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Standing Committee on Resource Stewardship
Chair, Mr. Garth Rowswell
c/o Committee Clerk
9820 – 107 Street NW
Edmonton, Alberta T5K 1E7

Dear Mr. Chair,

Please accept the following as Trans Union of Canada, Inc.'s ("TransUnion") written submissions to the Standing Committee on Resource Stewardship's ("the Committee") consultation document, *Emerging Issues: The Personal Information Protection Act* ("PIPA"), dated February 13, 2024 (the "PIPA Consultation").

By way of introduction, TransUnion has been a leading provider of credit information services in Canada since 1989. Respect for and protection of the personal information of consumers is at the center of TransUnion's business operations and deeply embedded within our culture.

As one of Canada's two major credit reporting agencies, we are entrusted with protecting and maintaining accurate and up-to-date credit information about Canadians. We assist banks, credit unions and other organizations in Alberta in making informed and accurate decisions about an applicant's credit worthiness, thereby reducing financial risk. We also help Albertan businesses verify the identity of potential customers. For consumers, we provide tools, resources, and education to help them manage their credit health and achieve their financial goals. Should you require any additional information to enhance your understanding of TransUnion and our business, you are welcome to consult our website at www.transunion.ca and we would further invite you to engage directly with TransUnion through the undersigned.

Since PIPA was enacted in 2004, there has been a rapid evolution of technology and the emergence of new digital business models. Consumer demands for convenience, better service and rates have increasingly driven the digital transformation of the economy and as a society, we are enjoying its benefits. As this is unfolding, there is also an increasing and sophisticated awareness about privacy risks. Consumers want to reap the benefits of digital economy but they still want to be able to control what information they share and how it's used, and they want to ensure that there are modern rules and tools in place to protect their journey. Business in turn requires privacy frameworks that respect and protect consumers, but also provide it with the ability to innovate, compete, and meet customer demands in a fast-moving marketplace.

To strike the right balance, privacy frameworks require clear principles. They must be nimble and aligned with major trading partners, technologically neutral, and they should embrace common sense rules that apply to the collection, use, disclosure, retention and security of personal information. We would add that regulators should also be equipped with a range of tools that allow for flexible and appropriate enforcement.

To simplify our submissions and using the headings and numbering from the PIPA Consultation, TransUnion is providing feedback to only the questions that are directly relevant to its business and where we wish for specific concerns and feedback to be considered by the Committee in its review.

2.0 The Changing Legislative Landscape in Canada and Internationally

1. Are there specific amendments needed to harmonize PIPA with other jurisdictions to make it easier for businesses to operate in all jurisdictions?

At a high level, we would echo the commentary from the PIPA Consultation that speaks to the importance of legislative alignment with other jurisdictions. As noted, Alberta, along with British Columbia and Québec, are unique among the provinces in having stand-alone private sector privacy legislation. TransUnion would hope that the Standing Committee would continue to place emphasis on maintaining PIPA's substantial similarity to the anticipated federal *Consumer Privacy Protection Act* ("CPPA") and *Artificial Intelligence and Data Act* ("AIDA").

Likewise, the PIPA Consultation mentions the newly amended Québec *Act respecting the protection of personal information in the private sector* ("QPSA"). While we appreciate the desire to align privacy legislation across Canadian jurisdictions, there are problematic requirements in the QPSA around the designation of a "Person in Charge" that should not be duplicated in Alberta. Under the QPSA, the highest authority in the organization is designated the "Person in Charge". This role can be assigned to a different individual in the organization; however, QPSA requires this one individual to review and sign off on all complaints, policies, practices, etc. for the organization. This creates an unreasonable burden on a solitary employee when dealing with a medium to large sized organization. While we appreciate the value of ensuring that organizations have specialized leadership specifically dedicated to managing privacy, the overly prescriptive assignment of all tasks to one individual does not account for the practical reality of managing the volume of tasks and consumer interactions that organizations must manage.

