

**FW: Updated proposed agreement**

Rush Smith [rush.smith@nelsonmullins.com]

**Sent:** Friday, October 26, 2012 9:17 AM**To:** Stirling, Bryan**Importance:** High**Attachments:** SCRevenue(CLEAN).ECD PMID~1.docx (65 KB) ; SCRevenue.ECD PMID-Credit~1.docx (67 KB)

FYI. I spoke to Thad. My cell phone is 803-606-1406 if you need me.

Rush Smith | 803-255-9492 | [rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)

Nelson Mullins Riley &amp; Scarborough, LLP, Columbia SC

**From:** Rush Smith**Sent:** Friday, October 26, 2012 9:13 AM**To:** 'agjwmcinto@scag.gov'**Cc:** Thad Westbrook; Pitts, Ted; 'etter\_jf@sctax.org'; cooperh@sctax.org; Jon Neiditz**Subject:** FW: Updated proposed agreement**Importance:** High

John,

I've been asked to forward this to you. Please call me on my cell, 803-606-1406. Time, as I believe you know, is of the essence.

Rush

Rush Smith | 803-255-9492 | [rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)

Nelson Mullins Riley &amp; Scarborough, LLP, Columbia SC

**From:** Rush Smith**Sent:** Thursday, October 25, 2012 6:15 PM**To:** 'Pitts, Ted'**Cc:** 'etter\_jf@sctax.org'; 'KimpsoM@sctax.org'; Jon Neiditz; Harry Cooper; Rush Smith**Subject:** FW: Updated proposed agreement**Importance:** High

Ted,

Here's the updated agreement. We're in the process of reviewing it, but I wanted to get it in your hands ASAP.

Ozzie's attached email reflects where they are in the process. We will answer Ozzie's last question affirmatively.

Rush

Rush Smith | 803-255-9492 | [rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)

Nelson Mullins Riley &amp; Scarborough, LLP, Columbia SC

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**From:** Ozzie Fonseca [<mailto:ofonseca@experianinteractive.com>]  
**Sent:** Thursday, October 25, 2012 5:45 PM  
**To:** Rush Smith; Ken Bixler  
**Cc:** Jon Neiditz; [KimpsoM@sctax.org](mailto:KimpsoM@sctax.org)  
**Subject:** Updated agreement

Rush:

Attached please find redlined and clean versions of the agreement. Please review the document and let us know if you have any concerns.

I spoke with our executives about the possibility of getting started without a signed agreement, but I did not get approval for that approach. Given the size and scope of the engagement, they would be most comfortable with a formal contract.

Since time is of the essence, Ken and I are available to jump on a call to work out any final details.

On a final note we'll need 24 hours (we are aiming for less) to upload the eligible individual file, but will start getting calls right away. Are we at liberty to distribute codes to people who identify themselves as victims within the first 24 hours?

Thanks

**Ozzie Fonseca, CIPP/US**  
**Senior Director, Data Breach Resolution**



Experian Consumer Direct  
535 Anton, Suite 100, Costa Mesa, CA 92626  
(949) 567-3851 - Desk  
(949) 302-2299 - Cell  
(949) 242-2938 - Fax  
[ozzie.fonseca@experian.com](mailto:ozzie.fonseca@experian.com)

Blog: [www.Experian.com/blogs/data-breach](http://www.Experian.com/blogs/data-breach)  
Follow us on Twitter: [www.Twitter.com/Experian\\_DBR](http://www.Twitter.com/Experian_DBR)  
Visit us at <http://www.experian.com/databreach>

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## CREDIT MONITORING PRODUCTS AGREEMENT

