

ACFE (SA) FORENSIC ENQUIRY SYSTEM CODE OF CONDUCT AND TERMS OF USE

1 INTERPRETATION

In this Code clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention -

- 1.1 an expression which denotes –
 - 1.1.1 any gender includes the other genders;
 - 1.1.2 a natural person includes an artificial or juristic person and vice versa;
 - 1.1.3 the singular includes the plural and vice versa;
- 1.2 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time;
- 1.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Code;
- 1.4 where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Code;
- 1.5 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day;
- 1.6 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.7 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Code may apply or to the laws of which a party may be or become subject;
- 1.8 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s; and
- 1.9 this Code will continue to apply after any expiration or termination of membership or which of

necessity must continue to have effect after such expiration or termination of membership, notwithstanding that the clauses themselves do not expressly provide for this;

1.10 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.10.1 “**ACFE (SA)**” - the Association of Certified Fraud Examiners - South African Chapter (Company Registration Number 1990/014890/08) incorporated under Section 21 of the Companies Act 61 of 1973, as amended;

1.10.2 “**ACFE (SA) Forensic Enquiry System**” - the electronic system developed and owned by TransUnion Credit Bureau via which ACFE (SA) Forensic Enquiry Users will request and receive a Forensic Enquiry;

1.10.3 “**ACFE (SA) Forensic Enquiry Users**” – all registered members of the ACFE (SA) from time to time who are authorised to access the ACFE (SA) Enquiry System for the purposes of requesting and receiving Forensic Enquiries and who for such purpose have concluded a Subscription Agreement with TransUnion Credit Bureau and agreed in writing to be bound by the Code, this authorisation is not automatic and in terms of the Code may be revoked;

1.10.4 “**ACFE (SA) Members**” – all registered members of the ACFE (SA) from time to time;

1.10.5 “**Code**”- means this document headed Code of Conduct and Terms of Use as amended from time to time;

1.10.6 “**Data Provider**” – any person or institution, including national and provincial public entities, the State and organs of State, who supply TransUnion Credit Bureau or the ACFE(SA) with data

1.10.7 “**Forensic Enquiry**” - a forensic report to be used by ACFE (SA) Forensic Enquiry Users for the purposes prescribed in the NCA which enquiry will be generated on request therefore by an ACFE (SA) Forensic Enquiry User, and shall at all times comply with the requirements of lawful use;

1.10.8 “**NCA**” - the National Credit Act No 34 of 2005 and the Regulations promulgated thereunder from time to time;

1.10.9 “**Signature Date**” - the date the member of the ACFE (SA) signs the Code;

1.10.10 “**Steering Committee**” – the committee appointed for the purposes of defining and approving all strategic matters concerning the ACFE (SA) Enquiry System;

1.10.11 “**Subscription Agreement**” - the subscription agreement to be concluded between TransUnion Credit Bureau and ACFE (SA) Members prior to such member being entitled to

request and use a Forensic Enquiry;

1.10.12 **“TransUnion Credit Bureau”** - TransUnion Credit Bureau (Pty) Ltd (Company Registration Number 2004/007773/07) duly registered in terms of the NCA with the National Credit Regulator under NCR Registration No. NCRCB4.

2 INTRODUCTION

- 2.1 The ACFE (SA) have been in existence since 1998. The Association of Certified Fraud Examiners is an international, professional organisation dedicated to fighting fraud and white-collar crime. As fraud becomes increasingly more prevalent and complicated in the 21st century, the Association of Certified Fraud Examiners continually researches and develops new publications, self-study products, and cutting-edge fraud training designed to educate and prepare fraud examiners for the challenges they face. The ACFE (SA) creates a community environment in which local forensic examination practitioners can associate and share information.
- 2.2 TransUnion Credit Bureau is a risk management information provider, and enables access to substantial database's of information relating to individuals and corporate institutions alike;
- 2.3 Various industries have engaged in information sharing initiatives for the purposes of the prevention and detection of fraud.
- 2.4 TransUnion Credit Bureau together with the ACFE (SA) has developed a solution whereby ACFE Forensic Enquiry Users are able to request, access and use certain types of data held in closed user group databases (“forensic data”), for the purposes of fraud prevention and detection. These databases are managed by TransUnion Credit Bureau on behalf of Data Providers alternatively, managed and owned by Data Providers independently of TransUnion Credit Bureau.
- 2.5 ACFE Members who wish to access the forensic data and received a Forensic Enquiry may only do so if they have –
 - 2.5.1 entered into a Subscriber Agreement with TransUnion Credit Bureau; and
 - 2.5.2 agreed to be bound by and adhere to the Code; and
 - 2.5.3 been approved by the ACFE (SA) to request, access and use the forensic data and the ACFE (SA) Forensic Enquiry System,
- 2.6 This Code sets out inter alia –
 - 2.6.1 the purpose for which and how the ACFE (SA) Forensic Enquiry System may be used and accessed;
 - 2.6.2 the type of forensic data that may be accessed;

2.6.3 levels of membership; and

2.6.4 governance.

