

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**Amendment No. 3
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Upstart Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7389
(Primary Standard Industrial
Classification Code Number)

46-4332431
(I.R.S. Employer
Identification Number)

Upstart Holdings, Inc.
2950 S. Delaware Street, Suite 300
San Mateo, California 94403
(650) 204-1000
(Address, including zip code, and telephone number, including
area code, of registrant's principal executive offices)

Dave Girouard
Chief Executive Officer
Upstart Holdings, Inc.
2950 S. Delaware Street, Suite 300
San Mateo, California 94403
(650) 204-1000
(Name, address, including zip code, and telephone number, including
area code, of agent for service)

Copies to:

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**Approximate date of commencement of proposed sale to the public:
As soon as practicable after this registration statement becomes effective.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant will file a further amendment which specifically states that this Registration Statement will thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement will become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 3 ("Amendment No. 3") to the Registration Statement on Form S-1 (File No. 333-249860) of Upstart Holdings, Inc. (the "Registration Statement") is being filed solely for the purpose of including certain exhibits to the Registration Statement as indicated in the Exhibit Index contained in Part II of this Amendment No. 3 and amending Item 15 of Part II of the Registration Statement. This Amendment No. 3 does not modify any provision of the prospectus that forms a part of the Registration Statement. Accordingly, the prospectus has been omitted.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth all expenses to be paid by us, other than underwriting discounts and commissions, upon completion of this offering. All amounts shown are estimates except for the SEC registration fee, the FINRA filing fee and the exchange listing fee.

| | Amount to be Paid |
|-----------------------------------|----------------------------------|
| SEC registration fee | \$ 33,166 |
| FINRA filing fee | 46,100 |
| Exchange listing fee | 295,000 |
| Printing and engraving expenses | 500,000 |
| Legal fees and expenses | 3,525,000 |
| Accounting fees and expenses | 4,192,000 |
| Transfer agent and registrar fees | 4,000 |
| Miscellaneous expenses | 317,000 |
| Total | <u>\$ 8,912,266</u> |

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors, and other corporate agents.

We have adopted an amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, and which will contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to our company or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

In addition, we have adopted amended and restated bylaws, which will become effective immediately prior to the completion of this offering, and which will provide that we will indemnify, to the

fullest extent permitted by law, any person who is or was a party or is threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was one of our directors or officers or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. Our amended and restated bylaws will provide that we may indemnify to the fullest extent permitted by law any person who is or was a party or is threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was one of our employees or agents or is or was serving at our request as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Our amended and restated bylaws will also provide that we must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

Further, we have entered into indemnification agreements with each of our directors and executive officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements require us, among other things, to indemnify our directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require us to advance all expenses incurred by the directors and executive officers in investigating or defending any such action, suit or proceeding. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions that will be included in our amended and restated certificate of incorporation, amended and restated bylaws, and the indemnification agreements that we have entered into with our directors and executive officers may discourage stockholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and executive officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law.

Certain of our non-employee directors may, through their relationships with their employers, be insured or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

The underwriting agreement filed as Exhibit 1.1 to this registration statement will provide for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act or otherwise.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES.

Since January 1, 2017, we have issued the following unregistered securities:

Convertible Promissory Note Issuances

In September 2017, we issued subordinated convertible notes in the aggregate principal amount of \$20.0 million in a private placement. We refer to these notes as the 2017 convertible notes. The 2017 convertible notes accrued interest at a rate equal to 8.0% per year. Each of these notes was converted on June 30, 2018 into shares of our Series C-1 preferred stock.

Warrant Issuances

In July 2017, we issued a warrant to purchase a total of 31,554 shares of common stock to one accredited investor at an exercise price of \$1.35 per share.

In September 2017, we issued warrants to purchase a total of 830,468 shares of preferred stock to two accredited investors at an exercise price of \$3.612413 per share. Each of these warrants was terminated on June 30, 2018.

In October 2018, we issued warrants to purchase a total of 150,000 shares of common stock to two accredited investors at an exercise price of \$2.16 per share.

Preferred Stock Issuances

From January 2017 through February 2017, we sold an aggregate of 307,825 shares of our Series C-1 convertible preferred stock to 3 accredited investors at a purchase price of \$3.612413 per share, for an aggregate purchase price of \$1.1 million.

From December 2018 to March 2019, we sold an aggregate of 5,788,697 shares of our Series D convertible preferred stock to 4 accredited investors at a purchase price of \$9.000295 per share, for an aggregate of \$54.1 million.

In November 2020, we sold 600,208 shares of our Series B convertible preferred stock to one accredited investor at a per share exercise price of \$0.01 pursuant to an exercise of a warrant.

Common Stock Issuances

In September 2020, we sold 282,750 shares of our common stock to an accredited investor, as part of a strategic transaction.

From January 1, 2017 through December 3, 2020, we issued to our directors, officers, employees, consultants and other service providers an aggregate of 1,602,219 shares of our common stock upon the exercise of options under our equity compensation plans at exercise prices ranging from \$0.15 to \$8.88 per share.

Option Issuances

From January 1, 2017 through the filing date of this registration statement, we granted to our directors, officers, employees, consultants, and other service providers options to purchase an aggregate of 15,362,417 shares of our common stock under our equity compensation plans at exercise prices ranging from approximately \$1.35 to \$20.23 per share.

We believe the offers, sales, and issuances of the above securities were exempt from registration under the Securities Act (or Regulation D or Regulation S promulgated thereunder) by virtue of Section 4(a)(2) of the Securities Act because the issuance of securities to the recipients did not involve a public offering, or in reliance on Rule 701 because the transactions were pursuant to compensatory benefit plans or contracts relating to compensation as provided under such rule. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us. The sales of these securities were made without any general solicitation or advertising.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a) *Exhibits.*

See the Exhibit Index immediately preceding the signature page hereto for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated herein by reference.

(b) *Financial Statement Schedules.*

All financial statement schedules are omitted because the information called for is not required or is shown either in the consolidated financial statements or in the notes thereto.

ITEM 17. UNDERTAKINGS.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|--|
| 1.1# | <u>Form of Underwriting Agreement.</u> |
| 3.1# | <u>Amended and Restated Certificate of Incorporation of the registrant, as amended by a certificate of amendment dated November 30, 2020, as currently in effect.</u> |
| 3.2# | <u>Form of Amended and Restated Certificate of Incorporation of the registrant, to be in effect upon completion of this offering.</u> |
| 3.3# | <u>Bylaws of the registrant, as amended, as currently in effect.</u> |
| 3.4# | <u>Form of Amended and Restated Bylaws of the registrant, to be in effect upon completion of this offering.</u> |
| 4.1# | <u>Form of common stock certificate of the registrant.</u> |
| 4.2# | <u>Amended and Restated Investors' Rights Agreement among the registrant and certain holders of its capital stock, amended as of December 31, 2018.</u> |
| 4.3# | <u>Form of warrant to purchase Series B preferred stock.</u> |
| 4.4# | <u>Form of warrant to purchase common stock.</u> |
| 5.1# | <u>Opinion of Wilson Sonsini Goodrich & Rosati, P.C.</u> |
| 10.1+# | <u>Form of Indemnification Agreement between the registrant and each of its directors and executive officers.</u> |
| 10.2+# | <u>Upstart Holdings, Inc. 2020 Equity Incentive Plan and related form agreements.</u> |
| 10.3+# | <u>Upstart Holdings, Inc. 2012 Stock Plan and related form agreements.</u> |
| 10.4+# | <u>Upstart Holdings, Inc. Employee Incentive Compensation Plan.</u> |
| 10.5+# | <u>Upstart Holdings, Inc. 2020 Employee Stock Purchase Plan.</u> |
| 10.6+# | <u>Upstart Holdings, Inc. Executive Change in Control and Severance Policy and related participation agreements.</u> |
| 10.7+# | <u>Upstart Holdings, Inc. Outside Director Compensation Policy.</u> |
| 10.8# | <u>Sub-Sublease Agreement, dated April 1, 2019, between Bay Meadows Station 3 Investors, LLC and Open Text Inc., Snowflake, Inc. and Upstart Holdings, Inc.</u> |
| 10.9# | <u>Amended and Restated Loan and Security Agreement, dated September 5, 2018, between Silicon Valley Bank, Upstart Holdings, Inc. and Upstart Network, Inc. amended as of October 22, 2018, August 14, 2019, June 30, 2020, October 1, 2020, November 3, 2020 and November 25, 2020.</u> |
| 10.10# | <u>Mezzanine Loan and Security Agreement, dated October 22, 2018, between Silicon Valley Bank, Upstart Holdings, Inc. and Upstart Network, Inc. amended as of June 30, 2020 and October 1, 2020.</u> |
| 10.11# | <u>Amended and Restated Revolving Credit and Security Agreement, dated May 22, 2020, between Upstart Loan Trust and Goldman Sachs Bank USA.</u> |
| 10.12# | <u>Revolving Credit and Security Agreement, dated May 23, 2018, between Upstart Warehouse Trust and Deutsche Bank AG, New York Branch, and Wilmington Savings Fund Society, FSB, amended as of August 3, 2018 and July 10, 2020.</u> |

| Exhibit Number | Description |
|----------------|--|
| 10.13#^ | Third Amended and Restated Loan Program Agreement, dated January 1, 2019, between Upstart Network, Inc. and Cross River Bank, amended as of November 20, 2019 and November 25, 2020. |
| 10.14#^ | Third Amended and Restated Loan Sale Agreement, dated January 1, 2019, between Upstart Network, Inc. and Cross River Bank, amended as of November 25, 2020. |
| 10.15#^ | Second Amended and Restated Promotion Agreement, dated November 6, 2020, between Upstart Network, Inc. and Credit Karma Offers, Inc. |
| 10.16^ | Amended and Restated TransUnion Master Agreement for Consumer Reporting and Ancillary Services, dated November 25, 2020, between Upstart Network, Inc. and TransUnion LLC. |
| 10.17^ | Amended and Restated Billing Agent Agreement, dated November 25, 2020, between Upstart Network, Inc. and Trans Union LLC. |
| 21.1# | List of subsidiaries of the registrant. |
| 23.1# | Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm. |
| 23.2# | Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1). |
| 24.1# | Power of Attorney. |

+ Indicates management contract or compensatory plan.

Previously filed.

^ Portions of this exhibit (indicated by asterisks) have been excluded because such information is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Amendment No. 3 to the registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in San Mateo, California, on the 7th day of December, 2020.

UPSTART HOLDINGS, INC.

By: /s/ Dave Girouard
Dave Girouard
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 3 to the registration statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|------------------|
| <u>/s/ Dave Girouard</u> Dave Girouard | Chief Executive Officer and Director (<i>Principal Executive Officer</i>) | December 7, 2020 |
| <u>/s/ Sanjay Datta</u> Sanjay Datta | Chief Financial Officer (<i>Principal Financial Officer</i>) | December 7, 2020 |
| <u>/s/ Natalia Mirgorodskaya</u> Natalia Mirgorodskaya | Corporate Controller (<i>Principal Accounting Officer</i>) | December 7, 2020 |
| * <u>Paul Gu</u> | Director | December 7, 2020 |
| * <u>Mary Hentges</u> | Director | December 7, 2020 |
| * <u>Oskar Mielczarek de la Miel</u> | Director | December 7, 2020 |

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|--|--------------|------------------|
| * _____ Ciaran O'Kelly | Director | December 7, 2020 |
| * _____ Sukhinder Singh Cassidy | Director | December 7, 2020 |
| * _____ Robert Schwartz | Director | December 7, 2020 |
| * _____ Hilliard C. Terry III | Director | December 7, 2020 |
| /s/ Dave Girouard _____ *By: Dave Girouard Attorney-in-Fact | | |

**AMENDED AND RESTATED TRANSUNION MASTER AGREEMENT
FOR CONSUMER REPORTING AND ANCILLARY SERVICES**

This Amended and Restated TransUnion Master Agreement for Consumer Reporting and Ancillary Services (“Agreement”) is made and entered as of this _____ date of 11/25/2020, 2020 (the “Effective Date”), by and between Trans Union LLC, with its principal place of business at 555 West Adams, Chicago, Illinois 60661 (“TransUnion”), and Upstart Network, Inc., with its principal place of business at 2950 South Delaware Avenue, #300, San Mateo, CA 94403 (“Subscriber”).

