not, after termination of this Agreement be entitled to retain possession, use or enjoyment of the Device, unless You exercise one of the options as provided for in clause 14.1.
- 5.3 On termination of this Agreement, for any reason whatsoever, You shall return the Device, together with all accessories thereto, if any, to Us in a good condition, fair wear and tear expected, unless You exercise one of the options as provided for in clause 14.1.
- 5.4 If you do not exercise any of these options, We will be free to sell or rent the Device to anyone else.
- 5.5 Note that if you do not exercise any of the above options and also do not return the Device to us as you are obligated to do, We may charge the market value of the Device to You as a replacement fee for the Device.

## **6 RISK, DAMAGE & LOSS:**

- 6.1 Notwithstanding the provisions of clause 5, risk of damage to, loss or destruction of the Device shall pass to You at the time of delivery of the Device to You.
- 6.2 Should the Device be damaged, lost, stolen, destroyed or in any other way be rendered unfit for use, unless it is as a result of a defect in or malfunction of the Device, You shall remain liable for the Rental Payment for the Rental Period, unless the Agreement is terminated subject to the provisions of Clause 10.
- 6.3 In addition to clause 6.2 You shall be liable to compensate Us for any and all damage or loss We may have suffered as a result of damage to, loss or destruction of the Device.

## **7 INSURANCE**

- 7.1 We do not provide, nor do We require You to have any insurance in respect of the Device during the Rental Period.
- 7.2 Should You wish to insure the Device during the Rental Period You may do so at Your own cost.
- 7.3 Failure to obtain insurance or rejection of a claim submitted to Your insurance shall not release You from Your obligations under this Agreement in the event of damage to, loss or destruction of the Device.

## **8 DEFECTIVE EQUIPMENT**

- 8.1 In the event of any defect or malfunction in the Device, You will return the Device to Us for inspection.
- 8.2 Should inspection of the Device reveal that the defect or malfunction is as a result of improper use or handling of the Device, any necessary repairs will be for Your account. In this case You will remain liable for the Rental Payment during the Rental Period, and you will need to arrange for your own repairs.
- 8.3 For all other repairs, You will not be liable for the Rental Payment for the period during which the Device was repaired. No Rental Payment will apply during the month of the repair and the Rental Period will be extended with this period, and You will be liable for the Rental Payment during the extended period.

## **9 USE AND ENJOYMENT OF THE DEVICE**

- 9.1 During the Rental Period You shall use the Device only for the purpose for which it was intended, and You shall comply with all laws, regulations or rules relating to the possession or use of the Device.
- 9.2 RICA requires reporting to the South African Police Service in the event of a cell phone or SIM card being stolen, lost or destroyed. Should the Device and/or SIM be lost, stolen or destroyed during the Rental Period it shall be Your sole responsibility to report such loss, theft or destruction to a police official at any police station within a reasonable time of having become aware of the loss, theft or destruction and we may in our discretion require that you provide proof of your compliance with this obligation.
- 9.3 You may only use the Device in accordance with the manufacturer's instructions.
- 9.4 If the Device is locked by the network operator and/or the manufacturer of the Device due to multiple failed attempts to enter the access passcode, You may be liable for payment to unlock the Device. We will not be responsible to You in the event that You forget Your passcode.
- 9.5 By entering into this Agreement You consent to Us installing the Device Software on the Device identified through the Device IMEI number. The Device Software will enable us to lock the Device amongst other, in the event of breach by You as provided for in clause 12 hereof.

## **10 RIGHT TO EARLY CANCELLATION**

- 10.1 You shall be entitled to terminate this Agreement, at any time prior to expiry of the Rental Period, by giving Us 20 (Twenty) Business Days' written notice to that effect.
- 10.2 In the event of early cancellation of this Agreement by You, You will remain liable for any and all amounts already due to Us, which may include arrear first payment and/or Rental Payments.

- 10.3 We shall further be entitled to levy a reasonable cancellation penalty as a result of the early cancellation of this Agreement by You as prescribed in the CPA, which shall be determined when you give notice of cancellation.
- 10.4 Should You fail to return the Device to Us upon early cancellation of the agreement the Device shall automatically be locked by Us.
- 10.5 Should the Device have been damaged, lost or destroyed prior to the early cancellation of this Agreement You shall remain liable to compensate us for all damage (fair wear and tear excluded) or loss We may suffer as a result of damage to, loss or destruction of the Device.

