



FONEYAM DEVICE RENTAL TERMS AND CONDITIONS

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**Please note that these Terms and Conditions consist of two sections.
Choose the version that applies to you:**

FoneYam Terms & Conditions:

Rental agreements concluded on or before 3 November 2024

If you received your FoneYam contract on or before 3 November 2024, these Terms and Conditions apply to you, [CLICK HERE!](#)

FoneYam Terms & Conditions:

Rental agreements concluded on or after 4 November 2024

If you got your FoneYam contract on or after 4 November 2024, then these Terms and Conditions apply to you, [CLICK HERE!](#)



FONEYAM DEVICE RENTAL TERMS AND CONDITIONS

(VERSION APPLICABLE TO RENTAL AGREEMENTS CONCLUDED ON OR BEFORE 3 NOVEMBER 2024)

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. A data connection is required for communication between the Device and the Device Software on a regular basis, failing such communication at least once in a 30 day period, the Device will be locked.

You should ensure that you have a data connection within such 30 day period to stop the Device from locking.

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.

You consent to use of Your personal information for the purposes as provided in clause 15. 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.
- 2.4 In the event that that the terms and conditions have been translated, You agree that the original English text shall prevail in the case of any contradiction between such translated terms and conditions and the English text.

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 the option 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 the option as provided for in clause 14.1.
- 5.4 If you do not exercise the option, We will be free to sell or rent the Device to anyone else.
- 5.5 Note that if you do not exercise the option 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 In order to use the Device uninterruptedly a data connection is required at least once every 30 (thirty) days. The Device Software installed on the Device requires communication from the Device on a regular basis, should the Device not communicate with the Device Software for a period in excess of 30 days, the Device will be locked. You should ensure that you have a data connection within such 30 (thirty) day period.
- 9.3 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.
- 9.4 You may only use the Device in accordance with the manufacturer's instructions.
- 9.5 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.

9.6 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. The Device requires a data connection in order for the Device to be unlocked.
- 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 9.2, clause 12 or clause 14.2 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, failing which the Device will be locked.

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 service request, 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: info@fonyam.co.za

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 service request, 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 You can refer a 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@thenc.org.za

Website: www.thenc.org.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.



FONEYAM DEVICE RENTAL TERMS AND CONDITIONS

(VERSION APPLICABLE TO RENTAL AGREEMENTS CONCLUDED ON OR AFTER 4 NOVEMBER 2024)

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 associated with the Device will pass to You on delivery and that You will be liable for any damage to or destruction of the Device.

Should the Device be lost or stolen You will remain liable for the Rental Payments regardless of whether or not Our insurance claim is approved. Should Our insurance claim be approved You will receive a Replacement Device, provided that all Rental Payments, already due and payable, have been paid in full. A successful claim for loss or theft of the Device may only be submitted once during the term of the Rental Agreement.

Should the Device be destroyed or damaged beyond repair during the Rental Period You will remain responsible for the Rental Payments during the Rental Period unless the agreement is terminated in accordance with clause 10.

Clause 7 – Insurance.

We are insured against certain events at no cost to You. We may submit a claim to the Insurer upon the occurrence of any Insured Event, which claim may, or may not be approved by the Insurer. To assist Us in submitting Our claim, You should notify Us of the Insured Event and provide Us or the Insurer with the relevant or requested documents within the time frames specified in the Insurance Schedule. Should the time frames as provided for in the Insurance Schedule not be adhered to, the Insurer may not recognise or consider the claim.

In the event of Death, Disability or Loss of Income, We will waive Our right to collect further Rental payments from You. Should Our insurance claim not be approved You will remain liable for the Rental Payments during the Rental Period, unless the Agreement is terminated in accordance with clause 10 of the Agreement.

Regardless of whether Our insurance claim is approved or not You will remain liable for the Rental Payments for the Rental Period in the event of loss or theft of the Device. Should Our claim for loss or theft be approved You will be issued with a Replacement Device, subject thereto that all Rental Payments, already due and payable, have been paid in full.

At Our discretion, and on notification of Death, You may be granted a grace period of 1 (one) month which will extend the Due Date for the next Rental Payment for that period.

At Our discretion, and on notification of Disability or Loss of Income, You may be granted a grace period of 2 (two) months which will extend the Due Date for the next Rental Payment for that period. No grace period will be granted in the event of loss or theft of the Device.