RECITALS

WHEREAS, TransUnion and Subscriber previously entered into that certain TransUnion Master Agreement for Consumer Reporting and Ancillary Services dated March 20, 2015, including all addenda and amendments entered into from time to time by the parties (the “Existing MSA”); and

WHEREAS, TransUnion and Subscriber wish to amend and restate the Existing MSA in its entirety.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TransUnion and Subscriber hereby agree as follows:

1. **Scope of Agreement.** This Agreement applies to any of those information services which Subscriber may desire to receive from TransUnion and which TransUnion offers to Subscriber. Such information services shall herein be collectively referred to as “Services” and all information derived therefrom shall be collectively referred to as “Services Information”.

Subscriber enters into this Agreement on behalf of itself and its affiliates under common ownership and control, as identified on the attached Exhibit A (“Affiliates”), which may be amended by Subscriber from time to time to add and/or delete Affiliates upon written notice to TransUnion. Subscriber and all said Affiliates shall hereinafter be referred to collectively as “Subscriber”.

This Agreement consists of the general terms and conditions set forth in the body of this Agreement (“General Terms”), Exhibit A (“Affiliates”) and Exhibit B (“Fair Isaac Scores”). If there is a conflict between the General Terms and the terms of Exhibit A, the General Terms shall prevail; if there is a conflict between the General Terms and the terms of Exhibit B, Exhibit B shall prevail solely with respect to the FICO Scores as defined in Exhibit B.

2. **Subscriber’s Business.** Subscriber certifies that the nature of Subscriber’s business is as described by Subscriber in Subscriber’s customer membership materials. Subscriber certifies that Subscriber is not a telephone solicitor doing business in Massachusetts or Connecticut and using the data provided by TransUnion for the initiation of a telephone call or message to encourage the purchase or rental of, or investment in, property, goods or services, that is transmitted to a consumer.
3. **Consumer Reporting Services.**
- 3.1 **Consumer Report Information.** TransUnion makes certain consumer report information services from its consumer reporting database (“Consumer Report Information”) available to its customers who have a permissible purpose for receiving such information in accordance with the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) including, without limitation, all amendments thereto (“FCRA”).
- 3.2 **FCRA Penalties.** THE FCRA PROVIDES THAT ANY PERSON WHO KNOWINGLY AND WILLFULLY OBTAINS INFORMATION ON A CONSUMER FROM A CONSUMER REPORTING AGENCY UNDER FALSE PRETENSES SHALL BE FINED UNDER TITLE 18, OR IMPRISONED NOT MORE THAN TWO YEARS, OR BOTH.
- 3.3 **Subscriber Certifications.** Subscriber certifies that it shall request Consumer Report Information solely for Subscriber’s exclusive one-time use and use such information solely for the permissible purpose(s) set forth below in Sections 3.4 – 3.7, and for no other purpose, subject however, to the additional restrictions set forth herein. If requested by TransUnion, and in addition to the general certification set forth herein, Subscriber agrees to, and shall, individually certify the permissible purpose for each Consumer Report Information it requests. Such individual certification shall be made by Subscriber pursuant to instructions provided from time to time by TransUnion. For purposes of this Agreement, the term “adverse action” shall have the same meaning as that term is defined in the FCRA.

3.4 Consumer Report Information—Permissible Purpose(s):

- In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer.
- In connection with the underwriting of insurance involving the consumer.
- Pursuant to the written authorization of the consumer who is the subject of the Consumer Report Information. Subscriber certifies that each such written authorization will expressly authorize Subscriber to obtain the Consumer Report Information, and will contain at a minimum the subject's name, address, social security number (where available) and signature. Subscriber further agrees to retain copies of all such written authorizations for a minimum of five (5) years from the date of inquiry, and make such written authorizations available to TransUnion upon request. Nothing in this certification, or elsewhere in this Agreement, is intended to allow Subscriber to purchase Consumer Report Information for the purpose of selling or giving the report, or information contained in or derived from it, to the subject of the report, or to any other third party, and Subscriber expressly agrees to refrain from such conduct.
- For employment purposes, in which case Subscriber shall request only a TransUnion service expressly designed for employment purposes ("Employment Report"). Subscriber further certifies that it shall not request an Employment Report unless and subject to the following conditions:
 - A. A clear and conspicuous disclosure is first made in writing to the consumer before the Consumer Report Information is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes;
 - B. The consumer has authorized in writing the procurement of the Employment Report;
 - C. Information from the Employment Report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation;
 - D. The Employment Report will only be used once; and,
 - E. Before taking adverse action in whole or in part based on the Employment Report, Subscriber shall provide the consumer with a copy of the Employment Report and shall provide the consumer with a copy of the consumer's rights, in the format approved by the Consumer Financial Protection Bureau ("CFPB"), which form notice shall be supplied to Subscriber by TransUnion either with each report, or one time in print format, in which case Subscriber agrees to duplicate and provide said form notice to the consumer as required hereunder.
- To use the Consumer Report Information as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of, the credit or prepayment risks associated with an existing credit obligation.
- To use the Consumer Report Information in connection with Subscriber's legitimate business need for the information in connection with a business transaction that is initiated by a consumer.
- To use the Consumer Report Information in connection with Subscriber's legitimate business need for the information to review an account to determine whether the consumer continues to meet the terms of the account.

**** The following certifications are available for use by Government Agencies only ****

- To use the Consumer Report Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status.
- Subscriber is the head of a state or local child support enforcement agency (or state or local government official authorized by the head of such an agency), and on each request the Subscriber certifies that:
 - A. The Consumer Report Information is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;
 - B. The paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with state laws under which the obligation arises (if required by those laws);
 - C. The Subscriber has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and,

- D. The Consumer Report Information will be kept confidential, will be used solely for a purpose described in subparagraph (A) above, and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose;
- Subscriber is an agency administering a state plan under Section 454 of the Social Security Act (42 U.S.C. 654) and will use the information to set an initial or modified child support award.
- 3.5 Account Review/Account Monitoring Certification. In the event that Subscriber requests Consumer Report Information for account review or monitoring purposes, whether batch or on-line, Subscriber shall make such requests solely for review or monitoring of Subscriber's own open accounts and/or closed accounts with balances owing, and for no other purpose. Subscriber shall notify TransUnion in a mutually acceptable format of the review or monitoring methods and criteria desired, and of any desired changes to or deletion of any individual monitoring set, and shall delete individual monitoring sets on any consumers if Subscriber ceases to have a permissible purpose to receive Consumer Report Information on such consumers. When Subscriber requests information as a potential investor or servicer, or current insurer, in connection with a valuation of or an assessment of the credit or prepayment risks associated with an existing credit obligation ("Valuation Account Reviews"), Subscriber shall first obtain the prior written consent of the current account owner or servicer of such accounts and make a copy of such consent available to TransUnion.
- 3.6 Prescreening Certifications. Provided that Subscriber meets all TransUnion reporting requirements for prescreening customers as may be established by TransUnion from time to time, TransUnion, upon request by Subscriber, agrees to extract names from TransUnion's central computer file of credit information, or to screen names of individuals contained on a base list mutually acceptable to TransUnion and Subscriber, in accordance with selection criteria as specified by Subscriber and acceptable to TransUnion ("Prescreen Services"). Prescreen Services may include scores, attributes and/or other appends as mutually agreed. Each such request for prescreened names, including, but not limited to, such criteria associated with each such request, is hereby incorporated into this Agreement by reference.
- 3.6.1 Format and Delivery. TransUnion shall supply, and deliver to Subscriber, such Prescreen Services in the form of prescreened lists ("Prescreened Lists"), in a mutually agreed upon format. TransUnion will be responsible for the computer programming of the selection criteria specified by Subscriber.
- 3.6.2 Third Party Processors. Subscriber shall notify TransUnion, in writing, whether it intends to have a designated third party processor ("Processor") perform further processing of Prescreened Lists to further refine the selection. Upon such notification, TransUnion shall deliver such Prescreened Lists to Subscriber's designated Processor provided said Processor has been approved by TransUnion and has executed an agreement for processing with TransUnion. Subscriber shall so notify TransUnion in writing in conjunction with each prescreen request as to whether Subscriber intends to so utilize Processor. Subscriber certifies that neither the criteria used to select the names nor the tape nor media layout description of the attributes will be disclosed by Subscriber to Processor. Subscriber certifies that it will not request or receive from Processor any names of consumers other than those to which it will make a firm offer of credit or insurance, as defined by the FCRA ("Firm Offer"). Moreover, Subscriber shall require that Processor provide to TransUnion, in a mutually agreed upon format, clearly labeled media identifying all consumers on such refined Prescreened List so that TransUnion can post inquiries to its files on such consumers as required by law. Subscriber shall require that Processor provide such media to TransUnion upon completion of such further processing but in no event later than seventy-five (75) days after Processor's receipt of the media from TransUnion.
- 3.6.3 Subscriber Solicitation and Use of the Prescreened Lists. Except as otherwise mutually agreed, Subscriber will be responsible for preparation of solicitation materials and all other communications to be made with prescreened individuals. Subscriber hereby certifies that it will extend a Firm Offer of credit or insurance to each and every individual named on the Prescreened List, or Processor-refined Prescreened List, and that such offer will not be withdrawn or withheld after the offer is made, except as permitted by the FCRA. Subscriber further agrees to make available to TransUnion upon request a sample or draft of the mail piece or telemarketing script in which the Firm Offer will be made, and TransUnion may refuse to provide Prescreened Lists if TransUnion has a good faith belief that the proposed offer is not a Firm Offer of credit or insurance. However, notwithstanding this right to review the mail piece or script, TransUnion shall have no liability for failure of such mail piece or script to comply with applicable law, including, but not limited to, the FCRA.
- 3.6.4 One Time Use. All information received from Prescreened Services is for Subscriber's exclusive one-time use. Such information shall not be revealed or made available, in whole or in part, to any person except employees of Subscriber or Processor who have a need to know as expressly authorized under this Agreement. In no event shall the Prescreened Services be used for the processing of credit applications or underwriting insurance in the normal course of business. Except solely to the extent necessary to utilize such Prescreened Lists pursuant to the terms and conditions of this Agreement, Subscriber shall not copy the Prescreened Lists, or any portion thereof, without TransUnion's prior written consent, nor grant any other person or entity the right to do so. Moreover, Subscriber is not granted any ownership rights or title to the Prescreened Lists nor to any information contained in any and all such Prescreened Lists.

