



Equifax Australia Information Services and Solutions Pty Ltd

Terms of Supply

1. Introduction

- 1.1 This agreement applies when we, Equifax Australia Information Services and Solutions Pty Limited ABN 26 000 602 862 (“Equifax”) supply any of our standard information services (our “information services”) to you, our customer. Additional terms may apply to some of the services we supply – we will tell you if additional terms apply to any service you use.
- 1.2 Our information services include our consumer and commercial credit reporting services; our verification, scoring and consulting services; or any of our other data services.
- 1.3 In this agreement, the Privacy Act 1988 (Cth) is referred to as “the Privacy Act” and includes instruments and codes made under the Act. Terms used in this agreement that are defined in the Privacy Act have their defined meaning, unless the context otherwise requires.
- 1.4 In this agreement:
 - (a) “Australian Consumer Law” means Schedule 2 of the Competition and Consumer Act 2010 (Cth).
 - (b) “default information” includes serious credit infringements and default information as defined in the Privacy Act, as well as commercial credit defaults and commercial credit clearouts/skips;
 - (c) “Law” means:
 - (i) any statute, regulation, by-law, ordinance, subordinate legislation or legislative instrument in force from time to time to which a party to this agreement is subject;
 - (ii) the common law and the law of equity as applicable to the parties from time to time;
 - (iii) any binding court or tribunal order, judgement or decree;
 - (iv) any applicable industry code, policy or standard enforceable by law; and
 - (v) any applicable determination, direction, policy, rule or order that is binding on a party and that is made or given by any regulatory or quasi-regulatory body having jurisdiction over a party or any of that party’s assets, resources or business.
 - (d) “PRDE” means the Principles of Reciprocity and Data Exchange, prepared by the Australian Retail Credit Association, in the form in which they are in effect; and
 - (e) “Tier Level” means a level for the supply by a credit reporting body to a credit provider of credit reporting information and the contribution by a credit provider to a credit reporting body of credit information, as follows:
 - (i) “Negative Information” means (i) credit information about an individual other than consumer credit liability information (CCLI) or repayment history information (RHI); and (ii) CP derived information and CRB derived information which is not derived wholly or partly from CCLI or RHI;
 - (ii) “Partial Information” means (i) credit information about an individual other than RHI; and (ii) CP derived information and CRB derived information which is not derived wholly or partly from RHI; and
 - (iii) “Comprehensive Information” means credit information, CP derived information and CRB derived information about an individual.

2. Supply of our information services

- 2.1 We will supply our information services to you after we accept your request for the particular services.
- 2.2 Where we supply our information services to you online, the services are supplied over communication links and other networks, and the availability of the services rely on the availability of those links and networks. While we will do our best to make sure the online information services are available, we are not responsible if the links or networks are unavailable at any time, and we do not guarantee that services supplied online will be continuously available.
- 2.3 If we have given you a timetable or time estimate for providing our information services, we will use reasonable endeavours to meet that timetable or time estimate. We will let you know if we require you to take any action to assist us to meet the timetable or time estimate and will seek agreement from you before any action is undertaken.
- 2.4 You agree to comply with this agreement and follow any procedures and other instructions we provide when you use our information services, for example our Default Information Guide and instructions in documentation as to how to treat certain information. If we change any of our procedures or instructions, or if we introduce new ones and we think those changes will affect you, we will let you know in reasonable time taking into account the nature of those changes.

- 2.5 To access our services by direct link you will need to ensure that your system complies with our most up to date version of our system specifications to allow direct linking. You are responsible for any system changes you need to make and agree to make those changes within 6 months of us notifying you of a new version.
- 2.6 You agree to make available to us one contact person within your organisation or one contact for each branch of your organisation (and to notify us if they leave). That person will be responsible for liaising with us about the requirements of this agreement.
- 2.7 You agree to keep any username, password or other identifiers we give you to use our information services confidential and secure and to manage your users' access to our services. You agree that any identifiers we give you will not be transferred between users or disclosed to any third party and you will tell us if they are no longer required. You are responsible for all use of those identifiers. If we ask you to, you agree to stop using those identifiers or use any replacement identifiers we give you.