After any grace period, You will remain liable for the Rental Payments due on the adjusted Due Dates unless Our insurance claim is approved, or the Agreement is terminated in accordance with clause 10 of the Agreement.

Should You require additional insurance, You may insure the Device at Your own cost with an Insurer of Your choice, subject to normal insurance practices and restrictions.

Clause 8 – Defective Equipment.

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

Clause 9 – Use and enjoyment of Device.

By entering into the Agreement, You consent to the installation of Device Software on the Device identified by Your Device IMEI number. A data connection is required for regular communication between the Device and the Device Software, failing such communication at least once within a 30-day period, the Device will be locked. You must ensure that You have a data connection within this 30-day period to prevent the Device from locking. Your Device may be subject to certain Device Restrictions listed in the [Device Restriction List](#), as updated from time to time. You should familiarise Yourself with the relevant Device Restrictions that may apply to Your Device.

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 (other than the one initiated with the Device) without Our prior approval, We reserve 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. Should You, or any person You allow, modify or bypass or attempt to modify or bypass the Device Software or any lock on the Device or tamper or attempt to tamper with any application that impacts the security of the Device and our ability to manage the Device, the Device may be permanently locked and rendered unfit for use.

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 or Your inability to use the Device due to Device Restrictions or any defect or malfunction of the Device or the Device Software.

Clause 15 – Personal Information.

You consent to the use of Your personal information for the purposes as described in clause 15. You agree that We may sell the Device upon its return to Us in the same condition as it was received. You must therefore ensure You delete all Personal Information on the Device before returning it to Us.

1 INTRODUCTION

You hereby rent the Device from Us for the Rental Period in exchange for payment of the amount(s) as specified 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 and the [Insurance Schedule](#);
 - 2.1.2 “**Business Day**” means any day other than a Saturday, Sunday or official 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 “**Day-7 Payment**” means the payment payable within 7 (seven) days after the upfront payment as specified in the Rental Schedule;
 - 2.1.6 “**Death**” means Your death;
 - 2.1.7 “**Device**” means the Original Device or any Replacement Device, as the case may be;
 - 2.1.8 “**Device Restrictions**” means certain restrictions in the software of the Device which will limit Your use of certain of the Device’s functions and which are listed in the [Device Restriction List](#);
 - 2.1.9 “**Device Restriction List**” means the list of restrictions which may be applicable to Your Device;
 - 2.1.10 “**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;

- 2.1.11 “**Disability**” means a physical or mental impairment that affects Your ability to earn an income and/or to meet Your obligations under this Agreement;
- 2.1.12 “**Due Date(s)**” means the different due dates for payment of the Initial Payment and Rental Payments, each as specified in the Rental Schedule;
- 2.1.13 “**Initial Payment**” means the upfront portion payable by You prior to delivery of the Device and the Day-7 Payment as specified in the Rental Schedule;
- 2.1.14 “**Insurance Schedule**” means the written schedule attached to these terms and conditions that, among other things, provide the process for informing Us of an Insured Event, the periods within which We must be informed of an Insured Event or provided with relevant information and/or documentation pertaining to the occurrence of an Insured Event and the exclusions applicable to the payment of the Risk Cover benefit and/or Loss of Income Cover benefit and/or Loss and Theft Cover benefit;
- 2.1.15 “**Insured Event**” means –
- 2.1.15.1 Death;
- 2.1.15.2 Disability;
- 2.1.15.3 Loss of Income; or
- 2.1.15.4 loss or theft of the Device;
- 2.1.16 “**Insurer**” means,
- 2.1.16.1 in respect of Death and Disability, Abacus Life Limited with registration number 2007/032597/06; and
- 2.1.16.2 in respect of Loss of Income and/or loss and theft of the Device, Abacus Insurance Limited with registration number 2007/035136/06;
- 2.1.17 “**Loss and Theft Cover**” means the insurance policy in terms of which a benefit may be payable to Us by the Insurer in the event of loss or theft of the Device;
- 2.1.18 “**Loss of Income**” means an event, other than Your Disability, that affects Your ability to earn an income and meet Your obligations under this Agreement;
- 2.1.19 “**Loss of Income Cover**” means the insurance policy in terms of which a benefit may be payable to Us by the Insurer in the event of Loss of Income;
- 2.1.20 “**Original Device**” means the specific cell phone or tablet computer and accessories thereto, if any, issued to You on date of conclusion of the Agreement, as more fully described in the Rental Schedule;
- 2.1.21 “**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;
- 2.1.22 “**Rental Period**” means the rental period as specified in the Rental Schedule as amended from time to time;
- 2.1.23 “**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 clauses 7.5 and 12.1.2 hereof;
- 2.1.24 “**Replacement Device**” means the specific cell phone or tablet computer and accessories thereto, if any, issued to You as replacement for a Device, as more fully described in Your amended Rental Schedule, where applicable;
- 2.1.25 “**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;
- 2.1.26 “**Risk Cover**” means the insurance policy in terms of which a benefit may be payable to Us by the Insurer in the event of Death or Disability;
- 2.1.27 “**SIM**” means the Subscriber Identity Module which is inserted into the Device and linked to Your number to allow you access to a network;
- 2.1.28 “**VAT**” means value added tax payable by You in accordance with the Value Added Tax Act 89 of 1991, as amended;
- 2.1.29 “**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
- 2.1.30 “**You**” or, “**Your**” means the person who rents the Device from Us and whose full particulars appears in the Rental Schedule or such person’s estate in the event of their death.
- 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.
- 2.4 In the event that terms and conditions have been translated, You agree that the original English text shall prevail in the case of any contradiction between such translated terms and conditions and the English text.