- 3.7 **Instant Decision Processing.** TransUnion offers a suite of automated instant decision processing tools that: (i) determine whether a consumer qualifies for requested products or service, made available subject to the permissible certifications in Section 3.4, above; (ii) reviews existing customers for possible action on an account, made available subject to Section 3.5, above; or, (iii) performs a prescreen of an individual's consumer credit file against pre-determined credit criteria, made available subject to Section 3.6, above (collectively, "Instant Decision Processing"). When a Subscriber desires to receive any Instant Decision Processing services, the delivery specifications and decision criteria shall be set forth in a separate written Schedule to be attached thereto.
- 3.7.1 TransUnion has developed a service that allows its customers electing Instant Decision Processing services to retrieve, through the Internet, the instant decision screen and Consumer Report Information, if applicable, generated as a result of a previously processed instant credit decision transaction ("Previous Instant Credit Decision"). Consumer Report Information will be limited for decisions relating to prescreening.
- TransUnion may make the Previous Instant Credit Decision available to subscribers electing Instant Decision Processing services. TransUnion, for each individual instant credit decision transaction requested by Subscriber, shall exercise reasonable efforts to retain, on behalf of Subscriber, the Previous Instant Credit Decision which was originally delivered to Subscriber for a period of thirty-five (35) days from such instant credit decision transaction.
- Subscriber hereby represents and warrants that, for each individual instant credit decision transaction for which Subscriber utilized Previous Instant Credit Decision, Subscriber shall use the Previous Instant Credit Decision solely: (i) one time for the specific permissible purpose, pursuant to the FCRA, for which Subscriber requested such individual instant credit decision transaction; and, (ii) solely in conjunction with such particular individual instant credit decision transaction. Subscriber shall not use Previous Instant Credit Decision for any other purpose whatsoever.
- 3.8 **California Certification.** If Subscriber is a retailer who uses Consumer Report Information in connection with in-person credit applications, subject to the California Consumer Credit Reporting Agencies Act and all amendments thereto, then Subscriber shall instruct its employees responsible for receiving in-person credit applications from California consumers, including point of sale applications, to inspect the applicant's photo identification prior to requesting Consumer Report Information. Subscriber shall identify to TransUnion, either by subscriber code or by flag on the affected inquiry when it requests Consumer Report Information for an in-person credit application.
- 3.9 **Vermont Certification.** Subscriber agrees to comply with Vermont law when requesting a consumer report on a Vermont resident. Subscriber expressly agrees to obtain the consumer's consent before requesting a consumer report to the extent and in the manner required by Vermont law.
4. **Ancillary Services.**
- 4.1 **Fraud Prevention Services.** TransUnion offers several fraud prevention services that evaluate inquiry input elements against other input elements and/or against proprietary databases to identify potential discrepancies and/or inaccuracies. Fraud prevention service messages may be delivered with Consumer Report Information as a convenience, but are not part of a consumer's file nor are they intended to be consumer reports. In the event Subscriber obtains any fraud prevention services from TransUnion in conjunction with Consumer Report Information or as a stand-alone service, Subscriber shall not use the fraud prevention services, in whole or in part, as a factor in establishing an individual's creditworthiness or eligibility for credit, insurance, employment, or for any other purposes under the FCRA. Moreover, Subscriber shall not take any adverse action against any consumer that is based in whole or in part on the fraud prevention services. As a result of information obtained from the fraud prevention services, it is understood that Subscriber may choose to obtain additional information from one or more additional independent sources. Any action or decision as to any individual, which is taken or made by Subscriber based solely on such additional information obtained from such additional independent source(s) shall not be deemed prohibited by this paragraph.
- 4.2 **Reference Services.**
- 4.2.1 TransUnion offers a suite of reference services from sources other than its Consumer Reporting Database ("Non-CRD Reference Services"), which it may make available to Subscriber under the terms of this Agreement. Subscriber shall not use Non-CRD Reference Services for marketing purposes without the prior written consent of TransUnion.

- 4.2.2 TransUnion also offers the suite of reference services from its Consumer Reporting Database (“CRD Reference Services”). If Subscriber desires to receive CRD Reference Services, Subscriber hereby certifies that the specific purpose(s) for which the CRD Reference Services will be requested, obtained and used by Subscriber is one or more of the following uses as described in, and as may be interpreted from time to time, by competent legislative, regulatory or judicial authority, and as being encompassed by Section (6802)(e) of the Gramm-Leach-Bliley Act, Title V, Subtitle A, Financial Privacy (15 U.S.C. § 6801-6809) (“GLB”) and the United States Federal Trade Commission rules promulgated thereunder. Subscriber shall not request, obtain or use such CRD Reference Services for any other purpose.
- As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer;
 - As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with maintaining or servicing the consumer’s account with Subscriber and Subscriber is a financial institution;
 - With the consent or at the direction of the consumer;
 - To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
 - For use solely in conjunction with a legal or beneficial interest held by Subscriber and relating to the consumer; or,
 - For use solely in Subscriber’s fiduciary or representative capacity on behalf of the consumer.
- 4.2.3 For purposes of this Agreement, the term “Reference Services” shall be deemed to include both Non-CRD Reference Services and CRD Reference Services. Subscriber shall not take any adverse action against any consumer that is based in whole or in part on the Reference Services.
- 4.3 Depersonalized Data Services. From time to time, Subscriber may desire to obtain depersonalized data (“Data Services”) identified in a Data Services request form or other mutually agreed upon document signed by an authorized representative of Subscriber (“Data Services Request” or “DSR”). Subscriber represents and warrants that Subscriber shall use any and all Data Services received pursuant to this Agreement solely for one or more of the following purposes:
- A. Determination of the validity of an existing risk score model or of certain data attributes, when such model or attributes will be used in conjunction with the evaluation of consumer credit information received and used under this Agreement;
 - B. Building Subscriber’s own consumer credit information-based model which model shall be used solely in conjunction with the evaluation of consumer credit information received and used under this Agreement;
 - C. Review and validation of Subscriber’s policies relating to credit eligibility or any other permissible purpose under the FCRA, which policies Subscriber shall use in conjunction with evaluating consumer credit information received and used under this Agreement;
 - D. Determination of the qualitative value of consumer credit information TransUnion provides under this Agreement; or,
 - E. Other appropriate purpose as agreed to by TransUnion and Subscriber in an applicable DSR.
- 4.3.1 Subscriber shall not use Data Services for any other purpose and shall take no action as to any individual consumer as the result of the Data Services received under this Agreement. With respect to each request for Data Services, Subscriber represents and warrants that: (i) it does not have the ability to match the Data Services to the identity of any consumer; (ii) it shall make no attempt to obtain data permitting it to match the Data Services to the identity of any consumer; (iii) it will not accept any information from any third party that permits such a match; and, (iv) it will make no such match.
- 4.4 TransUnion Scores. Subscriber may request, in writing, that TransUnion provide TransUnion Scores to Subscriber, which shall include the Vantage Score, in connection with the delivery of a consumer report obtained hereunder or in connection with the delivery of Data Services under Section 4.3. TransUnion agrees to perform such processing as reasonably practicable. Subscriber shall use TransUnion Scores provided in connection with the delivery of a consumer report only in accordance with its permissible purpose under the FCRA certified at the time of its request for such TransUnion Scores. Subscriber will request Scores only for Subscriber’s exclusive use. Subscriber may store Scores solely for Subscriber’s own use in furtherance of Subscriber’s original purpose for obtaining the Scores

- 4.4.1 **Adverse Action Factors.** Subscriber recognizes that factors other than the TransUnion Score may be considered in making a decision as to a consumer. Such other factors include, but are not limited to, the credit report, the individual account history, application information, and economic factors. TransUnion may provide score reason codes to Subscriber, which are designed to indicate the principal factors that contributed to the TransUnion Score, and may be disclosed to consumers as the reasons for taking adverse action, as required by the Equal Credit Opportunity Act (“ECOA”) and its implementing Regulation (“Reg. B”). The TransUnion Score itself, when accompanied by the corresponding reason codes, may also be disclosed to the consumer who is the subject of the TransUnion Score. However, the TransUnion Score itself may not be used as the reason for adverse action under Reg. B.
- 4.4.2 **Use of TransUnion Scores for Model Development or Model Calibration.** TransUnion Scores, including the Vantage Score, obtained in conjunction with Data Services under Section 4.3 for the purpose of model development or model calibration, may be used for model development or model calibration in compliance with the following conditions: (i) the Scores may only be used as an independent variable in custom models; (ii) only the raw depersonalized Score and Score segment identifier may be used in modeling (i.e. no other Score information may be used, including, but not limited to, adverse action reasons, documentation, or scorecards may be used); and, (iii) Subscriber’s depersonalized analytics and/or depersonalized third party modeling analytics performed on behalf of Subscriber, using Scores, will be kept confidential and not disclosed to any third party except to: (a) Subscriber’s third party processing agents and other contractors of Subscriber who have executed an agreement that limits the use of the Scores by the third party only to the use permitted to Subscriber and contains the prohibitions set forth herein regarding model development, model calibration, reverse engineering and confidentiality; (b) to governmental regulatory agencies; and/or, (c) as required by law. In no event may Subscriber reverse engineer the TransUnion Scores.
- 4.4.3 **Confidentiality of TransUnion Scores.** The TransUnion Score is proprietary to TransUnion and shall not be disclosed to any other third party without TransUnion’s prior written consent, except as expressly permitted herein or where clearly required by law. All TransUnion Scores provided hereunder will be held in strict confidence and may never be sold, licensed, copied, reused, or reproduced, and may never be disclosed, revealed or made accessible, in whole or in part, to any Person, except: (i) to those employees of Subscriber with a need to know and in the course of their employment; (ii) to those third party processing agents and other contractors of Subscriber who have a need to know in connection with Subscriber’s use of the TransUnion Scores as permitted hereunder and who have executed a written agreement that limits the use of the TransUnion Scores by the third party only to the use permitted to Subscriber and contains the prohibitions set forth herein regarding model development, model calibration, reverse engineering and confidentiality; (iii) when accompanied by the corresponding reason codes, to the consumer who is the subject of the score, when in connection with an adverse action notice; (iv) to governmental regulatory agencies; (v) to ratings agencies, dealers, investors and other third parties for the purpose of evaluating assets or investments (e.g., securities) containing or based on obligations of the consumers to which the Scores apply (e.g., mortgages, student loans, auto loans, credit cards), provided that (a) Subscriber may disclose Scores only in aggregated formats (e.g., averages and comparative groupings) that do not reveal individual Scores, (b) Subscriber shall not provide any information that would enable a recipient to identify the individuals to whom the Scores apply, and (c) Subscriber shall enter into an agreement with each recipient that limits the use of the Scores to evaluation of such assets or investments; or, (vi) as required by law. Subscriber shall not, nor permit any third party to, publicly disseminate any results of the validations and/or other reports derived from the TransUnion Scores without TransUnion’s prior written consent. For the purpose of this Section 4.4.3, “Person” shall mean an individual, a partnership, a corporation, a limited liability company, a trust, a joint venture, an unincorporated organization and any Government Authority. For the purpose of this Section 4.4.3, “Government Authority” means any national, provincial, state, municipal, local or foreign government, ministry, department, commission, board, bureau, agency, authority, instrumentality, unit, or taxing authority thereof.
- 4.4.4 **Predictive Triggers Models.** TransUnion’s Predictive Triggers Models may be made available to Subscriber in conjunction with Subscriber’s Prescreen and Account Review requests. Subscriber hereby represents and warrants that when Subscriber requests Predictive Triggers Models in conjunction with its Account Review requests, Subscriber shall not use Predictive Triggers Models, nor any information derived therefrom: (i) to take any adverse action as to any individual consumer; or, (ii) for any other reason including, but not limited to, in connection with the collection of an account.
- 4.4.5 **TransUnion Score Performance.** Certain TransUnion Scores are implemented with standard minimum exclusion criteria. TransUnion shall not be liable to Subscriber for any claim, injury, or damage suffered directly or indirectly by Subscriber as a result of any Subscriber requested changes to the exclusion criteria which result in normally excluded records being scored by such TransUnion Scores. TransUnion warrants that the scoring algorithms used in the computation of the scoring services provided under this Agreement (“Models”), are empirically derived from credit data and are a demonstrably and statistically sound method of rank-ordering candidate records with respect to the purpose of the TransUnion Scores when applied to the population for which they were developed, and that no scoring algorithm used by a TransUnion Score uses a “prohibited basis” as defined in ECOA and Reg. B promulgated thereunder. The TransUnion Score may appear on a credit report for convenience only, but is not a part of the credit report nor does it add to the information in the report on which it is based.