3. Your use of our information services

- 3.1 You can only use the reports and information we supply you for your own internal business use and for the purpose that we supply them for. You must not re-sell, re-package or otherwise re-use our information in any other way.
- 3.2 If we deliver reports electronically, you can save them onto your system, or print them for your file. If you access our services by direct link and we deliver information to you by a stream of data you can copy the information onto your system and reprocess it, for example as part of your credit approval process. You agree that you will not reproduce, modify or adapt our reports and information in any other way.
- 3.3 We have copyright in the compilation of the information we use to supply our information services to you, and in the reports we supply to you when you use our information services.
- 3.4 We have developed information technology, software and documentation that we may use to provide the information services to you, and we have copyright and other rights in those items. You agree that you will not copy them, modify them, adapt them, reverse engineer them or infect them with viruses.

4. Information we collect from you

- 4.1 This section 4.1 only applies to you if you are a credit provider (by assignment or otherwise) under the Privacy Act or a debt collector. In return for using our Equifax consumer and/or commercial credit reporting services:
 - (a) you must give us all default information you are permitted to provide to us under the Privacy Act and other relevant Laws. You must do so as soon as possible;
 - (b) before you give us the default information (excluding for the purposes of this sub-clause (b) only serious credit infringements) you must take steps to recover the amount and to notify the debtor in writing that the default information is to be given to us and that we will supply it to other customers when they use our information services;
 - (c) you must update the default information you have given us as soon as practicable and no later than within 32 days of any change (to the extent permitted by the Privacy Act) so that the default information we hold remains accurate, up to date, complete and relevant; and
 - (d) if you breach this section 4.1 or sections 5.8(e) or (f) below, then we may provide you with notice in writing and you will have 30 days to rectify the breach. If the breach is not rectified within this period then we may in our discretion, and without limiting our other rights and remedies:
 - (i) remove from our services all default information (other than your own default information) on enquiries by you for those portfolios in respect of which you have breached the relevant section;
 - (ii) if you have nominated a Tier Level of Partial Information or Comprehensive Information under section 5.8 below, move you to a lower Tier Level, which shall be deemed to be your nominated Tier Level;
 - (iii) suspend or terminate our services to you; and/or
 - (iv) publish your failure to satisfy the requirements of the relevant section.
- 4.2 We collect information from you when you request our information services, such as the information you enter in a search enquiry. You acknowledge that the quality of our services and information returned to you relies on the information you provide us in your request for the particular service. You agree to provide any notifications to individuals or obtain any consents that are required under the Privacy Act before you request our information services.
- 4.3 Once you give information to us, we can use that information to supply our information services to you and others, and as otherwise permitted by the Privacy Act. You grant to us a non-exclusive, perpetual, irrevocable, transferable, royalty-free licence to use and sublicense the whole or any part of that information for those purposes. You warrant that your provision of information and the use by us of that information in accordance with this agreement will not infringe the intellectual property rights or other rights of any person. Because our information services rely on the information we collect, we do not usually remove any information from our systems, subject to our obligations under the Privacy Act. Information is updated where it is proven (to our satisfaction) not to be accurate, up to date or complete.
- 4.4 You agree to make sure that all the information you give us is accurate, up to date, complete and not misleading.

5. Our consumer credit reporting services

5.1 This section 5 only applies to you if you use our Equifax consumer credit reporting services, in addition to section 4.

5.2 If you use our consumer credit reporting services you agree:

- (a) that your use of the services is governed by the Privacy Act and that we can only let you use the service if we believe, on reasonable grounds, we are allowed to under the Privacy Act;
- (b) to tell us the purpose for which you will use the services for (and tell us if that purpose changes) and to only use the services for the purpose that we approve; and
- (c) to not knowingly request information from us where the disclosure of the information requested would contravene section 20F or any other section of the Privacy Act or other legislation as applicable.

5.3 You agree to ensure that credit information you disclose to us is accurate, up-to-date and complete, and to protect credit reporting information disclosed to you under Part IIIA of the Privacy Act from misuse, interference and loss, and from unauthorised access, modification or disclosure in compliance with section 20N and section 20Q of the Privacy Act respectively and any other relevant or applicable standard.

