

Creditscan Subscriber Terms and Conditions of Use

By clicking on the "I Agree" option or by using this Web Site you agree to be bound by these Terms and Conditions of Use, as amended from time to time. If you do not agree you may not use the Creditscan Service.

1 Definitions

- 1.1 In these Terms and Conditions of Use the following terms have the meanings assigned to them hereunder, unless the context clearly indicates otherwise:
- 1.1.1 "Commencement Date" means the date on which you were first provided with a Username and Password to access the Creditscan Service;
- 1.1.2 "Confidential Information" means that information belonging to or known by the parties to this Agreement which is not generally in the public domain and which came into being as a result of this Agreement;
- 1.1.3 "Consent" means any freely-given, specific and informed expression of will whereby natural people agree to the processing of personal information relating to them;
- 1.1.4 "Consumer" means a consumer as defined in Section 1 of the NCA;
- 1.1.5 "Consumer Credit Information" means that information as more fully set out in Section 70 of the NCA;
- 1.1.6 "Credit Bureau" means a credit bureau as defined in Section 43 of the NCA and registered as such with the National Credit Regulator of South Africa;
- 1.1.7 "Creditscan" means Creditscan (Pty) Ltd, a company incorporated in terms of the laws of South Africa, registration number 2006/012940/07, having its main place of business at No2A Ashtown Street Oakdale Bellville, South Africa , 7530 which it hereby elects as its domicilium citandi et executandi in terms of these Terms and Conditions of Use.
- 1.1.8 "Creditscan Services" are those information-related services as provided to Subscribers by Creditscan by means of the Web Site or any 3rd party integrated software, as amended from time to time and includes both those services provided for consideration and those services that are free and further includes those information-related services where the source of the information is not a Credit Bureau. Please consult the Web Site for more details;
- 1.1.9 "Credit Repair" shall bear the meaning set out in Notice 169 published in terms of the Consumer Affairs Act, 71 of 1988 (published in Government Gazette No. 18646);
- 1.1.10 "ECT Act" means the Electronic Communications and Transactions Act no25 of 2002;
- 1.1.11 "Force Majeure" means any act of God, strike, riot, war (whether declared or not) embargo, international restriction, shortage of transport facilities, any order of a regulatory authority and the downtime of a communications medium which is not under the control of the party concerned.
- 1.1.12 "NCA" means the National Credit Act no.34 of 2005, as amended;
- 1.1.13 "Prescribed Purpose" or "Enquiry Reason" shall mean those reasons for which Consumer Credit Information may be obtained as set out in the NCA and Regulations as amended from time to time and as explained in the "help on prescribed purposes" web page at <http://www.creditscan.co.za/enquiryreasons.php>;
- 1.1.14 "Primary Contact" means a single natural person that has been appointed by the Subscriber to represent the Subscriber to Creditscan;
- 1.1.15 "Regulations" means those regulations promulgated in terms of the National Credit Act no34 of 2005, as amended;
- 1.1.16 "Subscriber" means the legal entity/individual/s that completed the Subscriber Application Form and includes its agents, employees and assigns;
- 1.1.17 "Terms and Conditions" or "Agreement" means these Subscriber Terms and Conditions of Use as amended from time to time, and includes by reference all other terms and conditions that are contained in other documents or electronic references as mentioned in these Subscriber Terms and Conditions of Use in terms of Section 11(2) and Section 11(3) of the ECT Act;

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- 1.1.18 "Transaction" means each separate time a Subscriber accesses a specific Creditscan Service by means of the Web Site or any 3rd party integrated software. For the sake of clarity it is recorded that repeated access of the same Creditscan Service will result in multiple Transactions;
- 1.1.19 "User" means each natural person who has access to Creditscan Services as enabled by the Subscriber;
- 1.1.20 "Username and Password" means that combination of alphanumeric characters that are unique to each User and are intended to provide a safe and secure way of accessing the Creditscan Services in a manner where the use of the Creditscan Services can be tracked to each User;
- 1.1.21 "Web Site" means <http://www.creditscan.co.za> and includes any derivatives thereof, such as, but not limited to, <http://www.creditscan.co.za>.