- 4.5 **Third Party Scores and Other Third Party Services.** TransUnion has the capability to offer certain non-TransUnion owned scores derived from models built jointly with third parties, and other services provided by third parties, which are subject to separate warranties offered or terms imposed by such third parties. If desired by Subscriber, such third party scores and services shall be made available pursuant to a separate agreement or pursuant to an addendum or Exhibit to this Agreement. For the avoidance of doubt, those Fair Isaac Scores provided by TransUnion to Subscriber pursuant to Exhibit B are third party scores and do not constitute TransUnion-owned Services.
- 4.6 **OFAC Name Screen.** TransUnion, as a stand-alone service, in conjunction with Consumer Report Information or as an append to an ancillary service, has the capability to offer an indicator in the event a consumer's name, as supplied by Subscriber to TransUnion on input and not as may be found on TransUnion's database(s), appears on the United States Department of Treasury Office of Foreign Asset Control File ("OFAC File"). In the event Subscriber obtains OFAC Name Screen services from TransUnion in conjunction with Consumer Report Information or as an append to an ancillary service, Subscriber shall be solely responsible for taking any action that may be required by federal law as a result of a potential match to the OFAC File, and shall not deny or otherwise take any adverse action against any consumer which is based, in whole or in part, on TransUnion's OFAC Name Screen services.
5. **Additional Terms and Conditions.**
- 5.1 **Confidentiality.** Subscriber shall hold all Services Information in confidence and shall not disclose such information, in whole or in part, to any person except: (i) as required by law (e.g., an order of a court or data request from an administrative or governmental agency with competent jurisdiction) to be disclosed; provided however, that Subscriber shall provide TransUnion with ten (10) days prior written notice before the disclosure of such information pursuant to this Paragraph 5.1; (ii) its employees that have a need to know in connection with its use of the Services Information as permitted under this Agreement; or, (iii) its authorized agents who have a need to know in connection with its use of the Services Information as permitted under this Agreement and who are bound by written obligations sufficient to limit use of such Services Information strictly for Subscriber's benefit in accordance with the use and other restrictions contained in this Agreement. However, none of the foregoing restrictions shall prohibit Subscriber from disclosing to the subject of the Consumer Report Information, who is the subject of an adverse action, the content of the Consumer Report Information as it relates to any such adverse action. The foregoing obligations of confidentiality with respect to Services Information shall in all instances prevail over contrary or less stringent obligations of confidentiality entered between the parties.
- 5.2 **Safeguards.** Each party shall implement, and shall take measures to maintain, reasonable and appropriate administrative, technical, and physical security safeguards ("Safeguards") designed to: (i) insure the security and confidentiality of non-public personal information; (ii) protect against anticipated threats or hazards to the security or integrity of non-public personal information; and, (iii) protect against unauthorized access or use of non-public personal information that could result in substantial harm or inconvenience to any consumer. When a consumer's first name or first initial and last name is used in combination with both: (i) a social security number, driver's license or identification card number, or account number, credit or debit card number, and, (ii) any required security code, access code, or password that would permit access to an individual's financial account ("Personal Information"), and such combined information is delivered to Subscriber unencrypted, Subscriber shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information and to protect the Personal Information from unauthorized access, destruction, use, modification, or disclosure including without limitation, ensuring any Subscriber intentional deletion, destruction and/or disposal of Personal Information (whether in paper, electronic, or any other form, and regardless of medium on which such Personal Information is stored) is performed in a manner so as to reasonably prevent its misappropriation or other unauthorized use including, but not limited to, cross-shredding printed information and pulverizing or incinerating tapes, disks and other such non-paper media.
- 5.3 **Authorized Requests.** Subscriber shall use the Services and Services Information: (i) solely for the Subscriber's certified use(s); (ii) solely for Subscriber's exclusive one-time use; and, (iii) subject to the terms and conditions of this Agreement. Subscriber shall not request, obtain or use Services for any other purpose including, but not limited to, for the purpose of selling, leasing, renting or otherwise providing information obtained under this Agreement to any other party, whether alone, in conjunction with Subscriber's own data, or otherwise in any service which is derived from the Services. Services shall be requested by, and Services Information shall only disclosed by Subscriber to, Subscriber's designated and authorized employees and agents having a need to know and only to the extent necessary to enable Subscriber to use the Services and Services Information in accordance with this Agreement, and, with respect to agents, only those who are bound by written obligations sufficient to limit use of such Services and Services Information strictly for Subscriber's benefit in accordance with the use and other restrictions contained in this Agreement. Subscriber shall ensure that such Subscriber designated and authorized employees and agents shall not attempt to obtain any Services on themselves, associates, or any other person except in the exercise of their official duties.

5.4 Rights to Services. Subscriber shall not attempt, directly or indirectly, to reverse engineer, decompile, or disassemble Services and Services Information, or any confidential or proprietary criteria developed or used by TransUnion relating to the Services provided under this Agreement. Except as explicitly set forth in this Agreement the entire right, title and interest in and to the Services and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created by TransUnion in its performance of the Services, shall at all times vest exclusively in TransUnion. TransUnion reserves all rights not explicitly granted to Subscriber under this Agreement. Subscriber acknowledges that any misappropriation or threatened misappropriation of TransUnion's rights in and to the Services and other TransUnion intellectual property, or any breach or threatened breach of the foregoing restrictions, may cause immediate and irreparable injury to TransUnion, and in such event, TransUnion shall be entitled to seek injunctive relief, without the necessity to post bond, in addition to any and all other remedies available at law or in equity. Nothing stated herein will be construed to limit any other remedies available to TransUnion under this Agreement including, but not limited to suspension and/or termination.

5.5 Compliance with Laws. Each party hereto shall be responsible for its own compliance with all applicable federal and state legislation, regulations and judicial actions, including, but not limited to, FCRA, GLBA and all other applicable privacy laws, "do not call" laws, the Drivers Privacy Protection Act (18 U.S.C. Section 2721 et seq.) and similar and/or associated state laws and regulations governing the use and disclosure of drivers' license information, as now or as may become effective, to which it is subject. Changes in the performance of TransUnion's obligations under this Agreement necessitated by TransUnion's good faith interpretations of any applicable law, regulation, judicial or regulatory action or license rights, shall not constitute a breach of this Agreement.

Data provided by TransUnion as part of Services may include information obtained from the Death Master File ("DMF") made available by the US Department of Commerce National Technical Information Service and subject to regulations found at 15 CFR Part 1110. Subscriber shall comply with all applicable laws including, with respect to DMF data, 15 CFR Part 1110. Recipients of DMF data that fail to comply with 15 CFR Part 1110 may be subject to, among other things, penalties under 15 CFR 1110.200 of \$1,000 for each disclosure or use, up to a maximum of \$250,000 in penalties per calendar year.

5.6 Fees and Payments. Subscriber agrees to pay the fees and charges for Services provided to Subscriber under this Agreement. Such pricing is hereby incorporated into this Agreement by reference. Any periodic and/or minimum Subscriber fees under this Agreement are non-refundable, in whole or in part, in the event of a termination of this Agreement. TransUnion reserves the right to change the fees and charges from time to time, but no change in such charges shall become effective as to the Subscriber earlier than thirty (30) days after written notice thereof shall have been given by TransUnion to Subscriber. Subscriber shall also pay all the cost of all media, media shipping, and insurance costs, taxes, duties and/or other charges of any kind imposed by any federal, state, or local governmental entity for the Services, Services Information, or both, provided under this Agreement. However, Subscriber shall not be responsible for taxes imposed upon TransUnion by any federal, state or local authority against the gross income of TransUnion.

5.6.1 In addition, in the event that TransUnion's cost of rendering Services increases as a result of federal, state or local laws, ordinances or other regulatory, administrative or governmental acts, then TransUnion may implement a surcharge subject to the following: (i) any surcharge will be applicable generally to TransUnion's customers; (ii) TransUnion will provide sixty (60) days prior written notice to Subscriber prior to implementing any new surcharge; and, (iii) any surcharge will be applied only to products and services pertaining to consumers in the geographic area affected by the law, ordinance or other regulatory, administrative or governmental ordinance or other regulatory, administrative or governmental act. A legislative surcharge is imposed on certain types of reports pertaining to consumers residing in the United States, and an additional surcharge is imposed on certain reports pertaining to only Colorado residents.

5.6.2 TransUnion shall provide invoices to Subscriber and Subscriber shall pay such invoices within thirty (30) days of the invoice date. Without limiting any of TransUnion's remedies for non-payment or late payment of invoices, invoices which are not paid within sixty (60) days of the invoice date shall be subject to a late charge of one and one-half percent (1.5%) per month (18% per year) or the maximum allowed by law, whichever is less. If collection efforts are required, Subscriber shall pay all costs of collection, including reasonable attorneys' fees.