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 12.6.

3.2 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 Day-7 Payment shall be payable within 7 (seven) days of the Commencement Date, on or before 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.

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 the option 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 the option as provided for in clause 14.1.

5.4 If you do not exercise the option, We will be free to sell or rent the Device to anyone else.

5.5 Note that if you do not exercise the option and also do not return the Device to Us as you are obligated to do, We may charge you the market value of the Device at the end of the Rental Period as a replacement fee for the Device.

6 RISK, DAMAGE & LOSS:

6.1 Notwithstanding the provisions of clause 5 and clause 7, 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, destroyed or in any other way be rendered unfit for use, unless it is due to a defect or malfunction of the Device, You shall remain liable for the Rental Payment for the Rental Period unless the Agreement is terminated according to the provisions of clause 10.

6.3 Regardless of whether Our insurance claim in the event of loss or theft of the Device is approved or not, You shall remain liable for the Rental Payment for the Rental Period.

6.4 Should Our insurance claim for loss or theft of the Device be approved You will receive a Replacement Device, subject thereto that all Rental Payments due and payable, have been paid in full. A successful claim for loss or theft of the Device may only be submitted once during the term of the Rental Agreement.

6.5 Subject to the provisions of clause 7.10, should a Replacement Device, issued to You in event of an approved claim under the Loss or Theft Cover, be lost or stolen You shall remain liable for the Rental Payment for the Rental Period, unless the Agreement is terminated subject to the provisions of clause 10.

6.6 To assist Us in submitting Our claim to the Insurer, You should notify Us of the loss or theft of the Device and provide Us with the relevant and/or requested documents in the manner and within the time frames as provided for in the [Insurance Schedule](#).

6.7 In addition to clause 6.2 and 6.3, in the event that you fail to inform Us of loss or theft of the Device, or fail to assist Us in submitting Our claim timeously, or the Insurer does not approve the claim as provided for in clause 7, or You, or any person You allow, modifies or bypass or attempt to modify or bypass the Device Software or any lock placed on the Device or tamper or attempt to tamper with any application that impacts the security of the Device and our ability to manage the Device, which renders the Device unfit for use 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, theft or destruction of the Device.

7 INSURANCE OF THE DEVICE

7.1 Notwithstanding the provisions of clause 6.1, We are entitled to, and are, insured against Insured Events, at no cost to You. Should You require additional insurance, You may insure the Device at Your own cost with an Insurer of Your choice, subject to normal insurance practices and restrictions.

7.2 Subject to clauses 7.9, 7.10 and 7.11 and the exclusions as set out in the [Insurance Schedule](#) We will be entitled to claim payment of the benefit under the Risk Cover or the Loss of Income Cover and/or the Loss or Theft Cover, as the case may be, from the Insurer if any of the Insured Events occur. Submission of a claim does not mean that a claim will be approved and paid out by the Insurer and does not entitle You to not make payment or terminate the Agreement, other than as provided for in clauses 7.5 or 10 hereof.

