



**SUBSCRIBER AGREEMENT**

**between**

**TRANSUNION CREDIT BUREAU (PROPRIETARY) LIMITED**

**and**

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## 1 WHEREAS -

- 1.1 TransUnion is a credit bureau duly registered with the NCR and provides the Services;  
 1.2 the Subscriber is desirous of procuring the Services from TransUnion; and  
 1.3 the Parties agree to TransUnion providing the Subscriber with such Services in accordance with the terms and conditions herein.

## 2 INTERPRETATION

- In this Agreement, unless the context otherwise indicates –
- 2.1 the singular shall include the plural and vice versa;  
 2.2 reference to the masculine gender shall include the feminine gender and vice versa;  
 2.3 natural persons shall include created entities (corporate or unincorporated) and vice versa;  
 2.4 the headings in this Agreement are used for the sake of convenience, and shall not govern the interpretation hereof;  
 2.5 all expressions contained in this Agreement shall have the same meaning in all of the Schedules and Annexures, and in any documents incorporated by reference;  
 2.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision of this Agreement;  
 2.7 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;  
 2.8 defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning, and shall, unless the context otherwise requires, include the terms as defined;  
 2.9 a reference to any statutory enactment shall be construed as a reference to that enactment as at the Effective Date, as the case may be, and as amended or substituted from time to time;  
 2.10 a reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" shall be any day other than a Saturday, Sunday or official public holiday as gazetted by the government of the RSA from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African standard time being Greenwich Mean Time plus two hours;  
 2.11 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day;  
 2.12 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;  
 2.13 no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision;  
 2.14 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it: the application of the *eiusdem generis* rule is excluded; and  
 2.15 unless specifically otherwise provided, all amounts in this Agreement are exclusive of value-added tax.

## 3 DEFINITIONS

- 3.1 **"Affiliate"** means any subsidiary or a holding company or a subsidiary of the holding company of either Party or any entity that controls, is controlled by or is under common control with either Party. The terms "subsidiary" and "holding company" shall have the meaning assigned thereto in Chapter 1 of the Companies Act, 2008. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity through the ownership of voting securities representing fifty percent (50%) plus one of the possible votes;
- 3.2 **"Agreement"** means this agreement and all of the Annexures and any other document specifically incorporated herein by reference and signed by the Parties;
- 3.3 **"Annexure"** means any document attached hereto from time to time marked "Annexure" and signed by the Parties;
- 3.4 **"Association"** means without limitation, the CBA, CPA, Direct Marketing Association, South African Fraud Prevention Services and any other entity from time to time which regulates the provision of Consumer Credit Information and/or the provision of services similar to that which the Subscriber provides to its clients;
- 3.5 **"Batch Enquiries"** means, in relation to Commercial Enquiries, the processing of not less than 100 (one hundred) Commercial Enquiries or, in relation to Consumer Enquiries, the processing of not less than 500 (five hundred) Consumer Enquiries;
- 3.6 **"CBA"** means the Credit Bureau Association, a voluntary association of registered credit bureaux in the RSA;
- 3.7 **"Confidential Information"** means any information or data (a) which by its nature or content is identifiable as confidential and/or proprietary to either Party and/or any third party; or (b) which is provided or disclosed in confidence by the one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"); and (c) which Disclosing Party or any person acting on its behalf may disclose or provide to Receiving Party or which may come to the knowledge of Receiving Party by whatsoever means;
- 3.8 **"Consumer"** shall bear the meaning set out in Section 1 of the NCA;
- 3.9 **"Consumer Credit Information"** means consumer credit information as defined in the NCA;
- 3.10 **"Commercial Enquiries"** means enquiries done on a juristic person;
- 3.11 **"Consumer Enquiries"** means enquiries done on a Consumer;
- 3.12 **"CPA"** means the Credit Providers Association, a voluntary association of credit grantors in the RSA;
- 3.13 **"CPA Data"** means the payment profile information and/or default information belonging to the CPA members;
- 3.14 **"Data"** means any data including personal information (as defined in the ECT and any other applicable Laws) in whatever form provided, supplied, stored, collected, collated, accessed or processed by TransUnion;