- 5.7 **Term, Termination and Survival.** The term of this Agreement shall commence upon the Effective Date and shall remain in effect until terminated by any party hereto for any reason whatsoever by providing thirty (30) days prior written notification to the other party. Moreover, without limiting any other remedies to which either party may be entitled, if a party, in good faith, determines that the other party has materially breached any of its obligations under this Agreement, such party shall provide written notice to the other party of such determination. The breaching party shall have thirty (30) days to cure any alleged breach, provided that such breach is curable. If the breaching party fails to cure within thirty (30) days of receiving such written notice or if such breach is not curable, the non-breaching party shall have the right to immediately suspend its performance, in whole or in part, under this Agreement, immediately terminate this Agreement, or both.
- 5.7.1 The foregoing notwithstanding, TransUnion reserves the right, at TransUnion's sole option, to immediately suspend its performance, in whole or in part, under this Agreement, or immediately terminate this Agreement, if TransUnion, in good faith and in its sole discretion, determines that: (i) the requirements of any law, regulations and/or judicial action have not been met; (ii) as a result of any new, or changes in existing, laws, regulations, and/or judicial actions, that the requirements of any law, regulation and/or judicial action will not be met; (iii) the use of the Services is the subject of litigation or threatened litigation by any governmental agency; (iv) any product, process, or both, including, without limitation, any software, information, data, or other material, as well as any intellectual property rights embodied by any or all of the foregoing (whether licensed to, owned by, or otherwise controlled by, TransUnion), and necessary (as reasonably demonstrated by TransUnion) for the provision of the Services to Subscriber is/are enjoined, likely to be enjoined (in TransUnion's counsel's written opinion), or the licenses thereto is/are otherwise terminated by the licensing entity; and/or, (v) any combination of the foregoing.
- 5.7.2 With the exception of TransUnion's obligation, if any, to provide Services under this Agreement, all provisions of this Agreement shall survive any such termination of this Agreement including, but not limited to, all restrictions on Subscriber's use of Services Information. Moreover, any such termination shall not relieve Subscriber of any fees or other payments due to TransUnion through the date of any such termination nor affect any rights, duties or obligations of either party that accrue prior to the effective date of any such termination.
- 5.8 **Warranty.**
- 5.8.1 TransUnion Limited Warranty. TransUnion represents and warrants that the Services will be provided in a professional and workmanlike manner consistent with industry standards. In the event of any breach of this warranty, TransUnion shall exercise commercially reasonable efforts to re-perform the applicable Services which are not in compliance with the above warranty, provided that: (i) TransUnion receives written notice of such breach within ten (10) days after performance of the applicable Services; and (ii) the Services are able to be re-performed. TransUnion, in the event it cannot re-perform such Services, shall refund the fees paid by Subscriber for the applicable Services which are not in compliance with the above warranty. **SUBSCRIBER ACKNOWLEDGES AND AGREES THAT TRANSUNION'S SOLE AND EXCLUSIVE OBLIGATION, AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, IN THE EVENT OF ANY BREACH OF THE FOREGOING WARRANTY IS AS SET FORTH IN THIS PARAGRAPH. TRANSUNION DOES NOT WARRANT THE SERVICES TO BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS. THE WARRANTY SET FORTH IN THIS SECTION 5.8.1 IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT MIGHT BE IMPLIED FROM A COURSE OF PERFORMANCE OR DEALING OR TRADE USAGE OR WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATIVE OF TRANSUNION IS AUTHORIZED TO GIVE ANY ADDITIONAL WARRANTY.**
- 5.8.2 Subscriber represents and warrants that: (i) it has the authority to enter into and perform under this Agreement; (ii) it has the right to give to TransUnion the rights set forth in this Agreement; and, (iii) it has the right to provide any and all information including, but not limited to, data obtained from third parties, to TransUnion, and to allow TransUnion to provide the same to TransUnion's subcontractors, for use in performance of the Services.
- 5.9 **Indemnification for Intellectual Property Infringement.** TransUnion, subject to the limitations of liability contained herein, will defend and indemnify Subscriber against a third party claim that any TransUnion-owned Services infringe a United States patent, copyright, trademark, trade secret or other United States intellectual property rights of a third party, provided that: (i) Subscriber gives TransUnion prompt written notice of any such claim of which it has knowledge; (ii) TransUnion is given full control over the defense of such claim and all related settlement negotiations; and, (iii) Subscriber provides TransUnion with the assistance, information and authority necessary to perform TransUnion's obligations under this paragraph. Reasonable out-of-pocket expenses incurred by Subscriber in providing such assistance will be reimbursed by TransUnion.

If any such claim of infringement has occurred or in TransUnion's opinion is likely to occur, then TransUnion may, at its option and expense: (i) use commercially reasonable efforts to procure for Subscriber the right to use the infringing Services; (ii) replace or modify the infringing portion of the Services so that it is no longer subject to any infringement claim, or, (iii) if the foregoing, in TransUnion's reasonable determination, is not practicable, TransUnion shall so notify Subscriber of such determination and Subscriber shall have the right to immediately terminate this Agreement. TransUnion shall have no obligation under this Section to indemnify or defend Subscriber against a lawsuit or claim of infringement to the extent any such claim or lawsuit results from: (i) other material which is combined with or incorporated into the Services; (ii) any substantial changes or alterations to the information provided as part of the Services by Subscriber; (iii) any misuse or unauthorized use of the Services which, but for Subscriber's misuse or unauthorized use of the Services, such claim would not have occurred; or, (iv) required compliance by TransUnion with design documentation or specifications originating with, specified by or furnished by or on behalf of Subscriber. **THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY OF TRANSUNION AND THE SOLE AND EXCLUSIVE REMEDY OF SUBSCRIBER WITH RESPECT TO ANY PROCEEDINGS, CLAIMS, DEMANDS, LOSS, DAMAGE OR EXPENSES INCURRED BY SUBSCRIBER RELATING TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS RESULTING FROM THE SERVICES AND THIS AGREEMENT.**

- 5.10 **Limitation of Liability.** TRANSUNION'S SOLE LIABILITY, AND SUBSCRIBER'S SOLE REMEDY, FOR BREACHES OF THIS AGREEMENT BY TRANSUNION ARISING FROM TRANSUNION'S NEGLIGENCE SHALL BE THE CORRECTION OF ANY DEFECTIVE SERVICE OR THE REFUND OF FEES PAID FOR SAME. SUBSCRIBER'S SOLE LIABILITY, AND TRANSUNION'S SOLE REMEDY, FOR BREACHES OF THIS AGREEMENT BY SUBSCRIBER ARISING FROM SUBSCRIBER'S NEGLIGENCE SHALL BE CAPPED AT THE FEES BILLED UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE CLAIM. FOR ALL OTHER CLAIMS BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF SUCH OTHER PARTY'S BREACH OF THIS AGREEMENT, THE CULPABLE PARTY'S AGGREGATE TOTAL LIABILITY SHALL BE CAPPED AT SIX (6) TIMES THE AVERAGE MONTHLY REVENUE BILLED UNDER THIS AGREEMENT PRIOR TO THE CLAIM(S) ARISING.
- 5.10.1 **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES INCURRED BY THE OTHER PARTY AND ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF GOOD WILL AND LOST PROFITS OR REVENUE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**
- 5.10.2 **ADDITIONALLY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.**
- 5.11 **Assignment and Subcontracting.** Neither party may assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the other, and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, TransUnion may assign or transfer this Agreement to a wholly-owned subsidiary, in the event of a purchase of substantially all of TransUnion's assets, or in the event of a corporate form reorganization (e.g., LLC to C-Corporation), and Subscriber may assign or transfer its rights and/or obligations under this Agreement to any Affiliate of Subscriber identified on Exhibit A attached hereto. Moreover, TransUnion shall have the unrestricted right to subcontract the Services to be provided to Subscriber by TransUnion under this Agreement; provided however, that such subcontracting shall not relieve TransUnion of its obligations under this Agreement. The limited warranty and limitation of liability provisions set forth in this Agreement shall also apply for the benefit of TransUnion's licensors, subcontractors and agents.
- 5.12 **Security.** Subscriber represents and warrants that: (i) all TransUnion-supplied identification codes (each a "User ID") and associated passwords (each a "Password") shall be kept confidential and secure (e.g., Subscriber shall ensure that Passwords are not stored on any desktop and/or portable workstation/terminal nor other storage and retrieval system and/or media, that Internet browser caching functionality is not used to store Passwords and that appropriate firewalls or other electronic barriers are in place); and, (ii) each User ID and Password shall be used solely by individuals Subscriber has authorized to use such User IDs and Passwords. In the event of any unauthorized use, misappropriation or other compromise of User IDs and/or Passwords, Subscriber shall promptly (but in no event later than forty-eight (48) hours after the occurrence of any of the foregoing) notify TransUnion by phone and in writing.

Subscriber shall fully cooperate with TransUnion in mitigating any damages due to any misappropriation or unauthorized use or disclosure of any non-public personal information (including, but not limited to, Personal Information and other consumer credit information). Such cooperation shall include, but not necessarily be limited to, allowing TransUnion to participate in the investigation of the cause and extent of such misappropriation and/or unauthorized use or disclosure. Such cooperation shall not relieve Subscriber of any liability it may have as a result of such a misappropriation and/or unauthorized use or disclosure. Subscriber agrees, that to the extent any such unauthorized use, unauthorized disclosure, misappropriation, or other event is due to Subscriber's (including, without limitation, its employee's, agent's or contractor's) negligence, intentional wrongful conduct, or breach of this Agreement, Subscriber shall be responsible for any required consumer, public and/or other notifications, and all costs associated therewith; provided however, that other than except to the extent required to comply with applicable law, Subscriber shall make no public notification, including but not limited to press releases or consumer notifications, of the potential or actual occurrence of such misappropriation and/or unauthorized disclosure without TransUnion's prior written consent, and, with respect to any such notifications required by law, Subscriber shall not use any TransUnion trade name, trademark, service mark, logo, in any such notifications without the prior written approval of TransUnion.

- 5.13 In the event Subscriber will utilize a third party intermediary (e.g., application service provider, Internet service provider or other network provider) for the purpose of transmitting requests for, receiving, archiving, storing, hosting, or otherwise performing processing of any kind related to, Services and/or Services Information, Subscriber shall ensure it has first entered into an agreement with such third party prohibiting such third party's use of, and access to, the Services and Services Information for any purpose other than to the extent necessary to provide such application or network services to Subscriber. Subscriber shall be solely liable for any of its, such third parties, or other Subscriber agent's or contractor's, actions or omissions, including, but not limited to, any misappropriation or other compromise of User ID's and/or Passwords, any misappropriation and/or unauthorized disclosure of Services Information (including, but not limited to, consumer credit information), any security breaches, or any misuse of the Services Information in violation of this Agreement or applicable law. Furthermore, Subscriber understands and agrees that its third party intermediaries, agents and/or contractors shall not be entitled as a third party beneficiary or otherwise, to take any action or have any recourse against TransUnion in respect of any claim based upon any actual or alleged failure to perform under this Agreement.
- 5.14 No Waiver. No failure or successive failures on the part of either party, or its respective successors or permitted assigns, to enforce any covenant or agreement, and no waiver or successive waivers on the part of either party, or its respective successors or permitted assigns, of any condition of this Agreement, shall operate as a discharge of such covenant, agreement, or condition, or render the same invalid, or impair the right of either party, its respective successors or permitted assigns, to enforce the same in the event of any subsequent breach or breaches by the other party, its successors or permitted assigns.
- 5.15 Independent Contractors. This Agreement is not intended to create or evidence any employer-employee arrangement, agency, partnership, joint venture, or similar relationship of any kind whatsoever between TransUnion and Subscriber. Moreover, no party shall, by virtue of this Agreement, have any right or power to create any obligation, express or implied, on behalf of any other party.
- 5.16 Construction and Severability. All references in this Agreement to the singular shall include the plural where applicable. Titles and headings to sections or paragraphs in this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. If any term or provision of this Agreement is held by a court of competent jurisdiction be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 5.17 Force Majeure. Neither party shall be liable to the other for failure to perform or delay in performance under this Agreement if, and to the extent, such failure or delay is caused by conditions beyond its reasonable control and which, by the exercise of reasonable diligence, the delayed party is unable to prevent or provide against. Such conditions include, but are not limited to, acts of God; strikes, boycotts or other concerted acts of workers; failure of utilities; laws, regulations or other orders of public authorities; military action, state of war, acts of terrorism, or other national emergency; fire or flood. The party affected by any such force majeure event or occurrence shall give the other party written notice of said event or occurrence within five (5) business days of such event or occurrence.
- 5.18 Audit Rights. During the term of this Agreement and for a period of three (3) years thereafter, TransUnion may, upon reasonable notice and during normal business hours, audit Subscriber's policies, procedures and records which pertain to this Agreement to ensure compliance with this Agreement.

