



## TRANSUNION CREDIT BUREAU TERMS OF USE

### 1. DEFINITIONS

1.1 **"Confidential Information"** means personal information which belongs to a person and is not generally available to or known by others and any and all information or data which by its nature or content is identifiable as confidential and/or proprietary to TransUnion Credit Bureau and the Customer as the case may be.

1.2 **"Consumer Credit Information"** shall bear the meaning set out in Section 70 (1) of the NCA.

1.3 **"Customer/You"** means the person accepting the terms and requesting a Report.

1.4 **"Intellectual Property"** means all intellectual property of whatever nature owned and/or controlled by TransUnion Credit Bureau including without limiting the generality of the foregoing, all right, title and interest in and to all trade marks, trade names, trade secrets, technology, software, applications, web pages, logos, systems, methods, procedures, processes, domain names, styles, insignias, scoring processes, design, layout, "look and feel" and "get up" of the Reports, compilations, designs, patents, and copyright whether registered or not.

1.5 **"NCA"** means the National Credit Act, 34 of 2005 together with the Regulations.

1.6 **"Prescribed Information"** shall bear the meaning set out in Section 18 (6) of the Regulations being (a) status and history of outstanding obligations and payments in respect of goods, services or utilities supplied to consumers; (b) information that is relevant for the purposes of credit fraud detection and prevention; (c) payments made by a consumer in respect of a debt, where the debt has been ceded or sold by the credit provider; (d) information that is not related to and not intended for the purpose of providing consumer credit, provided that the consumer's consent has been obtained to use the information for such purposes and to submit, compile and report such information.

1.7 **"Prescribed Purpose"** shall bear the meaning set out in Section 18 (4) and 18(6) of the Regulations being (a) an investigation into fraud, corruption or theft, provided that the South African Police Service or any other statutory enforcement agency conducts such an investigation; (b) fraud detection and fraud prevention services; (c) considering a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances, provided that the consent of the consumer has been obtained prior to the report being requested; (d) an assessment of the debtors book of a business for the purposes of (i) the sale of the business or debtor's book of that business; or (ii) any other transaction that is dependent upon determining the value of the business or the debtors book of that business (e) setting in respect of the supply of goods, services or utilities provided that the consent of the consumer has been obtained prior to the report being requested (f) assessing an application for insurance, provided that the consent of the consumer has been obtained prior to the Report being requested; (g) verifying educational qualifications and employment provided that the consent of the consumer has been obtained prior to the Report being requested; (h) obtaining consumer information to distribute unclaimed funds, including pension funds and insurance claims; (i) tracing a consumer by a credit provider in respect of a credit agreement entered into between the consumer and the credit provider; (j) developing a credit scoring system by a credit provider or credit bureau.

1.8 **"Regulations"** means the National Credit Regulations, published in Government Gazette No. 8477, Notice 28864 and such other Regulations promulgated in terms of the NCA from time to time;

1.9 **"Report"** means a credit report and/or consumer enquiry generated response to a Request.

1.10 **"Request"** means a request for a Report.

1.11 **"Terms"**- means the terms and conditions set out herein.

Number 2004/007773/07) registered in terms of the NCA with the National Credit Regulator under registration number NCR CB4.

## **2. AGENCY**

You warrant that you have appointed CRED-IT-DATA ONLINE HOLDINGS PTY (LTD) as your agent (a) to request and receive Reports; and (b) to accept the Terms on your behalf.

## **3. UNDERTAKINGS**

3.1 Subject to Section 68 of the NCA as read with Regulations 18(4) and 18(5), you may only request and receive Consumer Credit Information and Prescribed Information for Prescribed Purposes and for such other purposes that TransUnion Credit Bureau is lawfully entitled to disclose Consumer Credit Information and Prescribed Information held by it.

3.2 You will at all times comply with the requirements for the receipt, compilation and reporting of information (including inter alia, Prescribed Information and Consumer Credit Information) as prescribed by the NCA and other relevant legislation.

3.3 Where adverse information concerning a consumer (as set out in Section 19(4) of the Regulations) is to be submitted to TransUnion Credit Bureau, such information may not be disclosed to TransUnion Credit Bureau unless and until the Customer has given the consumer at least 20 business days notice of your intention to submit such information to TransUnion Credit Bureau;

3.4 You shall have obtained all consents required by the NCA prior to requesting consumer credit information or submitting consumer credit information to TransUnion Credit Bureau.