2 Preamble

- 2.1 Creditscan provides the Creditscan services to Subscribers for consideration in terms of these Terms and Conditions.
- 2.2 The Subscriber wishes to appoint Creditscan as its agent in order to obtain the Creditscan services and agrees to abide by these Terms and Conditions.

3 Appointment

- 3.1 By completing and signing the Subscriber Application Form - which incorporates these Terms and Conditions - the Subscriber appoints Creditscan as its agent to procure the Creditscan Services. By providing the Primary Contact with a Username and Password Creditscan accepts this appointment.

4 Commencement and Duration

- 4.1 This Agreement will begin on the Commencement Date and will continue indefinitely subject to the rights of either party to terminate this agreement as detailed below.

5 Fees

- 5.1 Each Transaction processed through the Creditscan Web Site is subject to a fee which is paid in arrears or in advance each month and may be paid by any means as set out in the Subscriber Application Form. A monthly service fee of R150.00 is charged if 3rd party software and services are used by the Subscriber or where applicable.
- 5.2 All fees that are payable per Transaction for the Creditscan services by the Subscriber can be obtained on the Web Site and are incorporated herein by reference.
- 5.3 From time to time Creditscan will increase the fees payable for the Creditscan Services and will provide the Subscriber with 7 (seven) calendar days notice of the increase in fees, which notice may be provided electronically.
- 5.4 The Subscriber undertakes to pay all amounts due to Creditscan, without deduction or set-off, within 30 (thirty) calendar days of the date on the invoice provided by Creditscan to the Subscriber.
- 5.5 In the event that the Subscriber is a Juristic Person as defined in Section 1 of the NCA then the following provisions apply:
- 5.5.1 If the payment tendered by the Subscriber is not honoured by the financial institution concerned, the Subscriber shall be liable for an administration fee of R150.00 (two hundred rand) in addition to the fees then due to Creditscan; and
- 5.5.2 If the Subscriber does not pay the amount due in terms of the invoice mentioned in clause 5.4, interest at the rate of 2% (two percent) simple per month will be levied on overdue amounts and this interest will be calculated monthly.
- 5.6 For the sake of clarity if the Subscriber is a natural person then no interest will be levied on overdue amounts, unless legal action has commenced to recover any monies due to Creditscan. If legal action has commenced then the prescribed rate of interest in terms of the Prescribed Rate of Interest Act no.55 of 1975 will apply.
- 5.7 In the event of a change in the rate of Value Added Tax (VAT) or any other charge that is imposed on the Creditscan Services by the South African government or an organ thereof, Creditscan will be immediately entitled to increase the fee per Transaction by the amount that the charge was increased.

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5.8 The Subscriber hereby agrees that it wishes to receive invoices electronically.

Cooling off period not applicable

6.1 The Subscriber hereby agrees that the Creditscan Services may begin within 7 (seven) working days of completing the Subscriber Application Form and thus agrees that the cooling off period as set out in Section 44 of the ECT Act does not apply.

Submission and use of Data sent to Creditscan

7.1 The Subscriber undertakes to ensure that data that is submitted by it and its Users contains the following information in respect of a Consumer:

7.1.1 initials and surname or full names and surname;

7.1.2 South African identity number or if the Consumer does not have an identity number, the passport number and date of birth;

7.1.3 the residential address and telephone number of the Consumer (if known); and

7.1.4 the details of the employer and place of work of the Consumer (if known) and if self-employed or unemployed, a statement to that effect (if known).

7.2 The Subscriber undertakes that any data submitted to Creditscan shall be accurate, up-to-date, relevant, complete and not duplicated.

7.3 The Subscriber undertakes that any data submitted to Creditscan may be utilised by a Credit Bureau as part of its database in the ordinary course of business of a Credit Bureau.