- 7.3 We shall submit the claim in respect of the Insured Event directly to the Insurer who can either approve or not approve the claim.
- 7.4 To assist Us in submitting Our claim, should an Insured Event occur, You should notify Us of the Insured Event, and provide Us or the Insurer with the relevant and/or requested document(s) in the manner and within the periods as provided for in the [Insurance Schedule](#).
- 7.5 From the date of notification of:
- 7.5.1 Your Death, We will, in Our sole discretion extend Your Rental Period with 1 (one) month and adjust Your Rental Payment Due Dates accordingly ("the Grace Period") without locking the Device.
- 7.5.2 Your Disability or Loss of Income We will, in Our sole discretion, extend Your Rental Period with 2 (two) months and adjust Your Rental Payment Due Dates ("the Grace Period") accordingly without locking the Device.
- On completion of the Grace Period, You shall remain liable for the Rental Payments on or before the adjusted Due Dates unless Our insurance claim has been approved or the Agreement is terminated subject to the provisions of clause 10 of the Agreement. For the avoidance of any doubt, no grace period will be applicable in the event of loss or theft of the Device.
- 7.6 We will inform You if a claim is approved and, in the event of Death, Disability or Loss of Income, We will waive Our right to claim any further Rental Payments from You and You may continue to use the Device for the remainder of the Rental Period. At the end of the Rental Period, You may exercise the option as provided for in clause 14.
- 7.7 We will inform You if a claim is approved for loss or theft of the Device in which event You will be provided with a Replacement Device, subject thereto that all Rental Payments that due and payable, have been paid and the Agreement shall continue for the Rental Period as per the provisions of this Agreement and You shall remain liable for the Rental Payments for the Rental Period.
- 7.8 In the event that a claim is not approved You will remain liable for the Rental Payment for the Rental Period, unless the Agreement is terminated subject to the provisions of clause 10.
- 7.9 The benefit under the Risk Cover, Loss and Theft Cover and Loss of Income Cover will not be paid if Your Death, Disability, Loss of Income or loss or theft of the Device resulted from one of the grounds of exclusion as set out in the [Insurance Schedule](#).
- 7.10 The Loss and Theft Cover shall cease in the event that the Insurer pays out the Loss and Theft Cover benefit and You shall only be entitled to submit a claim for loss or theft of one Device during the Rental Period.
- 7.11 In addition to clause 7.10, the Risk Cover, Loss and Theft Cover and Loss of Income Cover shall cease in the event that:
- 7.11.1 Your Rental Agreement expires or is terminated, for any reason whatsoever; or
- 7.11.2 the Insurer pays out the Risk Cover benefit in respect of Death or Disability; or
- 7.11.3 the Insurer pays out the Loss of Income Cover benefit in respect of Loss of Income;
- 7.11.4 You fail to make the Day-7 Payment or Rental Payments under this Agreement on Due Date and in excess of a period in Our discretion and, at Our discretion, We place Your account in a written off status.

8 DEFECTIVE EQUIPMENT

- 8.1 In the event of any defect or malfunction in the Device, You may 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 own 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.
- 8.4 We may, in Our sole discretion, provide You with a Replacement Device in the event of any defect or malfunction in the Device.

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 In order to use the Device uninterrupted a data connection is required at least once every 30 (thirty) days. The Device Software installed on the Device requires communication from the Device on a regular basis, should the Device not communicate with the Device Software for a period in excess of 30 days, the Device will be locked. You should ensure that You have a data connection within such 30 (thirty) day period.
- 9.3 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.
- 9.4 You may only use the Device in accordance with the manufacturer's instructions.
- 9.5 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.

- 9.6 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.
- 9.7 Your Device may be subject to certain Device Restrictions which appears on the [Device Restrictions List](#), as may be updated from time to time. You should familiarise Yourself with the relevant Device Restrictions Applicable to Your Device.