3 REGULATION OF ACCESS TO THE ACFE (SA) FORENSIC ENQUIRY SYSTEM

- 3.1 Due to the nature of the forensic data, access to such data will be allowed according to levels of membership within the membership of ACFE (SA);
- 3.2 The ACFE (SA) Member shall adhere to the protocol issued by the ACFE (SA) defining the process to be followed for obtaining access to the forensic data and the ACFE (SA) Enquiry System.
- 3.3 Vetting of membership and the right to request a Forensic Enquiry will be determined by the ACFE (SA) and TransUnion Credit Bureau, in their sole discretion.
- 3.4 Membership of the ACFE (SA) does not automatically qualify an ACFE Member to become an ACFE (SA) Forensic Enquiry User who has access to a Forensic Enquiry.
- 3.5 The ACFE (SA) Member shall not amend, modify, alter, sell transfer, let, licence, transmit or otherwise distribute the Forensic Enquiry or any information contained therein.
- 3.6 The ACFE (SA) Member acknowledges that the forensic data and all information in the Forensic Enquiry shall be selected by the ACFE (SA) and TransUnion Credit Bureau and that the information may be obtained from Data Providers.
- 3.7 The ACFE (SA) Member shall comply with all statutes, regulations and provisions relating to the Forensic Enquiry and shall dispose of information contained in the Forensic Enquiry in the manner and when required in terms of any statutes, regulations or provisions.

4 STEERING COMMITTEE

- 4.1 The steering committee shall comprise at least 3 representatives of ACFE (SA) and 2 representatives of TransUnion Credit Bureau.
- 4.2 The Steering Committee shall meet at least monthly at a destination as agreed by the Steering Committee one week prior to the meeting.
- 4.3 A quorum for meetings of the Steering Committee shall be 2 members of which 1 shall be representative of the ACFE (SA) and 1 shall be representative of TransUnion Credit Bureau.
- 4.4 No resolution or decision of the Steering Committee shall be effective unless the unanimous decision of the members of the Steering Committee present at the meeting has been obtained. A representative of TransUnion Credit Bureau and the ACFE (SA) shall be present or represented at

each Steering Committee meeting.

4.5 The chairperson will be elected at each steering committee meeting. The participating industries may nominate one senior executive as a representative to the Steering Committee whose role will include championing the project within their environment.

4.6 The Steering Committee is mandated to –

4.6.1 champion and promote information sharing within the various Industries, with the guiding objective of preventing fraud and improving risk management;

4.6.2 define and approve all strategic matters concerning the initiative contemplated in 2.

5 INFORMATION SHARING

5.1 The ACFE (SA) Member acknowledges that the Forensic Enquiry contains information from public records and various other sources which neither TransUnion Credit Bureau nor the ACFE (SA) controls and which have not been verified unless otherwise indicated. Any information released in terms of a Forensic Enquiry shall in no way be construed as an opinion of TransUnion Credit Bureau or the ACFE (SA) on the solvency, financial standing, creditworthiness, integrity or motives of any party reported upon. TransUnion Credit Bureau and the ACFE (SA) make no representations and give no warranties and/or undertakings of whatever nature, whether express or implied in law, or residual in relation to the Forensic Enquiry or as to the accuracy or correctness of the Forensic Enquiry. Use of the Forensic Enquiries requires the ACFE (SA) Member to use his/her/its own skill and judgment.

5.2 The ACFE (SA) Member shall –

5.2.1 not rely solely on the Forensic Enquiry when conducting an investigation or carrying out any fraud investigation or fraud prevention activities. Any information released by TransUnion Credit Bureau (including but not limited to any information contained in or in any way related to a Forensic Enquiry) shall in no way be construed as an opinion of TransUnion Credit Bureau on the solvency, financial standing, creditworthiness, integrity or motives of any party reported upon but merely reflects a recording of information from various sources from time to time. Use of the Forensic Enquiry and any other information as aforesaid requires the ACFE (SA) Forensic Enquiry User to use his/her/its own skill and judgment. The ACFE (SA) Forensic Enquiry User shall be solely liable for all opinions, recommendations, forecasts or comments made or actions and decisions taken in reliance on a Forensic enquiry, and indemnifies the ACFE (SA) against any claim whatsoever arising out of the usage of information so obtained;

5.2.2 comply with all the any terms and conditions issued as per the agreements pertaining to the access to and use of forensic data from the various Data Providers;

5.2.3 not disclose a forensic enquiry to any third party, unless it has obtained the prior written consent of the Steering Committee;

- 5.2.4 co-operate with other ACFE (SA) Forensic Enquiry Users with regard to investigations related to the data obtained from Forensic Enquiries.