Use of Subscriber Data sent to Creditscan

8.1 The Subscriber acknowledges and agrees that:

8.1.1 The data contained in the Subscriber Application Form may be checked by Creditscan to ensure the accuracy thereof, and that this process may include the obtaining of a credit report on the Subscriber itself;

8.1.2 Creditscan may monitor the Subscriber's payment behaviour by researching its profile at one or more Credit Bureaux;

8.1.3 Creditscan may record and transmit the details of how the Subscriber performs in terms of this Agreement to any Credit Bureau; and

8.1.4 Creditscan may disclose information relating to the Subscriber's use of the Creditscan services to any Credit Bureau or to satisfy any requirement in law or as directed by the National Credit Regulator.

Use of Data sent to a Subscriber

9.1 Any information released by a Credit Bureau via Creditscan to a Subscriber shall in no way be construed as an opinion of the Credit Bureau and/or Creditscan on the solvency, financial standing, creditworthiness, integrity or motives of any party reported upon but merely reflects a recording of information received by the Credit Bureau from various sources from time to time. Use of the recommendations and the information contained within the credit reports requires the use of the Subscriber's skill and judgment. The Subscriber shall be solely liable for all opinions, recommendations, forecasts or comments made or actions taken in connection with the recommendations and information contained in the credit reports.

9.2 The Subscriber undertakes that it will only use the Consumer Credit Information provided by the Credit Bureau via Creditscan for the Prescribed Purpose as indicated to Creditscan by means of the Web Site.

9.3 The Subscriber undertakes that it will obtain the Consent of the Consumer for an enquiry to be made to a Credit Bureau for Consumer Credit Information before the subscriber requests information from Creditscan and/or a Credit Bureau, if such Consent is required by the applicable Prescribed Purpose.

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10 Technical Specifications and Security

- 10.1 While Creditscan uses its best efforts to provide the data related to the Creditscan services as quickly as possible it cannot guarantee the time period within which the data will be provided. Please contact Creditscan if the data that you required was not provided to you within 2 (two) working days.
- 10.2 Creditscan will provide Subscribers with technical specifications from time to time in order to ensure that the security of its system and related systems are not compromised and for operational reasons. The Subscriber undertakes to abide by these technical specifications and to implement them as soon as possible after they have been released by Creditscan. Failure to abide by these technical specifications could result in incorrect data being received and/or submitted by the Subscriber and/or damages sustained by third parties for which the Subscriber will be held strictly liable.
- 10.3 In addition to the technical specifications as mentioned above the Subscriber undertakes to ensure that:
- 10.3.1 The Username and Password of each User is exclusively used by that particular User;
- 10.3.2 Not to provide the Username and Password of any User to any person whatsoever aside from the Primary Contact;
- 10.3.3 It will notify Creditscan as soon as possible after it becomes aware of any security breach;
- 10.3.4 It will notify Creditscan either before or when the Primary Contact ceases to be entitled to represent the Subscriber;
- 10.3.5 It will not tamper with, reverse-engineer or disclose confidential information about the security systems of Creditscan and/or any Credit Bureau; and
- 10.3.6 It will be responsible for the actions of any of the Users that it allowed to have access to Creditscan's Services.

11 Intellectual Property

- 11.1 The Subscriber agrees that:
- 11.1.1 no unauthorised use of Creditscan's and/or the applicable Credit Bureau's intellectual property - which includes its designs, trademarks, copyrighted works or patents - is permitted; and
- 11.1.2 all rights, title and interest in and to the Intellectual Property vests in the Credit Bureau and/or Creditscan, respectively, as appropriate. Nothing in this Agreement transfers ownership in any of the Intellectual Property to any party.