- 5.19 **No Presumption against Drafter.** Each of the parties has jointly participated in the negotiation and drafting of this Agreement. In the event of any ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 5.20 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois regardless of the laws that might otherwise govern under applicable Illinois principles of conflicts of law.
- 5.21 **Trademarks.** Both Subscriber and TransUnion shall submit to the other party for written approval, prior to use, distribution, or disclosure, any material including, but not limited to, all advertising, promotion, or publicity in which any trade name, trademark, service mark, and/or logo (hereinafter collectively referred to as the "Marks") of the other party are used (the "Materials"). Such party, from whom approval is being requested, shall not unreasonably withhold its approval. Both parties shall have the right to require, at each party's respective discretion and as communicated in writing, the correction or deletion of any misleading, false, or objectionable material from any Materials. Moreover, when using the other party's Marks pursuant to this Agreement, a party shall take all reasonable measures required to protect the other party's rights in such Marks, including, but not limited to, the inclusion of a prominent legend identifying such Marks as the property of the other party. In using each other's Marks pursuant to this Agreement, each party acknowledges and agrees that: (i) the other party's Marks are and shall remain the sole properties of the other party; (ii) nothing in this Agreement shall confer in a party any right of ownership in the other party's Marks; and, (iii) neither party shall contest the validity of the other party's Marks. Notwithstanding anything in this Agreement to the contrary, TransUnion shall have the right to disclose to third parties Subscriber's marks to the extent they appear in consumer credit reports containing Subscriber's account information and/or inquiries without the prior written approval of Subscriber.
- 5.22 **CFPB Notices.** By signing this Agreement, Subscriber acknowledges receipt of a copy of the Consumer Financial Protection Bureau's "Notice to Users of Consumer Reports: Obligations of Users Under the FCRA" and a copy of the Consumer Financial Protection Bureau's "Notices to Furnishers of Information: Obligations of Furnishers Under the FCRA". Any future updates to the forgoing notices will be accessible by Subscriber on TransUnion's website.
- 5.23 **Entire Agreement.** **THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ALL EXHIBITS AND ATTACHMENTS HERETO, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN TRANSUNION AND SUBSCRIBER AND SUPERSEDES ALL PREVIOUS AGREEMENTS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, SOLELY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS AGREEMENT MAY NOT BE ALTERED, AMENDED, OR MODIFIED EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE DULY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. THIS AGREEMENT SHALL NOT BE BINDING ON EITHER PARTY UNTIL SIGNED BY TRANSUNION. THE INDIVIDUAL EXECUTING THIS AGREEMENT ON BEHALF OF SUBSCRIBER HAS DIRECT KNOWLEDGE OF ALL FACTS CERTIFIED AND THE AUTHORITY TO BIND SUBSCRIBER TO THE TERMS OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date. The parties hereto agree that a facsimile or other electronic transmission of an unmodified image (e.g., transmission in a portable document format "pdf") of this fully executed Agreement shall constitute an original and legally binding document.

TRANS UNION LLC

By: /s/ Peter Turek
 TransUnion Representative

Peter Turek SVP
 Name and Title of Signer (please print)

11/25/2020
 Date Signed

Upstart Network, Inc.
 Subscriber Name

By: /s/ Dave Girouard
 Subscriber Representative

Dave Girouard CEO
 Name and Title of Signer (please print)

11/25/2020
 Date Signed

 Subscriber Code Number Assigned

EXHIBIT A
AFFILIATES

Affiliates means, with respect to Subscriber, any entity at any time controlling, controlled by or under common control with such Subscriber, where such control means: (i) for corporate entities, direct ownership of 51% or more of the stock or shares entitled to vote for the election of the board of directors or other governing body of the entity; and, (ii) for non-corporate entities, direct ownership of 51% or more of the equity interest. Subscriber has such Affiliates, as listed on this Exhibit A, which Affiliates are authorized by Subscriber to access TransUnion consumer credit reports and/or ancillary services under Subscriber's code(s), pursuant to the terms and conditions of the Master Agreement. Subscriber shall notify TransUnion in writing of any additions to or deletions from this Exhibit A. Subscriber represents and warrants that it has the authority to enter into this Agreement on behalf of its Affiliates. Moreover, Subscriber represents and warrants that it shall insure that it has appropriate legal authority from each such Affiliate that binds each such Affiliate to the provisions of this Agreement, including, without limitation, all attachments hereto, as if each such Affiliate were a signatory to this Agreement. Subscriber certifies that all Affiliates participating under the Master Agreement shall be instructed as to their obligations under the Master Agreement, including but not limited to the certification of permissible purpose contained therein, if applicable. Therefore, Subscriber and each Affiliate shall be jointly and severally liable under the terms of this Agreement.

In the event Subscriber, or subsequently any Affiliate, assigns this Agreement to an Affiliate, then upon any and each such assignment, such assignee Affiliate hereby represents and warrants that it has the authority to assume all rights and obligations under this Agreement on behalf of itself and all other Affiliates listed below and that such assignee Affiliate further represents and warrants that it shall insure that it has appropriate legal authority from each of its Affiliates listed below that binds each such Affiliate to the provisions of this Agreement, including, without limitation, all attachments hereto, as if each such Affiliate were a signatory to this Agreement. Subscriber (or any such Affiliate, as applicable) shall promptly notify TransUnion in writing of any and each such assignment.

Date: _____

Subscriber Name: _____

Subscriber Code: _____

Affiliate Name

Physical Address, City, State and Zip Code

EXHIBIT B
FAIR ISAAC SCORES

This Exhibit for Fair Isaac Scores is entered into pursuant to the terms of that certain TransUnion Master Agreement for Consumer Reporting and Ancillary Services entered between TransUnion and Subscriber. In the event of a conflict between this Exhibit and the Agreement, the terms of this Exhibit shall govern solely with respect to FICO Scores.

1. This Exhibit governs the use by Subscriber of credit risk scores or insurance risk scores of Fair Isaac Corporation (“Fair Isaac”) (“FICO Scores”) Subscriber receives from TransUnion. From time to time, Subscriber may request that TransUnion provide FICO Scores (other than Archive Scores, as defined below), and TransUnion agrees to perform such processing as reasonably practicable, for each one of the following purposes requested: (a) in connection with the review of an on-line consumer report it is obtaining from TransUnion; (b) for the review of the portion of its own open accounts and/or closed accounts with balances owing that it designates; (c) as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; (d) for use as a selection criteria to deliver a list of names to Subscriber, or Subscriber’s designated third party processor agent, for transactions not initiated by the consumer for the extension of a firm offer of credit or insurance; or (e) [with respect to the insurance risk scores only], for use in connection with the underwriting of insurance involving the consumer. Subscriber shall use each such FICO Score only once and, with respect to FICO Scores other than Archive Scores, only in accordance with the permissible purpose under the FCRA for which Subscriber obtained the FICO Scores.

2. Subscriber may also request that TransUnion provide FICO Scores that utilize archived, depersonalized, consumer report information (“Archive Scores”) and TransUnion agrees to perform such processing as reasonably practicable. Subscriber shall use the Archive Scores solely to determine the validity of the FICO Scores for the benefit of Subscriber for the single project for which the Archive Scores were acquired, but for no other purpose and for no other entity. Determining validity of the FICO Scores consists solely of: (a) internal validation on Subscriber’s own account performance data; (b) internal evaluation of the predictive strength of the FICO Scores as compared to other scores, (c) internal evaluation of the value of the FICO Scores as an internal component of custom models; and/or (d) establishing score cut-offs and strategies, as they relate to Subscriber’s portfolios. Subscriber shall not make any attempt to link the Archive Scores to any information which identifies the individual consumers.

3. Subscriber acknowledges that the FICO Scores are proprietary to Fair Isaac and that Fair Isaac retains all intellectual property rights in the FICO Scores and the Model(s) (defined below) used by TransUnion to generate the FICO Scores. Fair Isaac grants to Subscriber, effective during the term of this Exhibit, a personal, non-exclusive, non-transferable, limited license to use, internally, the FICO Scores solely for the particular purpose set forth in Section 1 or 2 above for which the FICO Scores were obtained, subject to the limitations set forth in this Exhibit, including, but not limited to the single use restrictions set forth above. Subscriber’s use of the FICO Scores must comply at all times with applicable federal, state and local law and regulations, and Subscriber hereby certifies that it will use each FICO Score (other than Archive Scores) only for a permissible purpose under the FCRA. Subscriber shall not attempt to discover, reverse engineer, or similar or emulate the functionality of the FICO Scores, Models or other proprietary information of Fair Isaac, or use the FICO Scores in any manner not permitted under this Exhibit, including, without limitation, for resale to third parties, model development, model validation (except as expressly set forth above in Paragraph 2 of this Exhibit), model benchmarking, model calibration or any other purpose that may result in the replacement of or discontinued use of the FICO Scores. “Model” means Fair Isaac’s proprietary scoring algorithm(s) embodied in its proprietary scoring software delivered to and operated by TransUnion.

4. Subscriber shall not disclose the FICO Scores nor the results of any validations or other reports derived from the FICO Scores to any third party (other than a consumer as expressly provided for below in this Section 4) unless: (a) such disclosure is clearly required by law; (b) Fair Isaac provides written consent in advance of such disclosure; and/or (c) such third party Subscriber’s designated third party processor agent aforementioned above in Section 1; provided however that in either (i.e., (b) or (c) above) event, Subscriber may make such disclosure (or in the event of (c), direct TransUnion to deliver such lists) only after Subscriber has entered into an agreement with the third party that (i) limits use of the FICO Scores to only the use permitted to Subscriber hereunder; (ii) obligates the third party provider to otherwise comply with the terms of this Exhibit; and (iii) names Fair Isaac as an intended third party beneficiary of such agreement. Subscriber shall not disclose a FICO Score to the consumer to which it pertains unless such disclosure is required by law or is in connection with an adverse action (as defined by the FCRA) and then only when accompanied by the corresponding reason codes. For the avoidance of doubt, Subscriber is expressly prohibited from disclosing FICO Scores to consumers for any other purpose whatsoever, including, without limitation, in conjunction with any FICO Open Access program or any “scores on statements” type program.

5. Subject to conditions which follow, Fair Isaac warrants that, as delivered to TransUnion, the Models used to produce the FICO Scores delivered hereunder are empirically derived and demonstrably and statistically sound. These warranties are conditioned on: (a) Subscriber's use of each FICO Score for the purposes for which the respective Model was designed, as applied to the United States population used to develop the scoring algorithm, (b) Subscriber's compliance with all applicable federal, state and local laws pertaining to use of the FICO Scores, including Subscriber's duty (if any) to validate or revalidate the use of credit scoring systems under the Equal Credit Opportunity Act and its implementing Regulation B ("Reg. B") and (c) Subscriber's use of the FICO Scores otherwise remaining in compliance with the terms of this Exhibit. Fair Isaac also warrants that the credit scoring algorithm does not consider any "prohibited basis" as defined or restricted by Reg. B. FOR ANY BREACH OF THIS WARRANTY, SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, AND FAIR ISAAC'S AND TRANSUNION'S ENTIRE LIABILITY, SHALL BE RECALCULATION OF THE FICO SCORES THAT FORMED THE BASIS OF SUCH BREACH. FAIR ISAAC AND TRANSUNION HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OTHER WARRANTIES THAT MIGHT BE IMPLIED FROM A COURSE OF PERFORMANCE OR DEALING OR TRADE USAGE.