We strongly recommend that Alberta continue to focus on ensuring organizations have robust privacy programs as a whole rather than prescribing tasks to one specific individual, as this will reduce organizational efficiency and not permit organizations to handle consumer interactions, policy development and implementation in the best way for consumers and businesses.

3.0 Artificial Intelligence

Should PIPA include a framework to regulate the design, development, and/or use of artificial intelligence systems within Alberta? If so, what should be included?

As set out above, TransUnion supports the continued objective of Alberta to align PIPA across jurisdictions, but specifically with the proposed new federal privacy legislation. As it stands, PIPA does not specifically address artificial intelligence; however, the federal government is proposing new legislation dealing specifically with artificial intelligence, called the *Artificial Intelligence and*

Data Act (“AIDA”). TransUnion appreciates that PIPA is technologically neutral, thereby permitting it to adapt well to the changing technology that has impacted collection, use and disclosure of personal information over the past 20 years. As artificial intelligence is globally a newly emerging area for regulation, we strongly recommend that Alberta consider the value of deferring to the proposed federal legislation in this regard or await the finalized AIDA to determine if further provincial legislation is required. As an organization that operates across Canada, we appreciate consistency, particularly in areas where both businesses and government are faced with entirely new regulations.

Regardless of the above, TransUnion has noted in Section 3 and throughout the PIPA Consultation that automated decision systems and artificial intelligence are often conflated and considered entirely together. We wish to emphasize that automated decision systems or algorithms are not necessarily artificial intelligence. By way of example, consumer credit scores are generated from algorithms that consider a set number of variables to assess credit risk along defined parameters. Additionally, device and identity risk are assessed often through scores or weighting of various established data points to determine the likelihood of fraud. Both of these examples of systems that assess variables can use personal information as part of automated decisioning system; however, they utilize algorithms designed by individuals using specific, weighted parameters and are widely understood to not be artificial intelligence or machine learning as they are not autonomous systems. Because of this, we would ask that any regulation around artificial intelligence or automated decision systems separate these concepts to allow for the many situations where personal information is used in an automated decision system that does not contain any artificial intelligence.

5.0 Protections of Sensitive Personal Information

1. Should provisions be added to PIPA to further protect potentially sensitive information? If so, for which information?

TransUnion appreciates the current approach of PIPA that focuses on incorporating the sensitivity of information throughout the legislation as a parameter for assessing controls and measures as it collects, uses and discloses information. We recommend that PIPA continue to focus on sensitivity as a parameter for consideration as part of placing protections and controls around information rather than a specific definition. This will also be more adaptable over time as new types of data and uses come with technological advancements.

2. Should provisions be added for biometric information?

While TransUnion appreciates the need for regulation of biometric information, we would encourage the Committee to consider that this is another area of near continuous development and change. We note that other jurisdictions that are considering or implanting legislation regulating biometric information are placing certain restrictions on use of that information. Of specific notes is that some jurisdictions are prohibiting organizations from using biometric information unless there is a non-biometric information alternative.

As consumers and businesses continue to move into virtual, online environments, organizations must adapt their fraud and identity assessment practices into new technology. Prohibiting use of biometric information as the sole method for identity verification will likely become a significant challenge for businesses that are in online environments that wish to ensure they are applying best practices for safeguarding access to information. We recommend that if the Committee

considers specific regulation of biometric information, that it continues to consider ways to ensure the legislation can adapt to permit technological developments, particularly where such developments are necessary for the better protection of consumer personal information.

6.0 Consent Requirements

1. *Are the provisions in PIPA dealing with forms of consent and the conditions attached to their use appropriate?*

TransUnion supports Alberta's approach to consent as outlined in PIPA. We note that PIPA specifically accommodates credit reporting agencies by permitting agencies to collect personal information without direct consent where consent is provided to the original creditor. We feel that the current approach to consent in PIPA along with the Guidelines for Obtaining Meaningful Consent, as published by the Office of the Information and Privacy Commissioner of Alberta on their website, provide sufficient regulation for meaningful consent.