- 3.15 **“Decision System”** means the software product developed and owned by TransUnion whereby the Subscriber submits Input Data to TransUnion and receives a Recommendation from TransUnion in response;
- 3.16 **“DMA”** means the Direct Marketing Association, a voluntary association of interactive and direct marketers;
- 3.17 **“ECT”** means the Electronic Communications and Transaction Act, 2002;
- 3.18 **“Effective Date”** \_\_\_\_\_
- 3.19 **“Group”** means, in relation to a Party, that Party's Affiliates from time to time;
- 3.20 **“IP Rights”** means all existing and future intellectual property rights of whatsoever nature subsisting anywhere in the world, whether registered or unregistered, including, without limitation, invention rights, patent applications and registrations, design rights, design applications and registrations, copyright, rights in data bases, trademarks, domain names and know-how and in the case of TransUnion, includes rights related to the scoring processes, design, layout, “look and feel”, and “get up” of the Reports and the Recommendations;
- 3.21 **“Laws”** means all laws, regulations, by-laws, rules, directives, orders and other requirements of any government or any government agency, body or authority, including any regulator or court;
- 3.22 **“NCA”** means the National Credit Act No. 34 of 2005 together with the Regulations;
- 3.23 **“Party/Parties”** means the Parties to this Agreement or either of TransUnion or the Subscriber as the context may require;
- 3.24 **“Input Data”** means the Subscriber's proprietary data submitted to TransUnion when processing an enquiry via the Decision System;
- 3.25 **“Personal Information”** means personal information as defined in POPIA, and any other information which may be defined or regulated as "personal information" in terms of any existing or future applicable Laws;
- 3.26 **“Prescribed Purpose”** shall bear the meaning ascribed to it in Section 18(4) of the Regulations;
- 3.27 **“Prescribed Information”** shall bear the meaning set out in Section 18(6) of the Regulations;
- 3.28 **“Process”** shall bear the meaning ascribed to it in POPIA;
- 3.29 **“POPIA”** means the Protection of Personal Information Act No. 4 of 2013;
- 3.30 **“Recommendation”** means a system generated recommendation, derived from a pre-determined set of rules used to analyse the Input Data and produce an objective opinion, which could include inter alia the following alternatives namely “accept”, “refer”, “serious refer” or “decline”;
- 3.31 **“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;
- 3.32 **“Reports”** means reports generated by TransUnion and/or TransUnion's systems pursuant to the use by the Subscriber of the Services;
- 3.33 **“RSA”** means the Republic of South Africa;
- 3.34 **“Services”** means the services that the Subscriber subscribes to from TransUnion from time to time, as set out in the relevant Annexure/s as amended from time to time;
- 3.35 **“Subscriber”** shall mean \_\_\_\_\_, (registration number) \_\_\_\_\_
- 3.36 **“Subscriber Data”** means any data owned by the Subscriber and provided to TransUnion in connection with this Agreement, but excludes any information that falls within the definition of Consumer Credit Information;
- 3.37 **“TransUnion”** means TransUnion Credit Bureau (Pty) Ltd, registration number 2004/007773/07, a private company with limited liability and duly registered with the NCR under registration number NCRCB4; and
- 3.38 **“TransUnion Data”** means any data, including Personal Information, supplied to the Subscriber by or on behalf of TransUnion in terms of this Agreement or Processed on behalf of TransUnion by the Subscriber (as the case may be).

#### 4 APPOINTMENT

The Subscriber appoints TransUnion, which appointment TransUnion accepts, with the effect from the Effective Date to provide it with the Services on the terms and conditions as set out in this Agreement.

#### 5 DURATION AND TERMINATION

This Agreement shall commence on the Commencement Date and shall continue for an indefinite period until terminated by either Party on no less than thirty (30) days written notice of termination to the other. TransUnion may immediately terminate this Agreement should it be prevented by law from continuing to carry out its obligations in terms of this Agreement. TransUnion shall not be liable for any loss or liability of whatsoever nature which may arise as a result of termination of this Agreement in terms of this clause 5.

#### 6 SUBSCRIBER'S ROLES AND RESPONSIBILITIES

##### General Compliance with Laws and Associated bodies

For the duration of this Agreement the Subscriber shall -

- 6.1 at all times comply with the requirements for the receipt, compilation and reporting of information (including, but not limited to, Prescribed Information and Consumer Credit Information) as prescribed by the NCA, POPIA and other relevant legislation, and other relevant industry bodies, including the CPA and CBA;
- 6.2 ensure that if various company(ies) in the Subscriber's Group use the Services in terms of this Agreement, that each such Group company agrees to be bound by the terms and conditions of this Agreement and the Subscriber shall in addition, be responsible for all acts and omissions of that Group company in terms of this Agreement and be liable for any breach by a Group company(ies) of this Agreement;
- 6.3 at all times comply with all Data use and Data protection requirements as may be applicable to the Services as dictated by TransUnion's data protection policies in force from time to time and/or any applicable Laws; and
- 6.4 as required by the NCA and other applicable Laws, protect the confidentiality of any Confidential Information pertaining to a Consumer or prospective Consumer and in particular shall only release such Confidential Information to TransUnion in accordance with the NCA, POPIA and other Applicable Laws.

### Use of Consumer Credit Information/Reports

6.5 Any Consumer Credit Information and/or Report and/or Recommendation containing Consumer Credit Information shall be used by the Subscriber solely and exclusively for a Prescribed Purpose and any other purposes that may be specifically prescribed by applicable Laws. The Subscriber shall not, whether directly or indirectly, sell or use for any commercial purpose the Report(s) and/or any of the contents thereof.