6 ACKNOWLEDGEMENTS AND UNDERTAKINGS

The ACFE (SA) Member acknowledges and agrees that:

- 6.1 his/her/its right to request and receive a Forensic Enquiry is dependent on his/her/its persisting membership of the ACFE (SA);
- 6.2 he/she/it shall at all times adhere to the Code;
- 6.3 he/she/it shall at all times comply with the provisions of the NCA in accessing and using the forensic data contained in the Forensic Enquiry and that in this regard, such data will be used exclusively for the purposes of fraud detection, fraud prevention and fraud management and for purposes of considering a candidate for employment in a position that requires trust and honesty and entails the handling of cash and finances, provided the consent of the employee in question has been obtained by the subscriber;
- 6.4 he/she/it will not use the Forensic Enquiry and any of the forensic data contained therein for a purpose other than as set out in the Code of Conduct, including any purpose that may result in any liability for ACFE (SA), TransUnion Credit Bureau or any third party provider of the forensic data;
- 6.5 he/she/it will make a resource available, to address and resolve issues and queries in respect of the initiative contemplated in paragraph 2.4;
- 6.6 provide quarterly feedback to the Steering Committee on the effectiveness of the Forensic Enquiry initiative contemplated herein.

7. PARTICIPATION

- 7.1 Utilisation of the Forensic Enquiry for any purposes other than that defined as in this Code will be deemed a breach of the Code. Access shall be suspended and the breach shall be brought to the attention of the Steering Committee to determine the appropriate action, which may include permanent suspension or expulsion from participation.
- 7.2 ACFE (SA) Forensic Enquiry Users agree that access to the data in the Forensic Enquiry and management of such data will be strictly controlled and limited in accordance with the requirements of the ACFE and TransUnion Credit Bureau from time to time.

8 INTELLECTUAL PROPERTY

- 8.1 The ACFE (SA) Member acknowledges that any and all intellectual property rights in, relating to, used

or embodied in, or in connection with the Forensic Enquiry and the ACFE (SA) Forensic Enquiry System remain the property of TransUnion Credit Bureau or its content providers, as the case may be.

- 8.2 The ACFE (SA) Member shall not modify, alter or combine any of the information contained in a Forensic Enquiry delivered in terms of this Code and any such modification, alteration or combination would constitute an infringement of the intellectual property rights of the ACFE (SA) or TransUnion Credit Bureau, its content provider or any Data Providers.
- 8.3 Neither the ACFE (SA) nor TransUnion Credit Bureau shall have any liability to the ACFE (SA) Forensic Enquiry User if any intellectual property infringement and resultant claim is based upon the use of the Forensic Enquiry or ACFE (SA) Enquiry System in a manner not expressly authorised by this Code.
- 8.4 The ACFE (SA) Member hereby indemnifies the ACFE (SA) and TransUnion Credit Bureau from any loss, costs or expenses suffered or incurred in connection with any claim, suit or proceeding brought against the ACFE (SA) and/or TransUnion Credit Bureau insofar as it is based on a claim that the supply, access, use of the Forensic Enquiry delivered in terms of this Code, and modified, or altered or combined with other information by the ACFE (SA) Member, constitutes an infringement because of such modification, alteration or combination.

9 REPRESENTATIONS AND WARRANTIES OF THE ACFE (SA) MEMBER

The ACFE (SA) Member warrants and represents that:-

- 9.1 it has authority to enter into the Code and to fully perform its obligation under hereunder;
- 9.2 it shall at all times continue to comply with all statutes, regulations and provisions, as well as the conditions, standards and requirements prescribed by any competent authority which may be applicable from time to time in respect of the information in the Forensic Enquiry;
- 9.3 It shall not divulge the information contained in the Forensic Enquiry to any third party.
- 9.4 It shall secure the information received in the Forensic Data in accordance with the requirements of TransUnion Credit Bureau.
- 9.5 it shall not do or omit to do anything which may cause the ACFE (SA) any harm or loss, including but not limited to any injury to the reputation of or goodwill of the ACFE, TransUnion Credit Bureau and/or Data Providers;
- 9.6 it shall use its best endeavors to provide any assistance as may be requested by the ACFE (SA) upon the happening of any event referred to in clause 9.5 above