3.5 You are aware that the NCA imposes civil and criminal penalties, including fines and imprisonment against anyone who knowingly and wilfully reports or obtains confidential information and/or consumer credit information from a credit bureau under false pretences and for purposes not permitted or prescribed by the NCA.

3.6 You have taken reasonable steps to ensure that the information you report to TransUnion Credit Bureau is accurate, up-to-date, relevant, complete, valid and not duplicated.

3.7 You will not submit Consumer Credit Information in respect of a debt that has prescribed in terms of the Prescription Act 68 or 1969, to TransUnion Credit Bureau.

3.8 You do not and will not (unless lawfully entitled to do so) take an upfront fee to remove or clear a person's name from the records of a credit bureau.

3.9 All persons requesting Reports on the Customers behalf have been duly authorized by you to do so. In addition, you shall ensure that only you or your authorised representatives have access to any PIN and/or password PIN issued for the purposes of requesting a Report. You shall be liable for transactions, fees and other costs arising out of the use by any person of the TransUnion Credit Bureau Services via the PIN and/or Password whether or not such use is or has been authorised by you.

3.10 Save as specifically set out herein, TransUnion Credit Bureau makes no representations and gives no warranties and/or guarantees of whatever nature, whether express, implied in law, or residual in respect of these Terms.

## **4. USE OF INFORMATION**

The Customer undertakes that -

4.1 information requested from or submitted to TransUnion Credit Bureau -

4.1.1 shall contain the following information in respect of a consumer who is a natural person: (a) initials and surname or full names and surname; (b) South African identity number or if the consumer does not have an identity number, the passport number and date of birth; (c) insofar as is possible (i) the residential address and telephone number of the consumer; (ii) the details of the employer and place of work of the consumer and if self-employed or unemployed, a statement to that effect;

4.1.2 shall contain the following information in respect of a consumer who is a juristic person: (a) registered and trading name; (b) Registration number; (c) registered address and physical and postal address;

4.2 information submitted to TransUnion Credit Bureau may be utilized by TransUnion Credit Bureau as part of its database in the ordinary course of its business as a registered credit bureau; (b) it shall take reasonable steps to ensure that that the information reported to TransUnion Credit Bureau is accurate, up-to-date, relevant, complete, valid and not duplicated (c) it shall not whether directly or indirectly, sell or use for any commercial purpose the Reports and/or any of the contents thereof;

4.3 TransUnion Credit Bureau may, at any time, and at its sole discretion (a) remove any information from its database's with immediate effect save for information which it is obliged to retain in terms of the NCA and any other applicable laws; (b) verify the accuracy of any statement or information obtained from the Customer;

4.4 Any information released by TransUnion Credit Bureau (including but not limited to any information contained in Reports) shall in no way be construed as an opinion of TransUnion Credit Bureau on the solvency, financial standing, creditworthiness, integrity or motives of any party reported upon but merely reflects a recording of information received by TransUnion Credit Bureau from various sources from time to time. Use of the Reports and any other information as aforesaid requires the Customer to use its own skill and judgment. The Customer shall be solely liable for all opinions, recommendations, forecasts or comments made or actions and decisions taken in reliance on the Reports;

4.5 Where the accuracy of any information submitted by the Customer to TransUnion Credit Bureau is challenged, and the Customer is aware of such challenge, the Customer shall not resubmit such challenged information to TransUnion Credit Bureau.

## **5. REQUEST FOR INFORMATION**

5.1 On the reasonable request therefore by TransUnion Credit Bureau, the Customer shall furnish TransUnion Credit Bureau, its representatives or an independent third party, as the case may be, with such information, data, records and Reports (collectively "the Items") as is necessary for the purposes of TransUnion Credit Bureau ensuring the Customer's compliance with these Terms.

5.2 Following receipt of the Items, the Customer shall where the Items furnished as aforesaid are not sufficient to enable TransUnion Credit Bureau to confirm the Customer's compliance with these Terms, furnish TransUnion Credit Bureau, its representatives or an independent third party, as the case may be, with any additional and specific Information requested by TransUnion Credit Bureau. Thereafter, should such additional information not be sufficient to enable confirmation as aforesaid, and insofar as (a) any law by which TransUnion Credit Bureau is bound; or (b) any authority who regulates the activities of TransUnion Credit Bureau requires TransUnion Credit Bureau to do so, TransUnion Credit Bureau, an independent third party or independent auditor as the case may be, shall be entitled on reasonable notice to the Customer, and during business hours, to audit the Customer's books, records and systems solely for the purpose of ensuring the Customer's compliance with these Terms.