### Consents

The Subscriber –

- 6.6 shall ensure that prior to submitting to and/or requesting any Consumer Credit Information or Reports from TransUnion it shall have obtained all Consumer consents (whether from natural or juristic persons – as applicable) that may be required in terms of the NCA, POPIA or any other applicable Laws to submit, request and/or receive such Consumer Credit Information or Reports, as the case may be; and
- 6.7 hereby consents and agrees that TransUnion may -
- 6.7.1 perform a credit search on its record with any registered credit bureaux, including TransUnion, when assessing its application for Services and monitor its payment behaviour with any registered credit bureaux;
  - 6.7.2 use new information and data obtained from other credit bureaux or registered credit/service providers in respect of the Subscriber's future applications for Services;
  - 6.7.3 record and transmit details of how the Subscriber has conducted its account with TransUnion with any registered credit bureaux, including TransUnion; and
  - 6.7.4 contact the Subscriber to market any of its product offerings to the Subscriber.

### Delivery Mechanism

- 6.8 The Parties will agree a delivery mechanism for the Subscriber to connect to TransUnion's systems in order for the Subscriber to request and receive the Services from TransUnion.
- 6.9 If the Services and Reports are made available to the Subscriber by means of a delivery mechanism requiring a security or access code, TransUnion shall furnish this to the Subscriber. The Subscriber must ensure that only it or its authorised representatives have access to the security or access code and that the security or access code is not shared by it or its authorized representatives. The Subscriber must also notify TransUnion immediately in writing if, the security or access code is no longer secure or may have been disclosed to any unauthorised person/s, and TransUnion will replace the security or access code within a reasonable period after receipt of written notification.
- 6.10 Any request for Batch Enquiries will only be processed by TransUnion if the request is set out on TransUnion's prescribed batch Subscriber Request Form.

### Security

- 6.11 The Subscriber shall comply with and shall procure that all its employees, representatives, sub-contractors and agents abide by TransUnion policies and processes, and any instructions given by TransUnion relating to the transmission of Data and any other information shared via the delivery mechanism. Where necessary, TransUnion will furnish the Subscriber with the necessary software including encryption software, to enable requests to be sent in the manner prescribed by TransUnion.
- 6.12 The Subscriber shall immediately notify TransUnion in writing of any breach or attempted breach of security, including the incident contemplated in clause 6.9 above, of which the Subscriber become aware or ought to have become aware of and the Subscriber shall take reasonable steps to prevent a recurrence thereof and to mitigate the effects of such breach. TransUnion shall be entitled to fully investigate such breach, attempted breach or incident (as the case may be) and the Subscriber shall give TransUnion its full co-operation with such investigation. Furthermore, the Subscriber shall be liable for transactions, fees and other costs arising out of the use by any person of the Services including use of the Services arising from a security breach.

### Submission of Data to TransUnion

- 6.13 The Subscriber undertakes that any Consumer Credit Information requested from or submitted to TransUnion -
- 6.13.1 shall contain, in relation to a Consumer who is a natural person, the minimum criteria as set out in Regulation 19(1); and
  - 6.13.2 shall contain, in relation to a Consumer who is a juristic person, the juristic person's registered and trading name; registration number, registered address, physical and postal address.
- 6.14 Generally in relation to the provision of Data, and in relation to listings of adverse credit information/defaults, the Subscriber undertakes that -
- 6.14.1 it is lawfully entitled to submit the Consumer Credit Information, Prescribed Information and Confidential Information to TransUnion and shall ensure that all information reported to TransUnion is accurate, up-to-date, relevant, complete, valid and not duplicated;
  - 6.14.2 it shall only list adverse credit information in respect of Consumers if (a) it is a member of the CPA (in which case listing of adverse credit information must be done via its monthly payment profile submissions to the credit bureaux); (b) it is a data supplier to the National Loan Register ("NLR") (it shall not however be entitled to list defaults in the public domain.); or (c) it is neither a CPA nor a NLR member, provided that it shall only be able to provide TransUnion with the nature of information, and the related purposes, which falls in the permitted categories set out in Regulation 18(6) of the NCA;
  - 6.14.3 it shall not be entitled to list information of the following nature, whether or not Consumer consent has been obtained, and of any nature that may be notified by TransUnion to the Subscriber from time to time –
    - 6.14.3.1 cheques - only negative information relating to cheques marked "Returned to Drawer" may be submitted provided that it is on the grounds of insufficient funds;
    - 6.14.3.2 Consumer Credit Information in respect of a debt that has prescribed in terms of the Prescription Act, No. 68 of 1969;

- 6.14.3.3 duplicate listings – for example, where listings in respect of a book debt are made by a data supplier who subsequently sells that book debt and the purchaser of the book debt lists the debtor for the same debt, the latter listing by the purchaser will not be permitted. Where it is found that a default listing is in respect of a debt that was previously listed either as a default or judgment, the second listing will be removed;
- 6.14.3.4 listings in relation to SABC television licences, maintenance orders and road traffic fines;
- 6.14.3.5 cost orders;
- 6.14.3.6 adverse information forming part of any dispute, existing prior to the date of the submission of that disputed adverse information, between the Subscriber and the Consumer in respect of whom such information is submitted (for purposes of this obligation, “dispute” refers to any instance where it can be proven that the Consumer had reasonably and expressly denied being liable for the whole or part of the relevant debt, whether or not through the institution of legal proceedings);
- 6.14.3.7 information which the Subscriber had already submitted to TransUnion in respect of a Consumer, which information the Consumer had successfully challenged in accordance with the process provided for in the NCA (“**Information Challenge**”). For purposes of clarity, the Subscriber shall not be entitled to modify the successfully challenged information in any way so as to resubmit same;
- 6.15 The Subscriber will give its customers twenty (20) Business Days’ written notice, as required by Regulation 19(4), of its intention to submit adverse information regarding the customer before such information is submitted to TransUnion.
- 6.16 The Subscriber will fully and timeously co-operate with TransUnion’s requests for credible evidence related to a listing when that listing has been challenged by a Consumer as part of any Information Challenge.