### ORDER FORM

*(Please complete all of the fields below)*

CLIENT INFORMATION	
<b>CLIENT:</b> a STATE OF INCORPORATION Corporation	<u>Client Billing Address and Contact</u>
<b>Address:</b>	<b>Address:</b>
<b>City:</b>	<b>City:</b>
<b>State:</b> Zip Code:	<b>State:</b> Zip Code:
<b>Contact:</b>	<b>Contact:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Email:</b>	<b>Email:</b>
ORDERING INFORMATION	
<b>Agreement Date:</b> October 25, 2012 <b>Enrollment End Date:</b> January 31, 2013	
<b>Product Term (per Individual):</b> One (1) year	
<b>Number of Activation Codes:</b> 3,000,000	
<b>Fee per Activation Code Redeemed:</b> \$15.35 <b>Set-up Fee:</b> \$0.00	
<b>Vanity URL for Consumer Product Website, if applicable:</b> www.protectmyid.com/scdor	
<b>Consumer Product Launch Date:</b> Within 24 hours of ECD's receipt of the List from Client <i>(This is an estimated date only)</i>	
<b>Consumer Products shall include one or more of the following products, which are further described in Exhibit A:</b>	
<b>Primary Product:</b> ProtectMyID Alert 3B (online/offline enrollment and alerts)	
<b>Secondary Product:</b> N/A	
Supplemental Client Services (check all that apply; services are described in greater detail in <u>Exhibit B</u> ):	
<input type="checkbox"/> <b>Communication Facilitation Services</b> – printing and mailing of letters - price is N/A ( <i>inclusive</i> of postage)	
<input checked="" type="checkbox"/> <b>Enhanced Customer Care Services</b> – additional call center services – price is \$.23 per individual affected (3,000,000 X \$.23 = \$690,000 -- Dedicated number 866-578-5422)	
<input type="checkbox"/> <b>Address Append Services</b> – Consumer address look up – price is N/A. A Rider agreement must accompany this form prior to processing data.	
<i>(The above Consumer Products are only available to Qualified (as defined in Exhibit A) Individuals who meet the requirements as defined and set forth in Exhibit A.)</i>	
<b>ALL INFORMATION CONTAINED IN THIS ORDER FORM IS SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THE ATTACHED CREDIT MONITORING PRODUCTS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE REPRESENTATIONS AND WARRANTIES; DISCLAIMERS, LIMITATIONS OF LIABILITY AND PROVISIONS REGARDING EACH PARTY'S RESPECTIVE INDEMNIFICATION OBLIGATIONS.</b>	

## CREDIT MONITORING PRODUCTS AGREEMENT

This Credit Monitoring Products Agreement (the "Agreement") is made by and between ConsumerInfo.com, Inc., a California corporation, also known as Experian Consumer Direct ("ECD"), and the party identified as "Client" in the Order Form and its Affiliates (collectively, "Client"), and shall be effective as of the Agreement Date (as defined in the Order Form). Each of ECD and Client are sometimes referred to herein as a "Party" and collectively as the "Parties." The Order Form attached hereto is made a material part of this Agreement and is incorporated herein by this reference.

### RECITALS

**WHEREAS**, Client maintains personal and other sensitive information on certain individuals;

**WHEREAS**, ECD, directly and through one or more third-party providers, provides certain credit monitoring and other products; and

**WHEREAS**, Client desires for ECD to make available certain of ECD's products to certain Individuals (as defined below) identified by Client with respect to whom Client maintains personal and other sensitive information.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms herein shall have the meanings set forth in the Ordering Information section of the Order Form, or, if not set forth therein, as defined elsewhere in this Agreement. The following terms shall have the following meanings ascribed to them:

**1.1** "Activation Code" means a unique, single use code with respect to each Individual that allows such Individual to enroll for and receive the Consumer Product. Each Individual may only redeem his/her Activation Code for only one applicable Consumer Product.

**1.2** "Affiliates" means any entity controlled by, under common control with or that controls the applicable Party. "Control" means ownership of fifty percent (50%) or more of the ownership interest of an entity.

**1.3** "Consumer Product(s)" means those products and services provided by ECD hereunder, as selected by Client and set forth in the Order Form.

**1.4** "Enrollment Period" means the period commencing on the actual launch date of the Consumer Product Website and ending on the Enrollment End Date as set forth in the Order Form, whereby Individuals may redeem their Activation Code and receive the Consumer Product.

**1.5** "Individual" means any individual for whom Client maintains personal and other sensitive information.

**1.6** "Individual Information" means all information pertaining to an Individual obtained by ECD, including without limitation, (a) through Individual enrollment for the Consumer Product or visiting ECD's website(s), or (b) through provision of the Consumer Product.

**1.7** "Law" means any rules, laws, statutes, regulations or judgments, orders or decrees imposed by any governmental entity.