## **6. LIABILITY AND INDEMNITIES**

6.1 Notwithstanding any other provision of these Terms –

6.1.1 TransUnion Credit Bureau shall not be liable for any loss, liability, damage or expense of whatsoever nature which may be attributable to or caused by (a) the breach by the Customer of any of its obligations as set out in these Terms, the NCA or any other applicable legislation; (b) the acts or omissions of the Customer, its employees, agents, representatives (whether or not authorised) and/or sub-contractors; (c) the use by the Customer or any third person of a Report/s; (d) any mistake, error or omission originating from information submitted to TransUnion Credit Bureau by the Customer; (e) any mistake, error or omission in Reports received by the Customer and where such mistake, error or omission is caused by or attributable to the Channel Partner; (f) any delay in delivering or in any manner communicating the Reports to the Customer; (g) the downtime of any telecommunications line and/or infrastructure and/or facilities;

6.1.2 neither Party shall under any circumstances be liable for indirect, consequential or punitive damages, howsoever arising.

6.2 Without prejudice to any of the rights of TransUnion Credit Bureau at law or in terms of these Terms, the Customer indemnifies TransUnion Credit Bureau against all loss, liability, damage and expenses of any nature whatsoever which TransUnion Credit Bureau may suffer or incur as a result of or in connection with the acts or omissions of the Customer, its employees, agents, representatives and/or sub-contractors or a breach by the Customer of these Terms.

## **7. BREACH**

Should either Party breach any provision of these Terms ("Defaulting Party") and fail to remedy such breach within seven days after receiving written notice requiring such remedy, then the other Party ("Aggrieved Party") shall be entitled, without prejudice to its other rights in law including any right to claim damages, to cancel these Terms or to claim immediate specific performance of all of the Defaulting Party's obligations whether or not otherwise then due for performance.

## **8. APPLICABLE LAW**

Subject to clause 9, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of the Republic of South Africa for the purpose of all or any legal proceedings arising from or concerning these Terms. This Agreement (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the Parties in terms of and arising out of the conclusion, breach and termination of the provisions of these Terms) shall be interpreted and governed in all respects by the laws of the Republic of South Africa.

## **9. ARBITRATION**

9.1 In the event of any dispute or difference arising between the Parties relating to or arising out of these Terms, including the implementation, execution, interpretation, rectification, termination

or cancellation of these Terms, (and without detracting from your right to avail yourself of the complaints and dispute resolution processes provided for in the NCA) the dispute shall in the first instance be referred to the Parties senior executives for resolution. In the event of the dispute not having been resolved within seven business days of the date of such referral (or such longer period as the Parties senior executive may agree in writing), the dispute or difference will be referred for arbitration to the Arbitration Foundation of South Africa ("AFSA") in terms of AFSA's arbitration rules for the time being in force.

9.2 This clause shall constitute each Party's irrevocable consent to the arbitration proceedings, and no Party shall be entitled to withdraw from such arbitration proceedings or to claim that it is not bound by this clause.

9.3 Each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings (a) shall be final and binding on each of them; and (b) will be carried into effect; and (c) be made an order of any court to whose jurisdiction the Parties are subject.

9.4 Notwithstanding the foregoing, nothing in this clause shall be construed as precluding either Party from applying to court for a temporary interdict or other relief of an urgent nature, pending the decision or the award of the arbitrator in terms of this clause.

#### **10. GENERAL**

10.1 TransUnion Credit Bureau may terminate the terms at any time on the giving of thirty days written notice thereof to the Customer.

10.2 This Agreement constitutes the sole record of these Terms between the Parties in relation to the subject matter hereof. No Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and overrides any prior commitments, undertakings or representations (whether written or oral) between TransUnion Credit Bureau and the Customer in respect of the subject matter hereof.

10.3 The Customer shall not cede any of its rights or delegate any of its obligations under these Terms or otherwise assign these Terms to any third party without the prior written approval of TransUnion Credit Bureau, which will not be unreasonably withheld.

10.4 In the event of a conflict between the provisions of these Terms and the NCA, as read with the Regulations, the provisions of the NCA as read with the Regulations will prevail.

10.5 No indulgence or extension of time which either Party ("the Grantor") may grant to the other ("the Grantee") shall constitute a waiver of, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting such right.

10.6 Notwithstanding anything to the contrary contained herein, these Terms shall endure for the benefit of and be binding on the successors'-in-title and permitted assigns of the Parties. The rights and obligations of each Party arising out of or pursuant to these Terms or its termination or cancellation shall devolve upon and bind its legal representatives, successors-in-title and permitted assigns.