6. IN NO EVENT SHALL SUBSCRIBER, TRANSUNION OR FAIR ISAAC BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES INCURRED BY ANY PARTY AND ARISING OUT OF THE PERFORMANCE OF THIS EXHIBIT, INCLUDING BUT NOT LIMITED TO LOSS OF GOOD WILL AND LOST PROFITS OR REVENUE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO FAIR ISAAC'S OR TRANSUNION'S VIOLATION OF SUBSCRIBER'S INTELLECTUAL PROPERTY RIGHTS NOR SUBSCRIBER'S VIOLATION OF TRANSUNION'S OR FAIR ISAAC'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING THE USE OR DISCLOSURE OF FICO SCORES IN VIOLATION OF THE TERMS OF THIS EXHIBIT). ADDITIONALLY, NEITHER TRANSUNION NOR FAIR ISAAC SHALL BE LIABLE FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS EXHIBIT BROUGHT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. IN NO EVENT SHALL TRANSUNION'S AND FAIR ISAAC'S COMBINED AGGREGATE TOTAL LIABILITY UNDER THIS EXHIBIT EXCEED THE AMOUNTS PAID UNDER THIS EXHIBIT DURING THE PRECEDING TWELVE (12) MONTHS FOR THE FICO SCORES THAT ARE THE SUBJECT OF THE CLAIM(S) OR [***] DOLLARS (\$[***]), WHICHEVER AMOUNT IS LESS.

7. Upon prior written notice, Fair Isaac shall have the right to audit Subscriber to verify Subscriber's compliance with this Exhibit. Subscriber shall accommodate Fair Isaac in connection with such audit. Such accommodation shall include, but not be limited to on-site inspect of Subscriber's records, systems and such documentation as deemed reasonably necessary to demonstrate compliance with this Exhibit. TransUnion and Subscriber acknowledge and agree that Fair Isaac is a third party beneficiary hereunder with respect to the Models, FICO Scores, and other Fair Isaac intellectual property and with fully enforceable rights. Subscriber further acknowledges and agrees that Fair Isaac's rights with respect to the Models, FICO Scores, other Fair Isaac intellectual property, and all works derived therefrom are unconditional rights that shall survive the termination for any reason.

8. This Exhibit constitutes the entire agreement among the parties hereto and supersedes all prior agreements, whether oral or written, express or implied, with respect to the FICO Scores. This Exhibit may not be amended except by written instrument signed by the duly authorized representatives of all parties.

Acknowledged:

Upstart Network, Inc.
Subscriber Name

By: /s/ Dave Girouard
Subscriber Representative

Dave Girouard CEO
Name and Title of Signer (please print)

11/25/2020
Date Signed

*** Certain information, as identified by [***], has been excluded from this agreement because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

PRICING ADDENDUM

This Pricing Addendum (the "Pricing Addendum"), is entered into on 11/25/2020 and is effective January 1, 2021 (the "Effective Date"), by and between Trans Union LLC ("TransUnion") and Upstart Network Inc. ("Subscriber"), and is intended to establish the pricing for Services provided to Subscriber by TransUnion pursuant to the Master Agreement for Consumer Reporting and Ancillary Services entered between the parties and effective March 20, 2015 (the "Agreement").

1. Subject to the terms and conditions of the Agreement, the following is the current pricing*:

A. Batch Prescreen Services Pricing

[***]

Trans Union Confidential Information

*** Certain information, as identified by [***], has been excluded from this agreement because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

B. Online Credit Report Services

[***]

Trans Union LLC

By: /s/ Peter Turek

Print Name: Peter L. Turek

Title: SVP

11/25/2020

Upstart Network Inc.

By: /s/ Dave Girouard

Print Name: Dave Girouard

Title: CEO

11/25/2020

Trans Union Confidential Information

*** Certain information, as identified by [***], has been excluded from this agreement because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

AMENDED AND RESTATED BILLING AGENT AGREEMENT

This Amended and Restated BILLING AGENT AGREEMENT (the “**Agreement**”) is made and entered into as of 11/25/2020, (“**Effective Date**”), by and between TRANS UNION LLC (“**TransUnion**”) with its principal place of business at 555 West Adams, Chicago, Illinois 60661, and Upstart Network, Inc. (“**BILLING AGENT**”) with its principal place of business at 2950 South Delaware Avenue #300, San Mateo, CA 94403.

RECITALS

WHEREAS, TransUnion has entered into an agreement (a “**Service Agreement**”) for consumer credit reporting and/or ancillary products and services (“**Services**”) with its customers reflected on Exhibit A (each, a “**Customer**”); and,

WHEREAS, TransUnion and Billing Agent have previously entered into that certain Billing Agent Agreement dated February 13, 2017, including all addenda and amendments entered into from time to time by the parties (the “**Existing Billing Agent Agreement**”); and

WHEREAS, TransUnion and Billing Agent wish to amend and restate the Existing Billing Agent Agreement in its entirety; and

WHEREAS, TransUnion and BILLING AGENT desire that BILLING AGENT act as a TransUnion billing agent for payment of certain Services provided by TransUnion to Customer(s) under the Service Agreement.

NOW, THEREFORE, in consideration of the foregoing and the promises and mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as adequate consideration by the parties, the parties hereto agree as follows:

1. Appointment

- 1.1 Subject to the terms and conditions of this Agreement, TransUnion engages BILLING AGENT on a nonexclusive basis, and BILLING AGENT accepts such engagement, to act as a TransUnion billing agent for the purpose of billing and payment of Services provided by TransUnion to certain Customers under the Services Agreement.
- 1.2 This Agreement is entered into in reliance on the integrity as well as the managerial capacity of BILLING AGENT, including its principals and employees. Therefore, this Agreement, including, without limitation, all rights and obligations set forth herein, with respect to BILLING AGENT, are personal to the BILLING AGENT and may not be subcontracted, to subagents or any other third party, by BILLING AGENT without the prior written consent of TransUnion. Moreover, this Agreement, including the rights and obligations contained in this Agreement, may not be assigned, transferred (e.g., via stock purchase, sale of assets, etc.) or otherwise disposed of, by operation of law or otherwise, in whole or in part, by BILLING AGENT. Any attempt to so subcontract, assign, or transfer such rights and obligations shall result in immediate termination of this Agreement.

2. Responsibilities of BILLING AGENT

- 2.1 BILLING AGENT shall conduct its business consistent with ethical business practice and in a manner so as to maintain and increase the goodwill and reputation of TransUnion and the Services.
- 2.2 BILLING AGENT will fulfill all its obligations under this Agreement in a professional and workmanlike manner.
- 2.3 BILLING AGENT shall at all times comply with all applicable laws, regulations and judicial actions.
- 2.4 BILLING AGENT shall obtain, and maintain for the term of this Agreement: (a) Worker’s Compensation and/or all other Social Insurance in accordance with the statutory requirements of the jurisdiction in which the services will be performed and (b) Comprehensive General Liability and Errors and Omissions Liability Insurance, covering all BILLING AGENT’S operations under this Agreement, in an appropriate amount, but in no event less than an amount of One Million Dollars (\$1,000,000.00) per occurrence. BILLING AGENT shall deliver to TransUnion within thirty (30) days of the execution date of this Agreement certificates evidencing the insurance obtained pursuant to the requirements set forth in this Agreement. All policies of insurance obtained pursuant to this Agreement shall provide that such insurance shall not be changed or canceled until thirty (30) days prior written notice has been given to TransUnion.

2.5 Unless otherwise set forth in this Agreement or as otherwise agreed to by TransUnion in writing, BILLING AGENT shall be responsible for all of its expenses incurred in the performance of this Agreement including, but not limited to: (a) dues and fees for membership in any local, state, or national trade association or attendance at seminars or conventions; (b) local and long-distance transportation expenses; and (c) expenses in connection with the operation of BILLING AGENT'S business, including telephone, delivery, entertainment, and promotional expenses.

3. Limited Agent Authority

3.1 BILLING AGENT shall not enter into any contract with respect to the Services to be provided by TransUnion nor shall BILLING AGENT negotiate, waive, alter, or change any provision of any such agreement, or proposed agreement.

3.2 All Customers to whom TransUnion chooses to provide services shall be required to execute appropriate documentation and agreements with TransUnion as determined solely by TransUnion. Any Customer(s) who enter into such agreements with TransUnion shall be deemed customers of TransUnion.

3.3 TransUnion shall have no liability for services (outside of TransUnion Services) provided by BILLING AGENT to Customer or third parties, and BILLING AGENT shall indemnify TransUnion in full (including attorneys' fees and costs) for any claims that relate to services that BILLING AGENT provides to or on behalf Customer or other third parties.

3.4 Nothing in this Agreement grants to BILLING AGENT any right or authority to incur any expense in the name of TransUnion nor to assume or create any obligation or responsibility, express or implied, for or on behalf of TransUnion, nor to bind TransUnion in any way or manner whatsoever.

3.5 All rights in any Trademarks associated with the business of TransUnion, including all goodwill pertaining thereto, shall be and remain the sole property of TransUnion. "Trademarks" shall be defined as all trademarks, trade names, service marks, slogans, logos, designs, and other similar means of distinction, which are owned or controlled by TransUnion. BILLING AGENT may use and display such Trademarks only in the manner and for the purposes authorized in writing in advance by TransUnion, and only during the term of this Agreement.

4. **Auditing Rights.** BILLING AGENT shall maintain complete and accurate records to substantiate its performance under this Agreement including, without limitation, its compliance with legal, regulatory, judicial requirements and compliance with other obligations under this Agreement. BILLING AGENT shall preserve such records for a period of at least thirty-six (36) months after termination of this Agreement. TransUnion shall have access to such records for purposes of audit, either through its own representatives or through an independent auditor selected and paid by TransUnion. Any such review of records may be conducted at any time during regular business hours and upon TransUnion providing BILLING AGENT no less than ten (10) days' prior written notification.

5. Compensation

5.1 TransUnion shall compensate BILLING AGENT for its services by establishing pricing with BILLING AGENT as set forth in Statement of Work entered into by BILLING AGENT on behalf of the Customer identified in Exhibit A, and permitting BILLING AGENT to mark up the cost and/or consolidate the fees into other fees, and bill the Customers who have entered into Service Agreements with TransUnion.

5.2 BILLING AGENT shall not disclose the fees for Services being assessed by TransUnion for services for Customer or any third parties, and BILLING AGENT shall be responsible for all invoicing, shall own the accounts receivable for such accounts and shall be responsible for all costs associated with any required collection efforts. However, BILLING AGENT shall notify TransUnion of any past due payments from such Customers and BILLING AGENT shall communicate directly with such Customers regarding such past due payments. If collection efforts are not fully successful within twelve months of initiation, BILLING AGENT shall reimburse TransUnion in full for any balance due to TransUnion for Services rendered.

5.3 TransUnion shall invoice BILLING AGENT at the pricing reflected in Exhibit A for all Customers reflected in Exhibit A. Payment must be received by TransUnion within thirty (30) days after BILLING AGENT'S receipt of invoice, and past due amounts shall bear interest at the rate of 1.5% per month or as provided for by law. In the event collection efforts are required to obtain payment from BILLING AGENT, TransUnion shall be entitled to all costs of collection, including reasonable attorneys' fees.

6. Term, Termination & Survival

6.1 **Term.** This Agreement shall commence upon the Effective Date and shall remain in effect for a period of one (1) year (the "Initial Term"); provided, however, after the Initial Term, this Agreement shall automatically renew for subsequent one (1) year periods (each, a "Renewal Term", and collectively with the Initial Term, the "Term"). The foregoing notwithstanding, either party shall have the right to terminate this Agreement as more fully stated herein.