#### **Removal of information from TransUnion’s database**

- 6.17 The Subscriber shall only be entitled to remove a default listing if it is factually incorrect, related to fraud or a duplicate listing.
- 6.18 The Subscriber does not and will not, unless lawfully entitled to do so, take an upfront fee in order to remove or clear a person’s name from the blacklist of a credit bureau.
- 6.19 TransUnion may, at any time, and at its sole discretion remove any information from its database with immediate effect, except information which TransUnion is obliged to retain in terms of the NCA and any other applicable Laws; and/or verify the accuracy of any statement or information obtained from the Subscriber.

#### **Consumer Credit Information requested in respect of juristic persons and their Principals**

- 6.20 The Subscriber acknowledges that in the event that it requests Consumer Credit Information in relation to any juristic person/s, the relevant Report to be provided to it may contain Consumer Credit Information relating to that entity’s directors, senior leadership and/or key stakeholders in the business (“**Principals**”).
- 6.21 In light of the above, the Subscriber undertakes that -
  - 6.21.1 it shall be fully authorised, as required by all applicable Laws, to obtain the Consumer Credit Information in respect of the Principals; and
  - 6.21.2 in the event that it requests Consumer Credit Information relating to both juristic persons and their Principals, it shall have fully complied with the requirements as set out in Section 18(5) of the Regulations; and it shall have obtained all required consents for obtaining and having sight of information regarding the Principals.

### **7 FEES AND PAYMENT**

- 7.1 The Subscriber agrees to pay to TransUnion the fees set out in the pricing Annexure/s attached hereto without deduction or set-off of any nature. Payment shall be made into TransUnion’s nominated bank account as specified on the invoice, within thirty (30) days from the date of each invoice. The Subscriber agrees that all fees and charges may be debited from its bank account, in terms of the debit order form completed by the Subscriber, to the extent that the Subscriber has completed the form.
- 7.2 Invoices may be queried with TransUnion within thirty (30) days from date of invoice. TransUnion shall under no circumstances entertain queries on invoices thirty (30) days after the date of invoice.
- 7.3 Fees and charges payable under this Agreement may be varied by TransUnion from time to time, and may be subject to additional terms and conditions in the Annexure/s.
- 7.4 All overdue accounts shall bear interest at the rate of 2% above the lending rate charged to TransUnion on its overdraft facilities by its bankers, First Rand Bank Limited (acting through its First National Bank Division), as certified by any manager of such bank, whose appointment and authority shall not be necessary to prove, calculated from the due date for such payment to the date of actual payment, both days inclusive. TransUnion also reserves the right to deactivate the Subscriber’s access to its Services immediately in the event invoices are not paid on the due date.
- 7.5 Insofar as it may be applicable, annual or other subscriptions paid in advance are non-refundable.

### **8 WARRANTIES**

- 8.1 Each Party warrants that -
  - 8.1.1 it has the authority necessary to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement; and
  - 8.1.2 it will maintain locally and internationally, all licences, certificates, authorisations, consents and permits to ensure that it functions as a lawful business entity and that its involvement with the Services in terms of this Agreement is lawful and compliant with all national and international statutes, rules and regulations and other requirements from time to time.
- 8.2 The Subscriber warrants that -
  - 8.2.1 for the duration of this Agreement it will at all times for the duration of this Agreement comply with each obligation imposed on it in terms of clause 6;
  - 8.2.2 it is fully authorised and has all required certifications to request and receive the Services; and

8.2.3 it has adequate systems and/or procedures to ensure that all Consumer Credit Information supplied to it by TransUnion is kept confidential and secure, and is protected against unlawful intrusion, wrongful alteration, unauthorized disclosure or access by any unauthorized third parties (including on-line access).

8.3 The United States Foreign Corrupt Practices Act prohibits giving money or items of value to non-United States officials to influence a non-United States government. The Act also prohibits giving money or items of value to any person or firm when there is reason to believe the gift will be passed on to a non-United States government official in an attempt to influence a non-United States government. The Subscriber represents and warrants that it understands and agrees to comply with these requirements of the United States Foreign Corrupt Practices Act and to refrain from accepting or making payments to third parties, which would cause TransUnion and/or any TransUnion Affiliate to violate or otherwise have liability under such Act.