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, or on such shorter period at Our discretion.
- 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 Day-7 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 and communicated when You give notice of cancellation.
- 10.4 Should You cancel the Agreement early as provided for in this clause, We may, in Our sole discretion, decide to sell the Device, in which event You may exercise Your option as provided for in clause 14 of this Agreement. Should You exercise Your option as provided for in clause 14 We shall, in addition to clause 10.2 and 10.3, be entitled to charge You the fair market value of the Device as at expiry date of the Agreement due to the early cancellation.
- 10.5 Should You not exercise Your option as provided for in clause 14 and fail to return the Device to Us upon early cancellation of the Agreement the Device shall automatically be locked by Us.
- 10.6 Should the Device have been damaged or destroyed or You failed to inform Us of loss or theft of the Device, or You failed to assist Us in submitting Our insurance claim timeously, or the Insurer does not approve the claim, or Loss or Theft Cover has ceased, as provided for in clause 7, 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, theft 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 Day-7 Payment by its Due Date;
- 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;
- 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 except for calling emergency numbers (112) 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 agree to 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. The Device will require a data connection in order for the Device to be unlocked.
- 12.4 In the event that You have a dual SIM Device, neither SIM card will function should the Device be locked.
- 12.5 Should You, or any person You allow, modify, or bypass or attempt to modify or bypass the Device Software or any lock on the Device, or tamper or attempt to tamper with any application that impacts the security of the Device and our ability to manage the Device, the Device may be permanently locked and may be rendered unfit for use.
- 12.6 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; and/or
- 13.2 a defect or malfunction in the Device Software; and/or
- 13.3 the Device being locked in accordance with the provisions of clause 9.2, clause 12 or clause 14.2 hereof; and/or
- 13.4 inability to use certain of the Device's functions due to the Device Restrictions as provided for in clause 9.7; and/or
- 13.5 inability to use the Device due to the Device being permanently locked because of modification or bypassing or attempted modification or bypassing of the Device Software or any lock on the Device, or tampering or attempted tampering with any application that impacts the security of the Device and our ability to manage the Device as provided for in clause 12.5.

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 Should We, in Our sole discretion, decide to sell the Device, 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, or such shorter period as provided for in clause in clause 10.4, 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 and Device Restrictions shall 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, failing which the Device will be locked.

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 service request, 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
International Number: 2721 495 1225
E-mail Address: info@fonyam.co.za

- 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 service request, 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, You can refer a 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@thenc.org.za
Website: www.thenc.org.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 SENT

- 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 or, in Our discretion, to the cell phone number used in the application. 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.

FONEYAM DEVICE RENTAL: INSURANCE SCHEDULE

1 FONEYAM CONTACT DETAILS

- 1.1 To inform Us of an Insured Event and/or submit documentation pertaining to an Insured Event, You can contact the FoneYam Contact Centre:

Service Centre Number: 0860 900 900
International Number: 2721 495 1225
E-mail Address: claims@fonyam.co.za

2 INFORMING US OF AN INSURED EVENT

2.1 Notification

2.1.1 **Death:**

- 2.1.1.1 Notification of Death must be made within **2 (two) months** of Death occurring, failing which Our Insurer may not recognise or entertain any claim for the Risk Cover benefit, and We may not waive Rental Payments.

2.1.2 **Disability:**

- 2.1.2.1 Notification of Disability must be made within **2 (two) months** of Disability occurring, failing which Our Insurer may not recognise or entertain any claim for the Risk Cover benefit, and We may not waive Rental Payments.

2.1.3 **Loss of Income:**

- 2.1.3.1 Notification of Loss of Income must be made within **2 (two) months** of Loss of Income occurring, failing which Our Insurer may not recognise or entertain any claim for the Loss of Income Cover benefit, and We may not waive Rental Payments.

2.1.4 **Loss or Theft of the Device:**

- 2.1.3.1 Notification must be made within **2 (two) months** of loss or theft of the Device occurring, failing which Our Insurer may not recognise or entertain any claim for the Loss and Theft Cover benefit, You may not receive a Replacement Device and We may not waive Rental Payments.

2.2 Document Submission

2.2.1 **Death:**

Any documentary proof and/or information as may be reasonably required should be submitted upon Our or Our Insurer's request and within **3 (three) months** of Death occurring failing which Our Insurer may decide not to recognise or entertain any claim for the Risk Cover benefit, and We may not waive Rental Payments.

2.2.2 **Disability:**

The following documents should be submitted by You on notification of Disability and/or request from Our Insurer and in any event within **3 (three) months** of Disability occurring:

- 2.2.2.1 a certificate by a qualified medical doctor to the effect that You are physically and/or mentally impaired to such an extent that You can no longer earn an income for the remaining duration of the Rental Agreement and the date on which the Disability commenced; and

- 2.2.2.2 any other documentary proof and/or information as may reasonably be **required or requested by Us or Our Insurer;**

failing which Our Insurer may decide not to recognise or entertain any claim for the Risk Cover benefit, and We may not waive Rental Payments.