12 Confidentiality and Privacy

- 12.1 The parties hereby warrant that they will not disclose the Confidential Information to any unauthorised third party and will use their utmost efforts and diligence to guard and protect the Confidential Information.
- 12.2 In the event that any Confidential Information is disclosed, whether intentionally, negligently or otherwise, the party who becomes aware of this disclosure will inform the other party in writing as soon as possible.
- 12.3 All payment information and personal information provided to Creditscan is stored electronically and is only able to be accessed by Creditscan's employees and agents. If specifically required Creditscan is obliged to provide personal data to a Credit Bureau/Credit Regulator in order for the Credit Bureau/Credit Regulator to fulfil its functions in terms of the NCA. This information is encrypted and protected by authentication mechanisms to ensure that this information is not disclosed to unauthorised persons.

13 Warranties

- 13.1 Save as specifically set out herein, neither Creditscan nor any Credit Bureaux make any representations and warranties and/or guarantees of whatever nature, whether express, implied in law, or residual, in respect of this Agreement, the Creditscan Services and/or the accuracy or correctness of the reports and/or the recommendations.
- 13.2 The Subscriber hereby warrants that:
- 13.2.1 It will abide by the terms of this Agreement and particular warrants that it will honour the undertakings as set out in this Agreement.

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- 13.2.2 It does not and will not at any time conduct and/or be directly or indirectly involved in the business of Credit Repair;
- 13.2.3 Any data sent to Creditscan is not subject to a duty of confidentiality between the Subscriber and the Consumer; and
- 13.2.4 It will at all times abide by all the applicable legal and/or regulatory requirements and constraints in regard to its access to and use of the Credit Bureau information and services.

14 Indemnity

- 14.1 The Subscriber hereby indemnifies Creditscan and/or the applicable Credit Bureau from any claims of whatever nature arising as a result of any actions taken or reliance made on information provided by Creditscan and the Credit Bureau concerned.
- 14.2 Creditscan and/or the applicable Credit Bureau will not be liable for an actual or contingent loss, liability, expense, costs or damage of whatsoever nature (whether indirect, direct, consequential or otherwise) suffered by the Subscriber as a result of:
- 14.2.1 A breach of this Agreement by the Subscriber;
- 14.2.2 The use of any data provided by Creditscan after the termination of this Agreement;
- 14.2.3 Any mistake, error or omission related to data submitted to or received from Creditscan;
- 14.2.4 Any delay or failure to communicate with Creditscan; and
- 14.2.5 An event of Force Majeure.
- 14.3 Without prejudice to any of the rights of Creditscan or the applicable Credit Bureau at law or in terms of this Agreement, the Subscriber indemnifies Creditscan and the applicable Credit Bureau against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and client and any additional legal costs) and expenses of any nature whatsoever which Creditscan and/or the applicable Credit Bureau may suffer or incur as a result of or in connection with the negligent acts or omissions of the Subscriber in carrying out its obligations in terms of this Agreement.

15 Disclaimer

- 15.1 All information provided to the Subscriber is provided on an "as is" basis. Creditscan does not have control over the data provided to the Subscriber and will not be held responsible for any error or omission related to the data. In addition Creditscan does not warrant that the Creditscan Services will be uninterrupted, error-free, free of viruses or destructive code or that defect will be corrected.

16 Audit

- 16.1 In order to ensure that the Subscriber complies with the terms of this Agreement, Creditscan is required to obtain the Subscriber's consent to audit its books records and systems, which consent the Subscriber hereby provides.
- 16.2 Any audit of the Subscriber's systems will be undertaken solely for the purpose of ensuring compliance with the terms and conditions of this Agreement and such information will be held in confidence unless this information is required to be provided to a Credit Bureau, the National Credit Regulator or to a court of law.
- 16.3 Creditscan may appoint third parties as its representatives and/or agents to conduct the said audit and the result of the audit will be provided to the Subscriber concerned.
- 16.4 Creditscan will pay for the costs of the audit unless the audit reveals that the Subscriber is or was in breach of this Agreement. If the Subscriber is breaching this Agreement or has breached this Agreement then the Subscriber will pay for the full costs of the audit.

17 Force Majeure

- 17.1 In the event that Creditscan, the Subscriber or the Credit Bureau is prevented from carrying out its obligations in terms of this Agreement as a result of Force Majeure, the party that is so prevented will be released from its obligations to the extent and for the duration that the event of Force Majeure exists.