TransUnion considered the quote in the PIPA Consultation of Dr. Teresa Scassa regarding consent and organizations using already-collected data for new purposes. From an organizational perspective, we are not permitted to use already-collected data for new purposes without obtaining consumer consent; therefore, we feel that this is clearly addressed in privacy law already. Further, there has been clear direction through consent guidelines issued by regulators that state consent must be set out clearly and cannot be buried in lengthy privacy policies. We have noted that as consent guidelines and regulations have evolved to become more prescriptive, further complications and some contradictions have arisen. While all consent guidelines from Canadian regulators call for consent to be emphasized, separate and clear from being buried in privacy policies, the amendments to the QPSA and the newly published Québec consent guidelines require that consent be presented separately for each purpose from any other information leading to consumer consent fatigue.

We believe this excessive level of prescription of separate consent wording for each purpose only further lengthens the consent process, which is already called out separately from privacy policies, thereby circumventing the aim to provide consumers with a comprehensive and condensed understanding of what they are being asked to consent to. While TransUnion fully supports the importance of providing consumers with a clear and separate consent request for each of the purposes for which it intends to collect, use or disclose personal information, overly prescriptive legislation or guidance in this regard may lead to more onerous consent being presented to an already consent fatigued consumer.

2. *Should individuals receive notice in plain language when organizations explain the purposes for which personal information is collected, used or disclosed?*

As outlined above, TransUnion fully supports initiatives to provide consumers with notice in plain language for the purposes for which information is collected, used or disclosed and we wish to stress that any regulations and guidance should not be so prescriptive that it inadvertently cause consent notices to become lengthy and thereby further fatigue consumers.

7.0 Individual Rights that are Not Included Under PIPA

1. Should PIPA include other protections for individual information, such as an individual's right to be forgotten or de-indexed?

The widely understood purpose of the right to be forgotten should be considered as de-indexing as set out in the PIPA Consultation. The right to be forgotten originates from concerns with the long-term impacts of information on the Internet accessible through social media and search engines. There is a global desire to grant consumers some ability to be de-indexed from search engines and otherwise provide methods for consumers to manage their online presence over time. Historically, in Canada, including in PIPA, consumers have a right to withdraw consent for use and disclosure of their personal information. However, necessarily, this privacy legislation has acknowledged that exceptions are required for the right to withdraw consent to allow for industries like credit reporting to function and to prevent consumers from misusing this premise to escape legal responsibilities.

When considering legislation to provide consumers with a right to be forgotten, all regulators should ensure that the wording of any legislation is clear to address this as a right to de-indexing and not a right to erasure as this could significantly impact the credit reporting industry and the financial sector more broadly. Consumers should have the right to withdraw consent, but such rights should continue to acknowledge the contractual obligations consumers have entered into with their creditors. Such exceptions are necessary because consumers cannot be allowed to misuse the right to withdraw consent or be forgotten to escape contractual obligations, such as asking for information to be deleted from their credit reports to prevent lenders from being able to collect on a debt or report full and accurate information on payment practices to a credit reporting agency. Any changes to PIPA should set clear limitations on the right to withdraw consent or be forgotten to prevent consumers from misusing this right to escape contractual and financial obligations.

2. Upon an individual's request, should organizations be required to transfer that individual's digital personal information to another organization in a structured, commonly used, and machine-readable format when it is technically feasible (data portability)?

In order to align with both the European *General Data Protection Regulation* ("GDPR") and the amended QPSA, it's important that any regulations around personal information portability set out that these requirements only apply to:

1. Information collected directly from the consumer; and,
2. Information that is not created or derived using personal information from the consumer.

Such specific application ensures that this personal information right is properly aimed at providing consumers with the ability to more easily access competitive products and services. It is understood that personal information portability rights are globally aimed at enhancing competition in the areas of open banking, also referred to as consumer directed finance, by permitting consumers to be able to take transactional information from their primary financial institution to other financial institutions to search for more competitive rates for financial products and services. Such objectives do not encompass organizations like credit reporting agencies

that are otherwise regulated information reporting agencies required to provide consumers with free access to data.