8.4 Save as specifically set out herein, the Subscriber agrees and acknowledges that TransUnion makes no representations and gives no warranties and/or guarantees of whatsoever nature, whether express, implied in law, or residual in respect of this Agreement, the Services, the Reports and/or the Recommendations.

## 9 INDEMNITY AND DISCLAIMER

9.1 Without prejudice to any of the rights of the Parties at law or in terms of this Agreement –

9.1.1 each Party indemnifies the other Party ("**Indemnified Party**") against all loss, liability, damage and expense of whatever nature which the Indemnified Party may suffer or incur as a result of or in connection with any one or more breach/es of the warranties provided by it in clause 8;

9.1.2 the Subscriber indemnifies TransUnion against all loss, liability, damage and expense of whatever nature which TransUnion may suffer or incur as a result of or in connection with the negligent acts or omissions of the Subscriber, its employees, agents, representatives and/or contractors in connection with the implementation of this Agreement or a breach by the Subscriber of this Agreement.

9.2 The Subscriber's obligation to indemnify TransUnion will survive the termination, for any reason, of this Agreement.

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

## 10 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement –

10.1 neither Party shall be liable to the other for any indirect, special or consequential damages;

10.2 TransUnion shall not be liable for any loss, liability, damage or expense of whatsoever nature suffered by the Subscriber as a result of or which may be attributable to –

10.2.1 any breach by the Subscriber of its obligations as set out in this Agreement or applicable Laws;

10.2.2 the intentional or negligent acts or omissions of the Subscriber, its employees, agents, contractors and representatives;

10.2.3 any event of Force Majeure as defined in clause 13.1; or

10.2.4 the downtime of any telecommunications line and/or infrastructure and/or facilities.

10.3 Neither Party's aggregate liability, if any, to the other Party under this Agreement, with the exception of the Subscriber's obligation to pay the fees for the Services, shall exceed an amount equal to the charges incurred by Subscriber under this Agreement during the six month period prior to the occurrence of the first event giving rise to any such liability.

10.4 The limitation of liability set forth in clauses 10.1 and 10.3, will not:

10.4.1 apply in any way to the Subscriber's liability to TransUnion under clauses 11, 12 and 14 below;

10.4.2 apply to liability resulting from gross negligence or wilful misconduct of the Subscriber, its agents, employees or assigns; or

10.4.3 apply to damages incurred by TransUnion as a result of governmental, regulatory or judicial action(s) pertaining to violations of any applicable Laws, or any combination of same, to the extent that such damages result from the Subscriber's breach, directly or indirectly, of its obligations under this Agreement.

## 11 TRANSUNION DATA

11.1 The Subscriber shall not, and shall procure that its employees shall not -

11.1.1 Process the TransUnion Data in any manner or for any purpose other than as set out in this Agreement; or

11.1.2 cause TransUnion to breach or contravene any applicable Laws relating to privacy or protection of Personal Information, including POPIA.

11.2 Any breach by the Subscriber of its obligations set out in this clause 11, shall be deemed to be a material breach of this Agreement and TransUnion shall be entitled, but not obliged, to terminate this Agreement with immediate effect on written notice to the Subscriber.

11.3 The Subscriber shall not transfer TransUnion Data across the border of the RSA unless it has obtained the explicit prior written consent from TransUnion for each such intended transfer.

11.4 Should any Laws affecting the provision, implementation and/or usage of the Services, including without limitation POPIA, be introduced at any time, TransUnion reserves the right, on written notice to the Subscriber, to either terminate this Agreement on written notice to the Subscriber or to re-negotiate the provisions of this Agreement. Should the Parties fail to agree on amendments to this Agreement within 30 (thirty) days of such written notice, TransUnion shall be entitled, but not obliged, to terminate this Agreement with immediate effect at any time without liability or penalty.

## 12 INTELLECTUAL PROPERTY RIGHTS

12.1 The Parties agree and acknowledge that all rights, title and interest in and to each Party's Intellectual Property vests in that Party. Nothing in this Agreement transfers ownership of either Party's Intellectual Property to the other Party.

12.2 All Intellectual Property rights in the Services, Consumer Credit Information and the Data, including the CPA Data, vests in TransUnion or TransUnion's relevant licensors.

12.3 The Subscriber hereby grants TransUnion a perpetual, royalty free, non-exclusive, non-transferable license to use and copy the Subscriber Data in order to perform this Agreement and to use and copy the Subscriber Data for TransUnion's business purposes.

12.4 TransUnion hereby grants the Subscriber a non-exclusive, non-transferable license to use the Consumer Credit Information solely for the Prescribed Purposes.