5.4 You agree to co-operate upon request by us in the conduct of audits in accordance with applicable Law, relating to your compliance with section 5.3 above and the steps you take in relation to requests to correct credit reporting information or credit eligibility information required by the Privacy Act; to provide access to your systems and documentation to enable an independent person approved or nominated by us, acting reasonably, to conduct those audits at your expense; and to provide us with the outcome of those audits.

5.5 You agree to co-operate with us and to deal with and address any suspected breaches arising from those audits.

5.6 Nothing that we do in connection with those audits should be construed as providing legal or compliance advice or any imprimatur in respect of your data management practices or compliance with the Privacy Act. This is and remains your responsibility.

5.7 You acknowledge and agree that:

- (a) our consumer credit reporting services are provided on a reciprocal basis, as set out in this section 5 and section 4;
- (b) in order for a credit provider to receive CCLI or RHI held by us and contributed by a signatory to the PRDE, or any personal information derived from such CCLI or RHI, the recipient credit provider must be a signatory to the PRDE, or a credit provider which is engaged by a signatory credit provider as either an agent or a securitisation entity to assist the credit provider for a securitisation related purpose; and
- (c) in order to receive any RHI held by us, a credit provider must hold an Australian credit licence.

5.8 You agree that if you are a credit provider:

- (a) you must nominate the Tier Level at which you will obtain supply from us of credit reporting information in accordance with this agreement;
- (b) you may nominate a different Tier Level by providing 90 days' prior written notice to us;
- (c) in order to nominate a Tier Level of either Partial or Comprehensive Information, you must have contributed all default information for all consumer credit accounts in accordance with section 4.1(a) of this agreement at the time of such nomination;
- (d) you may only obtain and we will supply our consumer credit reporting services at your Tier Level, provided that if particular services are only available, or only requested by you, at a lower Tier Level, we will supply those services at that lower Tier Level;
- (e) you must contribute credit information to us at your Tier Level:
 - (i) for at least 50% of consumer credit accounts, on and from the date immediately prior to you obtaining supply of our consumer credit reporting services; and
 - (ii) for all consumer credit accounts and portfolios:
 - A. if you are not a signatory to the PRDE, on and from the date which is 12 months from the commencement of supply of our consumer credit reporting services; and
 - B. if you are a signatory to the PRDE, on and from the date which is 12 months from the earlier of your Effective Date and the commencement of supply of our consumer credit reporting services (unless the commencement of supply of our services is more than 12 months after your Effective Date, in which case contribution for all credit accounts and portfolios is on and from the commencement of supply of our services);
- (f) without limiting your obligations under sub-section (e), if and when you nominate a higher Tier Level under this section 5.8, you must contribute credit information at the higher Tier Level:
 - (i) for at least 50% of consumer credit accounts, prior to you obtaining supply of our consumer credit reporting services at the higher Tier Level; and
 - (ii) for all consumer credit accounts and portfolios, within 12 months of nomination of the higher Tier Level; and

- (g) if your Tier Level is comprehensive information, you must subject to sub-sections 5.8(e) and (f), contribute RHI for all credit accounts which are open as at the date at which contribution of RHI by you is first required (First Contribution) under this section 5.8, for a period of three calendar months prior to the date of First Contribution, or alternatively, supply over three consecutive months to then amount to First Contribution by you, and thereafter, all credit accounts and portfolios on an ongoing basis.

5.9 If you are a credit provider that is not a signatory to the PRDE, then:

- (a) our consumer credit reporting services will not include the supply of CCLI or RHI contributed by PRDE signatories, or personal information derived from such CCLI or RHI, as described in section 5.7(b) above;
- (b) our consumer credit reporting services may not include the supply of any CCLI or RHI, or associated derived information. We may in our discretion offer from time to time consumer credit reporting services that include the supply of CCLI and RHI contributed by non - PRDE signatories, and/or derived information. If our consumer credit reporting services you use do not include the provision of CCLI or RHI, your nominated Tier Level shall be deemed to be Negative Information; and
- (c) we encourage you to contribute credit information to us in compliance with the Australian Credit Reporting Data Standards (ACRDS).