We strongly recommend that if the Alberta government considers including amending PIPA to include information portability rights, it limits such portability requirements to align with the wording already set out in the QPSA and GDPR which have been worded to clearly apply this right to the emerging market of consumer directed finance.

3. ***Should organizations be required to provide individuals with the logic involved in automated decision making about that individual (algorithmic transparency)?***

Fundamentally, there is a need for a better understanding of the relationship between privacy concerns and consumer demands for efficient and instantaneous services. Additionally, there is a need to protect organizational competitiveness and to protect the efficacy of certain information products that require a level of confidentiality to be effective. TransUnion offers services that leverage algorithms and automated decision-making systems used by businesses to make decisions about credit, employment, tenancy, and identity and fraud protection, among other things.

The most basic advantage of algorithms and automated decision-making systems is that they enable faster and more consistent decisions, which may result in a greater variety of credit choices and better identity protection for consumers.

Financial institutions need to be able to maintain the proprietary confidentiality of credit scoring algorithms as this embodies the risk strategy of that organization. Full transparency would prohibit competition by permitting competing institutions from being able to understand the exact risk strategy of their competitors.

Further, algorithms are widely used in assessing device and identity risk. The secrecy of these algorithms is fundamental to protecting their efficacy. Too much transparency will make it easier for nefarious actors to circumvent the protection such algorithms aim to offer.

TransUnion generally supports the objective of providing consumers with a better understanding of algorithms that are used in connection with organizational decisions, such as credit scores or fraud and identity assessment in an online environment. This being said, we strongly recommend that any regulation aimed at increasing transparency must not compromise the objectives of competition and security that underly such algorithms.

Under the QPSA, there are requirements for transparency in automated decisioning and profiling systems. However, the legislation focuses on providing transparency to the key factors that influence both systems rather than full transparency into the underlying algorithms. This approach allows for a better understanding of how such algorithms impact the consumer individually without requiring the level of transparency that would compromise confidential proprietary information or the underlying factors that contribute to the efficacy of the algorithm, such as those used in fraud and identity assessment.

8.0 Safeguarding Personal Information

1. Should PIPA regulate the de-identification and/or anonymization of personal information within the control of an organization and the subsequent use or disclosure of the de-identified or anonymized information? If so, how?

It is important to note that both Québec regulations and amendments to the CPPA have modified their definitions of anonymization to clarify that there is no absolute when defining anonymization. TransUnion strongly recommends that Alberta aligns to set out in any definition of anonymization that anonymized information is when there is a very low risk of re-identification, rather than zero risk of re-identification. We wish for an alignment with GDPR on that matter.

An area where privacy regulation, consent and innovation can come head-to-head is on the topic of de-identification. Historically, neither provincial nor federal privacy legislation has sought to regulate de-identified data. There has been consideration recently regarding how to establish a meaningful framework that permits de-identified data to be used by organizations for secondary or tertiary purposes while balancing consumer expectations around consent. TransUnion continues to support current legislative practices that aim only to regulate personal information; however, TransUnion would support changes to PIPA that promote de-identification as a privacy-respectful means of supporting innovation and leveraging data for socially and economically beneficial purposes.

More specifically, we invite additional legislative clarification that allows organizations to use personal information to create de-identified datasets for use in the innovation environment, without an additional obligation of consent. Information that has been de-identified through a risk-based framework can help businesses continue to protect consumers' personal information while allowing them to innovate and advance in the digital space. We recommend that the Standing Committee consult further with industry stakeholders to understand the benefits of de-identification and the many nuances of this approach to privacy protection.

3. Should organizations be required to complete and submit a privacy impact assessment to the Commissioner for specific initiatives involving personal information?