12.5 The Subscriber shall:

12.5.1 ensure that all personnel who use the Consumer Credit Information are suitably trained and skilled in such use;

12.5.2 if use of the Consumer Credit Information is restricted to certain products and/or the Subscriber business divisions as specified in the Annexure/s, only use the Consumer Credit Information in connection with those divisions as recorded in the Annexure/s;

12.5.3 not sell, transfer, sub-license, distribute, commercially exploit or otherwise make available to or use for the benefit of any third party, any of the Consumer Credit Information;

12.5.4 not copy, adapt, alter, modify, reverse engineer, decompile or otherwise interfere with the Consumer Credit Information or combine it with other materials without TransUnion's prior written consent or as permitted by law;

12.5.5 only use the Consumer Credit Information on equipment owned, operated or controlled by the Subscriber or on such other site as agreed by the Parties from time to time in writing;

12.5.6 not allow any third party to amend, modify or otherwise alter the Consumer Credit Information without TransUnion's prior written consent.

## 13 FORCE MAJEURE

13.1 Should either Party ("**Invoking Party**") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of any Act of God, war, fire, flood, legislation, insurrection, sanctions, trade embargo or any economic or other cause beyond the reasonable control of such Party ("**Force Majeure**") then the Invoking Party will forthwith give written notice thereof to the other Party –

13.1.1 specifying the cause and anticipated duration of the Force Majeure; and

13.1.2 promptly upon termination of the Force Majeure, stating that such Force Majeure has terminated.

13.2 Performance of any such obligations will be suspended from the date on which notice is given of Force Majeure until the date on which notice is given of termination of Force Majeure ("**Suspension Period**"), subject always to the remaining provisions of this clause 13.

13.3 The Invoking Party will not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the Force Majeure during the Suspension Period provided that -

13.3.1 the Invoking Party uses and continues to use its best efforts to perform such obligation; and

13.3.2 if the Force Majeure shall continue for more than 60 (sixty) consecutive days, the other Party will be entitled to cancel this Agreement on the expiry of such period, but will not be entitled to claim damages against the Invoking Party as a result of the delay or failure in the performance of any obligations hereunder due to or resulting from the Force Majeure.

## 14 CONFIDENTIALITY

14.1 Neither Party ("**Receiving Party**") shall, during the existence of this Agreement or at any time after this Agreement is cancelled or otherwise terminates, use, divulge, disclose, exploit, permit the use of or in any other manner whatsoever use the other Party's ("**Disclosing Party**") Confidential Information or disclose the existence or contents of this Agreement other than as provided or contemplated in this Agreement; provided that the Receiving Party may disclose the Disclosing Party's Confidential Information and the existence and contents of this Agreement-

14.1.1 to the extent required by applicable Laws or the valid order of a court of competent jurisdiction or the request of any governmental or other regulatory authority or agency, in which event the Receiving Party shall so notify the Disclosing Party as promptly as possible (and if possible prior to making any disclosure) and shall use its commercially reasonable endeavours to seek confidential treatment of such Confidential Information;

14.1.2 to, and permit the use thereof by, the employees, its representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or advisor of such Confidential Information or other information for any other purpose shall constitute a breach of this clause 14 by the Receiving Party.

14.2 The provisions of clause 14.1 shall not apply to any Confidential Information which –

14.2.1 is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause 14;

14.2.2 is received by the Receiving Party from a third party who has the right to disseminate such Confidential Information;

14.2.3 is or had already been independently generated by the Receiving Party prior to receiving it from the Disclosing Party.

15 **DOMICILIUM**

15.1 The Parties choose the following as their *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to this Agreement including the giving of any notice or the serving of any process -

**TransUnion:**

C/O TransUnion Legal  
Wanderers Office Park  
52 Corlett Drive  
Illovo

**The Subscriber**

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15.2 Either Party shall be entitled from time to time by giving written notice to the other Party, to vary its Domicilium to any other Domicilium within the RSA.

15.3 Any notice given by a Party to the other Party ("**Addressee**"), which is -

- 15.3.1 posted by pre-paid registered post to the Addressee's postal Domicilium shall be deemed to have been received by the Addressee within seven business days after the date on which it was so posted;
- 15.3.2 delivered by hand between the hours of 09:00 and 16:30 on any business day to the Addressee's physical Domicilium shall be deemed to have been received by the Addressee at the time of delivery.

15.4 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

15.5 This clause 0 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this clause 0.

15.6 For purposes of legal notices to be issued in terms of this Agreement, the term "writing" or "written" in this clause 0 excludes "data messages" as defined in the Electronic Communications Transactions Act of 2002. For purposes of other notices, the term "writing" or "written" shall include "data messages" as defined in the aforesaid Act; provided that for such data messages to be valid in the case of TransUnion, any such data message must be sent to the TransUnion Legal department and receipt of same must have been acknowledged by a legal advisor in that department.

16 **BREACH**

16.1 Unless this Agreement provides otherwise, if a Party ("**Defaulting Party**") commits a breach of any material provision of this Agreement and should such breach be -

- 16.1.1 capable of being remedied and should the Defaulting Party fail to remedy such breach within 14 (fourteen) days after receiving written notice from the other Party ("**Aggrieved Party**") requesting it to do so; or
- 16.1.2 incapable of being remedied,

then the Aggrieved Party shall be entitled, without prejudice to any other rights which it may have, to claim specific performance of the Defaulting Party's obligations or to cancel this Agreement, in either event without prejudice to the Aggrieved Party's right to claim damages.