5.10 If you are, or become, a signatory to the PRDE, then:

- (a) each party warrants that it has executed and will give effect to the Deed Poll referred to in the PRDE;
- (b) you must contribute credit information to us at your Tier Level, in accordance with section 5.8 and the Participation Level Threshold specified in the PRDE, subject to the materiality exceptions in paragraphs 29 to 33 of the PRDE, and any recommendation by the Industry Determination Group or decision by the Eminent Person as referred to in the PRDE;
- (c) you must:
 - (i) contribute credit information to us in compliance with the ACRDS; or
 - (ii) have engaged us to convert the credit information into an ACRDS-compliant format;
- (d) if you have specified any Designated Entity or Entities in accordance with the PRDE, section 5.8 applies separately in respect of any such Designated Entity or Entities as if each were a separate entity. For the avoidance of doubt, if a Designated Entity is your related body corporate, that Designated Entity is subject as a separate entity to all of the provisions of this agreement and you warrant that you have entered into this agreement on that Designated Entity's behalf;
- (e) each party agrees to comply with its reporting and compliance obligations under Principle 5 of the PRDE, and may disclose information to the extent necessary to comply with those obligations; and
- (f) if and to the extent that there is an inconsistency between a provision of this agreement and a provision in the PRDE, to the extent necessary to resolve the inconsistency, the provision in the PRDE prevails.

5.11 Where you are required to contribute Negative Information for any of the three Tier Levels under section 5.8 above, you must contribute the following types of credit information: (i) identification information; (ii) default information; (iii) payment information; and (iv) new arrangement information.

6. Our charges

6.1 You must pay us:

- (a) any annual fee we charge for any of our information services that you use. We may charge annual fees in advance.;
- (b) our current charges for any information service you use on the basis we set out in our invoice. We will tell you our current charges and fees before you use an information service, for example in our price list or proposal; and
- (c) GST on our fees and charges.

We will send you invoices for all our fees and charges.

6.2 We may change our fees and charges from time to time, upon 30 days prior notice to you.

6.3 If you do not pay us by the due date for payment, we may:

- (a) require you to pay the whole of the amounts outstanding by you to us, which immediately become due and payable;
- (b) require you to pay a late payment fee of 1.5% of the amount outstanding at the due date;
- (c) charge interest on the amount overdue at 2% per month from the due date for payment until the date on which the debt is paid;
- (d) require you to pay us any costs for agents incurred in recovering money you owe us, including commissions and legal costs on a solicitor-client basis; and/or
- (e) list information about the default with any credit reporting body.

6.4 You agree to keep confidential the terms and conditions of supply of our services to you, including our fees, charges and pricing arrangements, under this and any other agreement between us, except to the extent that such terms are generally known to the public, other than as a result of your failure to comply with the obligations of confidentiality in this agreement.

7. Term, termination and suspension

7.1 This agreement continues until either of us terminates it by giving 30 days written notice to the other. Any outstanding charges for our services up to and including the date of termination, will be payable by you upon cancellation

7.2 If this agreement is terminated, sections 3, 4.3, 5.4, 5.5, 6.3, 6.4, 7, 8, and 9 survive termination.

7.3 We may withhold, suspend or terminate any of our information services to you immediately

- (a) if you do not pay our fees and charges for any service, or breach clause 3.1;
- (b) if we reasonably believe you are not complying with any of your other obligations under this agreement or any other agreement you have with us, and this non-compliance is not capable of remedy or, if it is capable of remedy, it is not rectified within 14 days after we have notified you of the non-compliance; or
- (c) if we reasonably believe that you are not complying with your legal obligations in respect of the information that we supply you.

8. Compensation and liability

8.1 When we provide the information services to you, we rely on information provided to us by others. While we always aim to provide quality information to you, you understand that we do not independently check all information supplied to us, or the compilation of information by our systems, and that information may become out of date.

8.2 You understand that you are responsible for assessing the value of the information we provide you, and for the business decisions that you make, regardless of whether you base them on the information we supply.

8.3 To the extent we are able to at Law, we exclude all statutory or implied representations, conditions, warranties and terms relating to the information services or this agreement. We do not exclude any such representations, conditions, warranties or terms to the extent we are prohibited by Law from doing so (including under the Australian Consumer Law).