6.2 Termination.

- 6.2.1 TransUnion may terminate this Agreement for any or no reason upon written notice to BILLING AGENT.
- 6.2.2 The foregoing notwithstanding, either party may terminate this Agreement for the other party's breach of any material provision of this Agreement; provided the non-breaching party has provided the party in breach with written notice specifying such breach and the party in breach has failed to cure such breach within thirty (30) days of receipt of such notice.
- 6.2.3 The foregoing notwithstanding, without limiting any other remedies to which it may be entitled, TransUnion reserves the right to immediately terminate this Agreement if TransUnion, in good faith, determines that: (1) BILLING AGENT violated any portion of this Agreement or that the requirements of any law have not been met; (2) as a result of changes in laws, regulations or regulatory or judicial action, TransUnion, in good faith believes that the requirements of any law or regulation will not be met; (3) BILLING AGENT commits, pleads guilty or nolo contendere to, or is convicted of, an act or offense involving moral turpitude or commits any willful or dishonest act that could injure TransUnion in any material respect; and/or (4) BILLING AGENT attempts to assign (without prior written approval), or subcontract or transfer this Agreement including, without limitation, any and/or all of its rights and obligations. TransUnion shall promptly provide written notification to BILLING AGENT in the event it exercises such termination rights.
- 6.2 Survival. With the exception of BILLING AGENT acting as billing agent under this Agreement and BILLING AGENT'S obligation to provide these services, all other provisions of this Agreement shall survive any such termination of this Agreement. Moreover, any such termination shall not affect any rights, duties or obligations of either party that accrue prior to the effective date of any such termination.

7. Independent Status

- 7.1 Independent Contractor. The parties to this Agreement are independent contractors. Except for the explicit purposes set forth in this Agreement, no other relationship is intended to be created between the parties (including, but not limited to, any employer-employee arrangement, partnership, joint venture, or similar relationship of any kind whatsoever) including, without limitation, between a party and any principal or employee of the other party. Each party shall retain the right to perform services for others during the term of this Agreement as well as the right to maintain other businesses owned or controlled by it. Both parties shall retain the right to cause services of the same or a different kind to be performed by its own personnel or other agents during the term of this Agreement.
- 7.2 Income Taxes. Both parties understand that the other party will not contribute to Medicare, Social Security or any other required employment taxes on behalf of the other party, including without limitation such other party's principals and employees, nor will the other party withhold income taxes from compensation paid to the other party. Each party understands that it will be responsible for paying and reporting one hundred percent (100%) of all applicable taxes and social insurance including, but not limited to, federal and state employment and income taxes, social security taxes and unemployment insurance, for itself, its principals and its employees.
- 7.3 Employment Benefits. Each party understands that neither it nor its principals and employees will be entitled to receive any employment benefits from the other party including, but not limited to, health, life or disability insurance; retirement or pension plans; paid vacation or sick leave; unemployment compensation or worker's compensation insurance.

8. Representations and Warranties

- 8.1 BILLING AGENT represents and warrants: (1) that it has the experience and ability to perform the services and its obligations as set forth in this Agreement; (2) that it will perform the services in a professional and competent manner; (3) that it has the power to enter into and perform this Agreement; and (4) that its performance of this Agreement shall not violate any federal, state, and/or municipal laws or regulations.
- 8.2 BILLING AGENT represents and warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction that does or would present a conflict of interest, concerning the services to be provided by BILLING AGENT under this Agreement. BILLING AGENT agrees that if, after execution of this Agreement, it discovers a conflict of interest with respect to this Agreement, it shall make an immediate disclosure in writing to TransUnion, which shall include a description of the action which BILLING AGENT has taken or proposes to take to avoid or mitigate such conflict.
- 8.3 BILLING AGENT represents and warrants that each principal and each employee it selects to perform services for TransUnion pursuant to this Agreement is or will be bound (prior to rendering any such services) by an appropriate written agreement sufficient to ensure compliance with the provisions of this Agreement.

8.4 BILLING AGENT, to the extent it is engaged by a Customer for the purpose of requesting, receiving, processing and/or storing Services represents, warrants and covenants to TransUnion that any such actions shall be conducted solely in its capacity as an agent for such Customer, for the benefit of such Customer, and shall at all times be consistent with the terms, conditions, and restrictions contained in the Service Agreement in effect between the Customer and TransUnion.

9. Proprietary Information

- 9.1 From time to time TransUnion may provide business and technical information, which TransUnion considers confidential or proprietary (“Confidential Information”), to BILLING AGENT in connection with the services to be performed by BILLING AGENT under this Agreement. Moreover, without limiting the foregoing, all nonpublic information regarding names and addresses of any Customers, pricing, account invoices, training and educational manuals, memoranda, notes, records, drawings, manuals, disks, or other documents and media pertaining to TransUnion’s business and/or BILLING AGENT’S activities or duties under this Agreement, in whatever form and including all copies, extracts, summaries, and analyses thereof, shall also be deemed Confidential Information also belonging to TransUnion. BILLING AGENT shall hold in confidence and shall not publish, disseminate, disclose or otherwise use any Confidential Information it receives from TransUnion, except solely for purposes of, and solely to the extent necessary to, perform such services.
- 9.2 Subject to the Section below, the obligations of confidentiality set forth in this Section shall not apply to information: (a) which BILLING AGENT can demonstrate, by its written records, was already in the possession of BILLING AGENT prior to the first date of disclosure by TransUnion or any such other source; (b) which BILLING AGENT possesses or acquires independently of BILLING AGENT’S activities or duties under this Agreement; (c) which is now or becomes publicly known through no fault of BILLING AGENT; (d) which BILLING AGENT rightfully receives from third parties (except for information received by BILLING AGENT from third parties in connection with its performance of this Agreement); (e) which by TransUnion’s written authorization is approved for use or release by BILLING AGENT; or, (f) which is required by law (e.g., an order of a court or data request from an administrative or governmental agency with competent jurisdiction) to be disclosed; provided however, that BILLING AGENT shall use best commercial efforts to provide TransUnion ten (10) days’ prior written notice before the disclosure of such information pursuant to this subclause (f).
- 9.3 Any portion of such Confidential Information that is specific (i.e., business practices, database management techniques, etc.) shall not be within the foregoing exceptions to such obligations of confidentiality merely because such information is embraced by general disclosures that are within such exceptions. Moreover, the foregoing exceptions to such obligations of confidentiality shall not apply to a combination of features found in such Confidential Information unless that combination and not just the individual features are within such exceptions.
- 9.4 In the event that BILLING AGENT shall have knowledge of any breach of the confidentiality of, or the misappropriation of, any Confidential Information, BILLING AGENT shall promptly give notice thereof to TRANSUNION.
- 9.5 This Agreement including, without limitation, all Exhibits attached hereto, shall be deemed Confidential Information and BILLING AGENT shall not disclose the contents of this Agreement without the prior written consent of TransUnion, provided, however, that BILLING AGENT may disclose the fact of general existence of this Agreement.
- 9.6 In the event of a breach of the aforestated obligations of confidentiality, TransUnion shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief, as well as monetary damages. Nothing stated herein will be construed to limit any other remedies available to TransUnion.
- 9.7 Upon TransUnion’s written request or upon termination of this Agreement, whichever occurs first, BILLING AGENT shall either return all other Confidential Information provided to BILLING AGENT or to which BILLING AGENT may have otherwise obtained in performance of services for TransUnion under this Agreement, along with all copies thereof, to TransUnion or, at TransUnion’s sole option, provide a written certification, signed by an officer of BILLING AGENT, that all such other Confidential Information has been destroyed. All obligations of confidentiality set forth herein shall survive any such destruction of tangible Confidential Information as well as the return of tangible Confidential Information to TransUnion.

10. Limitation of Liability

- 10.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES INCURRED BY THE OTHER PARTY AND ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS OF GOOD WILL AND LOST PROFITS OR REVENUE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**
- 10.2 THE FOREGOING NOTWITHSTANDING, WITH RESPECT TO BILLING AGENT, IN NO EVENT SHALL THE AFORESTATED LIMITATIONS OF LIABILITY APPLY TO ANY PENALTIES, FINES, OR SIMILAR MONETARY DAMAGES INCURRED BY TRANSUNION AND RESULTING FROM GOVERNMENTAL, REGULATORY OR JUDICIAL ACTION(S) PERTAINING TO VIOLATIONS OF THE FAIR CREDIT REPORTING ACT (15 U.S.C. § 1681, ET SEQ.) AND/OR OTHER LAWS, REGULATIONS AND/OR JUDICIAL ACTIONS TO THE EXTENT SUCH DAMAGES RESULT FROM BILLING AGENT'S (INCLUDING, WITHOUT LIMITATION, BILLING AGENT'S EMPLOYEES') BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND/OR FROM BILLING AGENT'S (INCLUDING, WITHOUT LIMITATION, BILLING AGENT'S EMPLOYEES') NEGLIGENCE OR INTENTIONAL CONDUCT.**
- 10.3 TRANSUNION SHALL NOT BE LIABLE FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED. TRANSUNION'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT COLLECTED BY BILLING AGENT, UNDER THIS AGREEMENT, DURING THE TWELVE MONTH (12) MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.**
- 11. Notice and Notice Addresses** All required notices and other required communication, from one party to the other under this Agreement, shall be in writing and sent to the addresses set forth below. Any such notice or other communication shall be sufficiently given if: (1) delivered personally to the address, referred to below, of the party to whom notice is to be given; or, (2) sent by pre-paid first class mail, certified mail, registered mail or by nationally-recognized private express courier, to the address, referred to below, of the party to whom notice is to be given.

Trans Union LLC
555 W. Adams Street
Chicago, Illinois 60661
Attn.: GENERAL COUNSEL

Upstart Network, Inc.
950 South Delaware Avenue #300
San Mateo, CA 94403
ATTN.: General Counsel

- 12. Governing Law** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois regardless of the laws that might otherwise govern under applicable Illinois principles of conflicts of law.
- 13. Construction and Severability**
- 13.1** All references in this Agreement to the singular shall include the plural where applicable. Titles and headings to sections or paragraphs in this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement.
- 13.2** If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 13.3** Each of the parties has jointly participated in the negotiation and drafting of this Agreement. In the event of any ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 14. Force Majeure**. Any delay, omission or failure of performance by either party hereto under this Agreement shall not constitute default hereunder or give rise to any claim for breach of contract if, and to the extent, such delay, omission or failure is caused by or arises by reason of Force Majeure. Force Majeure shall mean occurrences beyond the reasonable control of the party affected, including acts of God; strikes, boycotts or other concerted acts of workmen; failure of utilities; laws, regulations or other orders of public authorities; military action, state of war or other national emergency; fire or flood which, by the exercise of reasonable diligence, the delayed party is unable to prevent or provide against. The party affected by any Force Majeure event or occurrence shall give the other party written notice of said event or occurrence within ten (10) days of such event or occurrence.

15. **Entire Agreement.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO AND SUPERSEDES ALL PREVIOUS AGREEMENTS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, THIS AGREEMENT MAY NOT BE ALTERED, AMENDED, OR MODIFIED EXCEPT BY WRITTEN INSTRUMENT, SIGNED BY THE DULY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the last date and year set forth below.

UPSTART NETWORK, INC.

TRANS UNION LLC

By: /s/ Dave Girouard

By: /s/ Peter Turek

Name: Dave Girouard

Name: Peter L Turek

Title: CEO

Title: SVP

Date: 11/25/2020

Date: 11/25/2020

Trans Union LLC Confidential Information

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Exhibit A

Customers

The following shall be deemed “Customers” for purposes of this Billing Agent Agreement:

[***]

Pricing

[***]

Trans Union LLC Confidential Information

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*** Certain information, as identified by [***], has been excluded from this agreement because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.