17 **AUDIT**

17.1 The Subscriber shall, on request from TransUnion, supply all reasonable information and materials requested by TransUnion, to assess and confirm the Subscriber's compliance with its obligations in terms of this Agreement. Such information and materials shall be provided, promptly to TransUnion at no additional cost and in any event within five business days of request.

17.2 The Subscriber shall allow TransUnion, its auditors and inspectors, access, at all reasonable times to any facility or premises at which the Services are utilised/accessed in terms of this Agreement, to documentation required in terms of Laws including any certificates and any other data and records relating to the resale of the Services for the purpose of performing audits and inspections on the Subscriber. The Subscriber shall provide to TransUnion and/or its auditors and inspectors such assistance and co-operation as they may reasonably require. TransUnion shall procure that any such audit shall not unreasonably disrupt the Subscriber's business operations and shall comply with the Subscriber's reasonable security or confidentiality requirements.

17.3 If, pursuant to any audit or investigation conducted it is found that the Subscriber is in breach of any provision of this Agreement, the Subscriber shall be liable to pay for the costs of such audit or investigation (without prejudice to any other rights which TransUnion may have in terms of this Agreement or at law).

18 **APPLICABLE LAW**

All matters arising in connection with this Agreement, including, without limitation, its interpretation, validity, implementation, rectification, enforcement and termination, shall be determined in accordance with the laws of the RSA (whether past, current or enacted in the future) and the Parties hereby submit, subject to clause 19, to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg.



## 19 DISPUTE RESOLUTION

- 19.1 If any dispute arises out of or in connection with this Agreement, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation, and in the event of that failing, either Party shall be entitled to refer the dispute to arbitration to be finally resolved in accordance with the Rules of Arbitration Foundation of Southern Africa by an arbitrator appointed by the aforesaid foundation.
- 19.2 In the case of arbitration -
- 19.2.1 the arbitration shall take place in Johannesburg;
- 19.2.2 the arbitrator shall be if the question in issue is:
- 19.2.2.1 primarily an accounting matter, an independent accountant agreed upon between the Parties;
- 19.2.2.2 primarily a legal matter, a practising senior counsel with no less than 10 (ten) years standing agreed upon between the Parties; or
- 19.2.3 any other matter, an independent person agreed upon between the Parties.
- 19.3 If the Parties cannot agree upon a particular arbitrator in terms of clause 19.2 above within seven business days after the arbitration has been demanded, the President of the Law Society of the Northern Provinces (or its successor) shall be requested to nominate the arbitrator within seven days after the Parties have so failed to agree.
- 19.4 The Parties irrevocably agree that the decision in these arbitration proceedings shall be binding on them; shall be carried into effect; shall have right for review; and may be made an order of any Court of competent jurisdiction.
- 19.5 Nothing herein contained shall be deemed to prevent or prohibit a disputant from applying to the appropriate court for urgent, relief pending the outcome of the arbitration proceedings.
- 19.6 Any arbitration in terms of this clause shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.

## 20 SUMMARY TERMINATION

- In addition to any provision in this Agreement, either Party shall be entitled to terminate this Agreement, at any time and with immediate effect, without prejudice to any other rights it may have hereunder or in law, by providing the other Party with notice of such termination if:
- 20.1 the other Party is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory winding up, judicial management or receivership or under the equivalent of any of the foregoing; or
- 20.2 the other Party makes any arrangement or composition with its creditors generally, or ceases or threatens to cease to carry on business or disposes of any of its material assets other than in the normal course of business; or
- 20.3 the other Party consolidates or merges with or into any entity (other than the consolidation or merger with an Affiliate of the Party, of which the Party is the surviving entity); or beneficial ownership of 20% (twenty percent) or more of the outstanding voting securities or other ownership interests of the other Party is acquired by any entity, or group of entities acting in concert; or
- 20.4 a substantial part of the Party's property becomes subject to levy, seizure, assignment or sale for or by any creditor or governmental agency.

## 21 CONSEQUENCES OF TERMINATION

- Upon termination of this Agreement the Subscriber shall –
- 21.1 pay all amounts then due and owing by the Subscriber to TransUnion;
- 21.2 cease all use of TransUnion's IP; and
- 21.3 immediately deliver to TransUnion all records, files, information, documentation and other materials, irrespective of the medium upon which same is stored, belonging to TransUnion, including the Services. The Subscriber shall further delete all copies of the aforesaid items from its systems and shall furnish TransUnion with a certificate signed by the Subscriber's executive director, confirming return and deletion of the items as aforesaid.