TransUnion notes that privacy impact assessments ("PIA") are now required for all projects involving personal information under the QPSA; however, there is no requirement to provide these to the Commissioner in Québec. For companies such as TransUnion that are information companies, this equates to a significant number of PIAs. Because of this, if there is a requirement under PIPA for such PIAs to be provided to the Commissioner, we suspect that this will result in an overload of documentation for the Commissioner's office and if any approval process is part of this review, there is a strong likelihood that this will result in delays of project development and innovation. We strongly recommend that any requirements for PIAs do not place regulator approvals as a requirement for all projects and permit organizations flexibility as they manage their operations.

9.0 Breach Notification

Are the provisions for notification of breaches to the Commissioner and individuals under PIPA appropriate?

TransUnion's practice is to notify all impacted Canadians if there is a privacy breach, regardless of jurisdiction and without requiring a regulator to provide direction to do so. Because of this, should PIPA be amended to align with breach notification requirements in other Canadian jurisdictions whereby consumers must be notified whenever there is a breach that has a real risk of significant harm, TransUnion's policies would already align to this standard.

TransUnion also supports the recent policy changes announced by the Office of the Information and Privacy Commissioner of Alberta to cease its practice of publishing decisions on all privacy breach notifications that it receives where consumers have already been notified and instead to focus its resources on ensuring that proper notification is provided. While TransUnion finds the current privacy breach requirements under PIPA are sufficient, we support changes that fully align PIPA's breach reporting regulations with the federal reporting regulations.

10.0 Administrative Monetary Penalties

Should PIPA include the ability of the Commissioner to levy administrative monetary penalties against an organization for certain contraventions of the Act?

TransUnion is not opposed to legislative amendments that provide new enforcement powers to the Commissioner. However, the legislation should provide for flexible means of enforcement. For example, in some cases the appropriate disciplinary tool may be education, in other more egregious instances, an administrative monetary penalty may be the best remedy. When determining the right approach, the Commissioner should consider the characteristics of the offence in conjunction with the overall diligence of the organization in adhering to its obligations under PIPA.

Additionally, with multiple jurisdictions in Canada creating more enforcement powers that include significant administrative monetary penalties, TransUnion would hope that in situations where organizations operate in multiple jurisdictions that the enforcement between jurisdictions would be coordinated to ensure that companies are not overly penalized.

If an issue occurs in multiple jurisdictions, we would like to see coordination between jurisdictions to avoid fine stacking and see alignment on what would constitute a reasonable monetary penalty. Being fined for the same offence but in different jurisdictions could be a significant burden and even bankrupt some businesses.

Conclusion

TransUnion supports the important work of the Standing Committee to modernize PIPA. In an era of swift technological innovation, data and the exchange of information are transforming the way businesses operate, while providing consumers with access to (among other things) credit and services that are customized to their unique requirements and needs. We encourage the

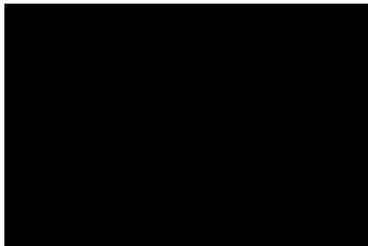
Committee to look at other jurisdictions who have recently completed their own privacy law reviews to ensure consistency and alignment.

If the Alberta government proceeds with amendments to PIPA, it will be crucial to ensure continued meaningful consultations with all stakeholders, including businesses, so that the multiple industry practices impacted by this important piece of legislation are properly considered. TransUnion would be pleased to participate in all future legislative discussions as part of our broader commitment to go beyond data by offering insights to assist businesses, consumers and government.

Unless otherwise marked as "CONFIDENTIAL" within this document, we consent to this submission being published in the context of this consultation process, but we ask that my name and contact information be removed from any publication of this document or from any distribution of this document outside of the Committee and any related government parties.

Please do not hesitate to contact me directly if you have any questions or wish to discuss any of the above in greater detail.

Sincerely,

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Managing Counsel, Regulatory and Privacy
TRANS UNION OF CANADA, INC.

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