2.2.3 **Loss of Income:**

The following documents should be submitted by You on notification of Your Loss of Income and/or on request from Our Insurer and, in any event, within **3 (three) months** of Loss of Income occurring:

- 2.2.3.1 an affidavit specifying the date on which You have, or will, suffer Loss of Income; and/or

- 2.2.3.2 a letter from Your employer specifying the date on which You have, or will, suffer Loss of Income; and/or

- 2.2.3.3 any other documentary proof and/or information as may reasonably be **required or requested by Us or Our Insurer;**

failing which Our Insurer may decide not to recognise or entertain any claim for the Loss of Income Cover benefit, and We may not waive Rental Payments.

2.2.4 **Loss or Theft of the Device:**

The following documents should be submitted by You on notification of loss or theft of the Device occurring and/or on request of Our Insurer and, in any event, within **3 (three) months** of loss or theft of

the Device:

- 2.2.4.1 the South African Police Service ("SAPS") case number under which loss or theft of the Device was reported to the SAPS.
- 2.2.4.3 any other documentary proof and/or information as may reasonably be **required or requested by Us or Our Insurer**;
failing which Our Insurer may decide not to recognise or entertain any claim for Loss or Theft Cover benefit, and You may not receive a Replacement Device and We may not waive Rental Payments.

3 EXCLUSIONS

3.1 Death or Disability:

No Risk Cover benefit will be paid to Us if Your Death or Disability resulted directly or indirectly from, or is attributable to, -

- 3.1.1 Your active participation in war, invasion, acts of foreign enemies, hostilities, warlike operations (whether war be declared or not), civil war, insurrection, revolution, civil commotion of uprisings or military power; and/or
- 3.1.2 the use of nuclear, biological or chemical weapons and/or any radioactive contamination; and/or
- 3.1.3 Your participation in criminal activities; and/or
- 3.1.4 Your participation in hazardous activities such as mountain climbing, bungee jumping and/or speed racing; and/or
- 3.1.5 suicide or attempted suicide, notwithstanding that such suicide or attempted suicide may be the result of insanity (temporary or permanent), mental illness and/or intoxication; and/or
- 3.1.6 gross negligence, recklessness or intentional exposure to danger on Your part, except in circumstances to save another human's life; and/or
- 3.1.7 the abuse of alcohol, drugs or narcotics on Your part or You being under the influence of alcohol, illegal drugs and/or habit-forming substances and/or resulting from chronic abuse of drugs by You; and/or
- 3.1.8 wilful self-infliction of injuries; and/or
- 3.1.9 Death or Disability occurring otherwise than during the duration of the Agreement; and/or
- 3.1.10 where there is evidence of an attempted submission of a fictitious claim, fraud or misrepresentation.

3.2 Loss of Income:

No Loss of Income Cover benefit shall be paid to Us if Your Loss of Income is attributable to the following:

- 3.2.1 Your Loss of Income occurs within the first 3 (three) months of the date on which Your Rental Agreement commences; and/or
- 3.2.2 Your Loss of Income is because of Your lawful dismissal, including dismissal because of Your wilful misconduct that is a violation of some established definite rule of conduct, a forbidden act, wilful dereliction of duty or misconduct; and/or
- 3.2.2 if You were aware of Your pending retrenchment or other event that may lead to Loss of Income before entering into the Agreement; and/or
- 3.2.3 if Your Loss of Income is because of Your acceptance of voluntary retrenchment or voluntary termination of employment; and or
- 3.2.4 if Your Loss of Income is because of Your resignation; and/or
- 3.2.5 if Your Loss of Income is because of Your retirement and/or
- 3.2.6 Loss of Income occurring otherwise than during the duration of the Agreement; and/or
- 3.2.7 where there is evidence of an attempted submission of a fictitious claim, fraud or misrepresentation.

3.3 Loss or theft of the Device:

No Loss and Theft Cover benefit shall be paid to Us if the loss or theft of the Device resulted directly or indirectly, or is attributable to, -

- 3.2.1 Your gross negligence or recklessness on Your part; and/or
- 3.2.2 the Device being confiscated by a regulatory authority; and/or
- 3.2.3 loss or theft of the Device occurring otherwise than during the duration of the Agreement; and/or
- 3.2.4 where there is evidence of an attempted submission of a fictitious claim, fraud or misrepresentation.