## 22 GENERAL

- 22.1 This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein.
- 22.2 This Agreement supersedes and overrides any prior commitments, undertakings or representations (whether written or oral) between the Parties in respect of the subject matter hereof.
- 22.3 No addition to, variation, consensual cancellation or novation of this Agreement, including this clause 22.3 shall be of any force or effect unless reduced to writing and signed by both Parties or by their duly authorised representatives.
- 22.4 All provisions of this Agreement and any Annexure hereto shall be independent of each other and deletion from or the invalidity of any such provision or schedule shall not affect the remainder of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any of the Annexures hereto, as they may be revised from time to time, the provisions of this Agreement shall prevail, unless otherwise specifically recorded and agreed in any Annexure.
- 22.5 No indulgence or extension of time which either Party ("Grantor") may grant to the other 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.
- 22.6 Notwithstanding anything to the contrary contained herein, the rights and obligations of each Party arising out of or pursuant to this Agreement or its termination or cancellation shall devolve upon and bind its legal representatives, successors-in-title and permitted assigns.
- 22.7 The relationship of the Parties, inter se, shall be governed by the terms of this Agreement and they shall not by reason of the actions of either of them be entitled or empowered to represent or hold out to any third party that they are entitled to bind the credit of the other or that the relationship between them is that of a partnership, joint venture or the like, as aforesaid.

- 22.8 The terms of this Agreement shall constitute a *stipulatio alteri* in favour of each of the companies comprising the TransUnion Group and shall be capable of acceptance by any of them without need to give notice to any of the other Parties to this Agreement.
- 22.9 No part of this Agreement may be ceded, assigned, transferred or made over by either Party without having secured the prior written consent of the other Party in its sole discretion.
- 22.10 This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. An electronic counterpart of this Agreement in fax or e-mail form shall be conclusive evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.
- 22.11 Each Party shall bear its own fees, costs and expenses in respect of the negotiation, execution and implementation of this Agreement.

23 **EXECUTION**

This Agreement is executed for and on behalf of –

**TRANSUNION CREDIT BUREAU (PROPRIETARY) LIMITED**

SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_ DESIGNATION: \_\_\_\_\_  
WHO WARRANTS THAT S/HE IS DULY AUTHORISED HERETO

\_\_\_\_\_  
(Subscriber Name and Registration Number)

SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_ DESIGNATION: \_\_\_\_\_  
WHO WARRANTS THAT S/HE IS DULY AUTHORISED HERETO

## SERVICE APPLICATION FORM

SECTION A: TO BE COMPLETED IN FULL BY ALL CLIENTS APPLYING FOR TRANSUNION'S SERVICES		
<b>A1: Name of your TransUnion sales consultant</b>		
<b>A2: Client's information</b>		
1.	Full registered name of business or name of sole proprietor	
2.	Business registration number <u>or</u> identity number of sole proprietor/partnerships	
3.	NCR registration number (if applicable)	
4.	Vat number	
5.	Trade Name/s of business	
6.	Nature of business i.e. Core Industry of business	
7.	Type of business e.g. Sole Proprietor / Pty Ltd / CC / Partnership / Limited / Parastatal / Other (specify)	
8.	Domicilium address (i.e. this is your address at which you will accept service of legal notices/ documents)	
9.	Physical address	
10.	Postal address	
11.	Telephone number/s	
12.	Fax number/s	
13.	E-mail address of signatory	
14.	E-mail address to which electronic invoices should be sent	
15.	Holding company name	
16.	Holding company registration number	
17.	Affiliations (company name)	
<b>A3: BY SIGNING THIS AGREEMENT YOU AGREE THAT, WE CAN DO AN ENQUIRY ON YOUR PERSONAL CREDIT REPORT, YOUR BUSINESS CREDIT REPORT AND/OR YOUR BUSINESS PRINCIPALS (WHICHEVER IS APPLICABLE) FOR RISK ASSESSMENT PURPOSES, AND YOU WARRANT THAT THOSE PRINCIPLES HAVE CONSENTED TO SUCH ENQUIRY/IES.</b>		
<b>A4: You must submit the following documents to us with this completed application form:</b>		
Relevant documentation set out in the Client Verification Form		Client Information form
Proof that the signatory hereto is authorized to sign the agreement on behalf of the business		Needs Analysis <i>(if applicable)</i>

A5: Schedules to the Agreement:				
No.	Schedule	Applicable Annexures	Select which Schedules are included in the Services provided to You	
			Yes	No
1.	IDS	IDS_A; IDS_B – Pricing; IDS_C - Code of Conduct		
2.	NaTIS	NAT_A- Product & Pricing		
3.	Asset Monitoring	AMS_A; AMS_B – Details of Authorised Agents		
4.	Business Payment Information (Trade Data)	BPI_A – Business Payment info in Age Analysis; BPI_B – Fees & Charges; BPI_C – Code of Conduct		
5.	Insurance Connectivity Insurer (ICI)	IC_A- Pricing; IC_B; List of participating Intermediaries; IC_C- List of scorecards		
6.	Insurance Connectivity Administrator (ICA)			
7.	Insurance Connectivity Intermediary (ICI2)	IDS_D – Participating Insurers; IDS_B - Pricing		

A6: FOR OFFICE USE ONLY				
Sales Consultant			Subscriber Category (A,B, or C)	
New Business	°Yes	°No	Debtor Number	
National Contract	°Yes	°No	Subscriber Number	
DMS Management Report	°Yes	°No	Contract Number	
- Monthly / Weekly			Debtor Administrator's Name	