8.4 We are not liable to you or to anyone else for:

- (a) any loss or damage arising out of, or in connection with, the information we provide to you (including loss of profit, revenue or business or indirect, consequential, special or incidental loss or damage); or
- (b) any indirect or consequential loss or damage arising out of or in connection with this agreement or our services (including loss of profit, revenue or business or special or incidental loss or damage), however such loss, damage or liability arises or might arise (including in contract, tort (including negligence), under statute or in equity) if it were not for this section. Our total aggregate liability for any loss or damage not excluded under this clause 8.4 is limited to the amount of fees and charges paid by you for the information services under this agreement in the 12 months immediately prior to the event giving rise to the liability. This exclusion and limitation do not apply to the extent the Law prohibits us excluding or limiting our liability (including under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law).

8.5 Our total liability for any loss or damage under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law (including under the Australian Consumer Law), is limited to the extent permitted by Law, to us re-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the information service to which your claim relates.

8.6 You indemnify us for any loss we suffer or liability we incur because:

- (a) any information you give us is not accurate, up to date or complete or is otherwise misleading;
- (b) you have not updated default information or credit information you have given us so that the default information or credit information we hold at any given time is not accurate, up to date, or complete or is otherwise misleading; or
- (c) of any misuse of the information services or the information we supply you.

8.7 You agree to provide us with reasonable co-operation (at your own expense) in the handling of disputes, complaints, investigations or litigation involving a third party, that arise as a result of your use of our services including disputes, complaints, investigations or litigation that arises out of or relates to default information or credit information you have given us. Your co-operation includes but is not limited to providing us in a timely manner with relevant documents, access to relevant employees or any other reasonable assistance that may be required in the course of dealing with such matters, and may in some circumstances involve you being joined as a party to any litigation as well as or instead of us.

8.8 In this section 8, references to "we" and "us" include our officers, employees, contractors and agents.

9. General

- 9.1 You agree to comply with the Privacy Act (whether it expressly applies to you or not) and all other Laws that apply to the information that we provide to you or you provide to us, or to your use of our information services (and to maintain documentation to demonstrate your compliance). This includes compliance with the following matters:
- (a) in the case of default information:
 - (i) the debt is not statute barred and that there is no other legal impediment (such as orders or injunctions, final or interlocutory) to the collection of the debt in question; and
 - (ii) the debt has not been sold or assigned prior to listing; and
 - (b) all information provided by you to us has been collected and disclosed to us in accordance with valid consents or notices (including on behalf of us), as required under the Australian Privacy Principles or Part IIIA of the Privacy Act as applicable.
- 9.2 If we ask you to, you agree to provide us, on not less than 5 business days' notice, with access to your systems and/or documentation so that we can check your compliance with this agreement and in some cases aspects of the Privacy Act. You are not required to provide information to us to the extent that doing so would cause you to breach the confidence of a third party or would cause you to breach the Privacy Act.
- 9.3 We may add or withdraw any service and modify or otherwise change any service :
- (a) without notice to you where this is necessary to comply with Law or because of a change of Law, or any other event outside of our reasonable control; and
 - (b) for any reason upon provision to you of not less than 30 days' notice.
- 9.4 We may vary the terms and conditions of this agreement at any time:
- (a) upon provision to you of notice where this is necessary to comply with Law or because of a change of Law; and
 - (b) for any reason upon provision of not less than 30 days' notice to you
- 9.5 Neither of us is liable for a failure or delay in performing an obligation under this agreement to the extent the failure or delay is because of an event beyond our reasonable control. If either of us is affected in this way, each of us will use our reasonable endeavours to minimise delays or interruptions.
- 9.6 Where we have used the word "includes" or "including" or "for example", these words do not have a limiting effect.
- 9.7 Where we have referred to any legislation or a provision of any legislation, it includes that legislation or provision as from time to time re-enacted or otherwise amended.
- 9.8 We will send bills and notices to either the last postal address, fax number or email address you have given to us. You must tell us if you change any contact details.
- 9.9 You agree you will not transfer your rights or obligations under this agreement to any other person without first getting our written consent. We will not unreasonably withhold our consent.
- 9.10 No delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion.
- 9.11 If any term of this agreement is unlawful and unenforceable, it will be severed from this agreement and the rest of this agreement remains in force.
- 9.12 This agreement supersedes any other agreement you have with us for our information services unless we agree otherwise in writing.
- 9.13 This agreement is governed by the Laws of New South Wales and both parties submit to the non-exclusive jurisdiction of the courts of that state