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17.2 Any party that is so prevented by Force Majeure as described above will endeavour to contact the other parties as soon as it is able and inform them of the event that gave rise to the Force Majeure, the expected duration of the Force Majeure and thereafter indicate when the Force Majeure has ceased to apply.

18 Cession

18.1 The Subscriber shall not be entitled to cede or assign any of the rights contained herein without the express written permission of one of the Directors of Creditscan. Creditscan may cede this agreement by providing written notice to you, which notice may be communicated electronically.

19 Legal Costs

19.1 In the event that the Subscriber breaches this agreement, it shall be liable for any legal, professional and/or other costs and/or disbursements (including the costs of any letter of demand, tracing agents fees and collection commissions), that are incurred due to this breach on the scale as between attorney and own client.

20 Termination

20.1 This Agreement may be terminated by the Subscriber or Creditscan by giving the other party 30 (Thirty) calendar days notice of the intention to terminate this agreement or as a result of a breach of this Agreement as described hereunder.

21 Breach of Agreement

21.1 In the event that the Subscriber breaches any term of this Agreement Creditscan will be entitled to cancel this Agreement immediately by notice in writing, without prejudice to any of its other rights and remedies, which include any right to claim damages and indemnification.

22 Entire Agreement and Variation

22.1 This Agreement constitutes the entire Agreement between Creditscan and the Subscriber and supersedes any express or implied oral representation or any advertising by a party. No variation of this Agreement is valid unless reduced to writing and agreed to by a Director of Creditscan.

22.2 Any certificate by a Director of Creditscan, whose appointment, qualification and authority need not be proved, indicating the various versions of this Agreement, will be prima facie proof of the current and previous versions of this Agreement. All versions of this Agreement will be provided to the Subscriber by means of the Web Site.

22.3 Notwithstanding clause 21.1 above, this Agreement may be amended by Creditscan posting an amended Agreement on the Web Site, which shall be deemed to be effective and binding on the parties on the date as set out therein, provided that the date as set out within the Agreement is no earlier than 5 (five) calendar days after the amended Agreement is posted to the Web Site. In the event of a conflict between the terms of the current version of the Agreement and the previous versions of the Agreement as posted on the Web Site, the terms of the current version posted on the Web Site shall prevail.

23 Waiver and Failure to Enforce Rights

23.1 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.

24 Governing Law

24.1 This Agreement shall be construed and governed in accordance with the laws of the Republic of South Africa and the parties submit to the non-exclusive jurisdiction of the High Court of South Africa, Witwatersrand Local Division.

25 General

25.1 The parties undertake to ensure that all necessary resolutions are passed and all documents are signed as is necessary to give proper and due effect to the terms of this Agreement, or any matter arising there from, according to its intent and purpose.

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- 25.2 The expiration or termination of this Agreement shall not affect such of the provision of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 25.3 If any provision of this Agreement is unenforceable or invalid under law, the remaining substance of such provision and remaining provisions of this Agreement shall continue to be binding and in full force and effect provided the essential economic benefits of this Agreement are retained.
- 26 **Contact Information**
- 26.1 The parties choose their contact information and domicilium citandi et executandi as follows:
- 26.1.1 The Subscriber – As found in the Subscriber Application Form;
- 26.1.2 Creditscan– As set out in clause 1.17 of the Subscriber Application Form and the Web Site. In the event of a discrepancy between these details the details as found on the Web Site will prevail.
- 26.2 Either party may vary its domicilium citandi et executandi by providing written notice to the other, which may be provided electronically.
- 26.3 Notwithstanding clause 26.2 Creditscan may require that the Subscriber authenticate this change in domicilium citandi et executandi and contact information by providing proof of the new Subscriber address.

Please note by accepting these terms you in turn agree to terms and conditions of the various Credit Bureau's specified below.

TransUnion Credit Bureau Terms & Conditions
Experian Credit Bureau Terms & Conditions