## **11 WHEN WILL YOU BE IN BREACH?**

- 11.1 You will be in breach of Your obligations in terms of this Agreement if:
  - 11.1.1 You fail to make full payment of the first payment portion of the Initial Payment;
  - 11.1.2 You fail to make full payment of any Rental Payment by its respective Due Date;
  - 11.1.3 You, or any person who you allow, modify or bypass, or attempt to modify or bypass, the Device Software on the Device;
  - 11.1.4 You, or any person who you allow, modify or bypass, or attempt to modify or bypass any lock of the Device in the event that You are in breach as provided for clause 12;
  - 11.1.5 You insert a SIM card into the Device other than the one initiated with the Device, without obtaining Our prior approval. When you insert another SIM card into the Device, we will lock the Device and will only unlock it once we have approved your request to use the other SIM card in terms of our formal process;
  - 11.1.6 You breach any other provisions or obligation in terms of this Agreement.

## **12 WHAT WILL HAPPEN IF YOU ARE IN BREACH?**

- 12.1 If all, or part of a payment, is not made by its specified Due Date -
  - 12.1.1 the Device shall automatically be locked by Us. Once locked You will not be able to use the Device save for calling emergency numbers or Our customer service. The Device shall remain locked until all payments are up to date.
  - 12.1.2 We may in Our sole discretion extend Your Rental Period and adjust Your Rental Payment Due Dates accordingly, with or without locking Your Device. In such event You shall be liable for the Rental Payment during such extended period on/before the adjusted Due Dates. Where We extend Your Rental Period such extension shall be communicated to You by providing You with an amended Rental Schedule.
- 12.2 Should You, without obtaining Our prior approval, insert a SIM card in the Device, other than the one initiated with the Device, the Device will be locked.
- 12.3 The Device shall remain locked until the original SIM card has been inserted back into the Device and/or Our approval for using a different SIM card has been obtained as referenced in clause 11.1.5.
- 12.4 In the event that You have a dual SIM Device, neither SIM card will function should the Device be locked.
- 12.5 In the event of a material failure to comply with the provisions of this Agreement We shall be entitled to cancel this Agreement 20 (Twenty) Business Days' after giving You written notice of the material failure unless You rectify the failure within that time.

## **13 LIMITATION OF LIABILITY**

- Subject to applicable laws, We shall not be liable for any injury, loss or damage (direct or indirect, consequential or otherwise) which You or any third party may suffer as a result of inability to use the Device as a result of:
- 13.1 a defect or malfunction in the Device as provided for in clause 8 hereof; or
  - 13.2 the Device being locked in accordance with the provisions of clause 12 hereof.

## **14 END-OPTIONS**

- At the end of the Rental Period, and provided that You are up to date with all Rental Payments, You may exercise one of the following end-options:
- 14.1 You will have a first option (before anyone else) to purchase the Device from Us at fair market value to be determined at the end of the Rental Period and on the terms as provided for in a sale agreement to be concluded at the time when you exercise this option. Should this option be exercised the Device Software will be disabled.
  - 14.2 You may choose not to exercise the option in clause 14.1 and return the Device to Us at your cost.

## **15 PERSONAL INFORMATION**

- 15.1 You consent to the processing of your personal information by any Pepkor group company including any of their operators, commercial partners, agents and sub-contractors (who may be outside South Africa) as provided for in the Pepkor Group's External Privacy Statement:  
<https://www.pepkor.co.za/wp-content/uploads/2021/04/Privacy-Statement.pdf>
- 15.2 You consent to receive messages on the Device via the Device Software.
- 15.3 You agree that, should You return the Device to Us, for any reason whatsoever, other than for purposes of repairs as referred to in clauses 8.1 and 8.3, We shall be entitled to sell the Device to a third-party in the condition We receive it from you. It therefore remains Your responsibility to remove all Your Personal

Information from the Device prior to returning the Device to Us.

- 15.4 Please note that when you return the Device to us temporarily for purposes of inspection and repairs in terms of clause 8, you also need to delete all Personal Information on the Device before you return it to us.
- 15.5 We will not be liable to You if you do not comply with Your obligation to delete Personal Information from the Device as set out above in clauses 15.3 and 15.4.

## **16 CERTIFICATE OF INDEBTEDNESS**

A certificate signed by any of Our managers specifying the amount owing by You to Us and further stating that such amount is due, owing and payable by You, shall be sufficient proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.