10 REPRESENTATIONS AND WARRANTIES OF THE ACFE (SA)

Neither TransUnion Credit bureau nor the ACFE (SA) makes any representations nor give any warranties or guarantees of any nature whatsoever in relation to a Forensic Enquiry or the ACFE (SA) Forensic Enquiry System

11 EXCLUSION OF LIABILITY

11.1 Neither the ACFE (SA) nor TransUnion Credit Bureau and/or third parties shall be liable for any loss, liability, damage or expense of whatsoever nature suffered by an ACFE (SA) Forensic Enquiry User and/or any third party providers as a result of, or which may be attributable to or caused by -

11.1.1 the breach by the ACFE (SA) Forensic Enquiry User of any of its obligations as set out in the Code;

11.1.2 the negligent acts or omissions of the ACFE (SA) Forensic Enquiry User, its employees, agents, representatives (whether or not authorised) and/or sub-contractors;

11.1.3 the use by the ACFE (SA) Forensic Enquiry User or any third person of a forensic enquiry;

11.1.4 any mistake, error or omission in a forensic enquiry;

11.1.5 any delay in delivering or in any manner communicating a forensic enquiry to the ACFE (SA) Forensic Enquiry User.

11.2 Neither TransUnion Credit Bureau or The ACFE (SA) shall not under any circumstances whatsoever be liable for any consequential damages suffered by the ACFE (SA) Forensic Enquiry User including but not limited to loss of property, profit, business, revenue, goodwill or anticipated savings.

12 ARBITRATION

12.1 In the event of any dispute or difference arising between the parties relating to or arising out of this Code, including the implementation, execution, interpretation, rectification, termination or cancellation of this Code, the dispute shall in the first instance be referred to the steering committee for resolution. In the event of the dispute not having been resolved within seven business days of the date of such referral (or such longer period as the parties may agree in writing), the dispute or difference will be referred for arbitration to the Arbitration Foundation of South Africa ("AFSA") in terms of AFSA's arbitration rules for the time being in force.

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

12.3 Each of the parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings -

12.3.1 shall be final and binding on each of them; and

12.3.2 will be carried into effect; and

12.3.3 be made an order of any court to whose jurisdiction the parties are subject.

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

13 **APPLICABLE LAW AND JURISDICTION**

13.1 The parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court (formally known as the Witwatersrand Local Division of the High Court of the Republic of South Africa) for the purpose of all or any legal proceedings arising from or concerning this Code.

13.2 This Code (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the parties in terms of and arising out of the conclusion, breach and termination of the provisions of this Code) shall be interpreted and governed in all respects by the laws of the Republic of South Africa.

14 **FORCE MAJEURE**

14.1 Neither the ACFE (SA) nor TransUnion Credit Bureau shall be liable to the ACFE (SA) Forensic Enquiry User for any default or delay in performance as a result of an event of force majeure.

14.2 An "event of force majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of either Transunion Credit Bureau or the ACFE (SA) including vis major, casus fortuitus, any act of God, strike, theft, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, international restrictions, any requirement of any international authority, the downtime of any telecommunications line, any requirement of any government or other competent local authority, any court order, export control and shortage of transport facilities.

15 **DOMICILIUM AND NOTICES**

15.1 The chosen domicilium citandi et executandi ("domicilium") for all purposes relating to this Code, including the giving of any notice, the payment of any sum, the serving of any process, is as follows –

15.1.1 ACFE (SA) MEMBER

physical -

postal -

facsimile -

Attention -

15.1.2 ACFE (SA)

physical - 7 Queen Wilhelmina Rd
Muckleneuk
Pretoria

postal - P.O. Box 36799
Menlo Park
0102

facsimile - (012) 344 - 6486

Attention - the Chief Executive Officer

15.2 Either party shall be entitled from time to time by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium to any other facsimile number.

15.3 Any notice given or payment made by either party to the other ("addressee"), which is –

15.3.1 posted by pre-paid registered post to the addressee's postal domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the second business day after the date of delivery;

15.3.2 delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery;

15.3.3 delivered by courier between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee on the second business day after the date of delivery.

15.4 Any notice given by either party to the other which is successfully transmitted by telefacsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

- 15.5 This clause 15 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 15.
- 15.6 Any notice in terms of or in connection with this Code shall be valid and effective only if in writing and if received or deemed to be received by the addressee.
- 15.7 The term "writing" or "written" in this 15 excludes "data messages" as defined in the Electronic Communication Act of 2002.

For and on behalf of the Member
Who warrants that he/she is authorised to do so.

DATE: _____

(Name in block letters)

(Capacity)

PLACE: _____