## **17 WE NEVER LOSE OUR RIGHTS**

We do not lose any of Our rights under this Agreement if We do not immediately and in every instance insist on them. You may not raise it as a defence if We have a right but do not enforce it at the relevant time. For example, if We allow You extra time to pay Your Rental Payment in one month without locking the Device, it does not mean We have allowed You extra time the next or any other month.

## **18 GOVERNING LAW**

South African law governs this Agreement, and it must be interpreted by the laws of the Republic of South Africa. This applies even if the parties do not live in the Republic of South Africa.

## **19 YOU AGREE THAT WE MAY BRING LEGAL PROCEEDINGS IN THE MAGISTRATE'S COURT**

You agree that We may bring legal proceedings against You for this Agreement in any Magistrate's Court that has the authority to hear and decide on the case. (This authority is called jurisdiction.) You agree to the jurisdiction of the Magistrate's Court even if the amount We claim from You is more than the Magistrate's Court limit. This does not stop Us from bringing legal proceedings in a High Court that has jurisdiction.

## **20 TRANSFERRING RIGHTS OR OBLIGATIONS**

- 20.1 You may not transfer any of Your rights or obligations under this Agreement.
- 20.2 You agree that We may transfer some or all Our rights and obligations under this Agreement to any other person. We do not have to inform You or get Your permission to transfer Our rights and obligations. If this clause applies, then the term "We", used in this Agreement, will include the person to whom We have transferred any of Our rights or obligations in terms of this clause.

## **21 PROCESS TO FOLLOW IF YOU HAVE A SERVICE REQUEST OR COMPLAINT**

- 21.1 If You have a complaint or want to lodge a dispute, You can do any one or more of the following:
- 21.1.1 Visit an Ackermans or PEP store and ask the customer service desk to connect You to the FoneYam customer service centre.
- 21.1.2 Contact FoneYam customer service centre on the number indicated in the table below

Service Centre Number: 0860 900 900
-------------------------------------

E-mail Address: <a href="mailto:info@fonyam.co.za">info@fonyam.co.za</a>
--------------------------------------------------------------------------

- 21.1.3 Write a letter of complaint and send it to FoneYam at P.O. Box 140, Kuils River, 7579, South Africa.
- 21.1.4 E-mail Us to the e-mail address indicated in the table under clause 21.1.2
- 21.2 We will consider Your complaint or query in terms of Our internal processes, and We will let You know the outcome. If You are not satisfied with the outcome of Your dispute or complaint, You can refer the complaint or dispute to the Consumer Goods and Services Ombud.
- 21.3 You may also refer the complaint or dispute to an alternative dispute resolution agent, make an application to the Tribunal (as referred to in the CPA) or contact the Commission on the contact details listed below:
- 21.3.1 **National Consumer Commission**  
Telephone: 012 428 7000 or 012 428 7726  
E-mail: [complaints@thencc.org.za](mailto:complaints@thencc.org.za)  
Website: [www.thencc.gov.za](http://www.thencc.gov.za)
- 21.4 Nothing in this clause is intended to prevent You from exercising any rights You may have under the CPA.

## **22 WHERE COMMUNICATIONS AND NOTICES MAY BE SEND**

- 22.1 The cell phone number indicated in the Rental Schedule is the number where We may send all formal

communication unless amended by You. You may amend Your cell phone number by contacting FoneYam customer service on the number provided in clause 21.1.2 above.

22.2 You should send any legal notice to Us at Our chosen address at 31 Industrie Street, Kuils River, 7580.

### **23 THESE TERMS AND CONDITIONS ARE THE WHOLE AGREEMENT**

23.1 The Agreement is the whole agreement between You and Us. Neither party is legally obliged to comply with any express or implied term, condition, undertaking, representation, warranty, or promise not recorded in the Agreement. The Agreement replaces any arrangement or understanding held by the parties before this Agreement was signed.

23.2 If You want copies of documents relating to the Agreement, We will send these to You and We may charge a fee for this.

23.3 We monitor and record all Our telephone calls and other interactions with You.

### **24 EACH CLAUSE IS SEPARATE**

24.1 The parties acknowledge that each clause of this Agreement is separate. If any clause of this Agreement is or becomes illegal, invalid or unenforceable for any reason or in any jurisdiction, it will be treated as if it had not been written.

24.2 This does not:

24.2.1 make the rest of the Agreement illegal, invalid or unenforceable

24.2.2 affect the legality, validity or enforceability of the clause in another jurisdiction.