**1.8** "Product Term" means the period set forth in the Order Form, commencing on the date an Individual completes enrollment for the Consumer Product, which may occur at any time during the Enrollment Period.

### 2. CREDIT MONITORING PRODUCTS; SUPPORT

**2.1 Access to Consumer Products.** ECD hereby agrees to provide to Client the number of Activation Codes set forth in the Order Form, for the purpose of Client providing such Activation Codes to Individuals. When ordering Activation Codes, Client shall order a number of Activation Codes equal to the number of notifications that it intends to provide to Individuals pursuant to Section 2.7 below. Client shall assign an Activation Code to each Individual and upon each Individual redeeming an Activation Code and completing the required enrollment, ECD shall provide to such Individual the selected Consumer Product for the Product Term. The Activation Codes may be redeemed by Individuals only during the Enrollment Period, and such Activation Codes will expire at the end of such Enrollment Period. Client may not distribute any Activation Codes thereafter.

**2.2 Enrollment; Consumer Product Website.** Each Individual may enroll for the applicable Consumer Product during the Enrollment Period (a) via phone enrollment to ECD's Customer Care Center, and/or, in the event Client elects to send a Notification Letter at a point in time after the Release (b) online via a secure Website designated by ECD (the "Consumer Product Website"). As a condition to receiving the Consumer Product, each Individual must complete ECD's applicable enrollment process and/or the other applicable credit reporting companies' enrollment process, including providing all requested information, and agree to all terms and conditions as well as ECD's privacy policy (collectively, the "End-User Terms and Conditions") for the Consumer Product. ECD shall have sole discretion to determine the End-User Terms and Conditions pursuant to which the Consumer Product shall be provided to Individuals; provided that, ECD shall not charge Individuals for the Consumer Product provided under this Agreement and as described in Exhibit A during the Product Term. The delivery method of the Consumer Products to the Individuals during the Product Term is not subject to change (i.e., if Individuals enroll or are enrolled online, the Consumer Product will be delivered online for the entire Product Term; and if Individuals enroll offline, the Consumer Product will be delivered via mail, and customer care will be available via phone (in accordance with Section 2.4 below) for the entire Product Term).

ECD shall build, host and maintain, at its own cost, the Consumer Product Website. Unless agreed to in writing by ECD, all content, including the design and look and feel, of the Consumer Product Website shall be determined by ECD, at its sole and absolute discretion. The Consumer Product Website shall be operated in accordance with ECD's standard procedures and shall be accessible by Individuals on a date that ECD and Client mutually agree to in writing after the Release date..

**2.3 Enrollment Process; Authentication Failure.** Client hereby acknowledges that ECD shall maintain strict procedures and protocols relating to its enrollment process (including timed-out and other security measures), and failure by an Individual to follow such procedures and protocols may result in a failed enrollment. Client also acknowledges that there are a number of additional reasons and factors that may cause Individuals to fail authentication/enrollment, including, without limitation, corporate firewalls, proxy servers, spam blockers, fraud alerts, credit file freezes, data errors, inaccurate out-of-wallet information, or incorrect social security numbers. Upon any such failure, each affected Individual shall be provided with a toll-free Customer Care Center number to call. Upon an Individual initiating such call, a customer care representative will attempt to manually authenticate such Individual by asking additional security questions; provided, that, in the event such a telephonic authentication is not possible, additional steps may be taken. ECD shall endeavor to make the enrollment process as "user-friendly" as reasonably possible but without compromising its security standards. Notwithstanding the foregoing, ECD shall not be required to provide any refund of the Fee (as defined in Section 4.1 below) to Client in the event that such Individual fails to successfully complete such enrollment. ECD reserves the right, at its sole and absolute discretion, to modify or alter the enrollment process and/or the services associated therewith from time to time.

**2.4 Customer Care.** Customer care will be available to Individuals via access to a toll-free Customer Care Center located in the United States. Fraud resolution customer care shall be available to Individuals via customer care representatives in the United States. The services available via the Customer Care Center shall be limited to assistance with telephone and email inquiries regarding enrollment for the Consumer Product and technical issues relating to redemption of Activation Codes, authentication failure, username and password assistance, cancellations, locked accounts, changes in personal information, disputes, billing questions about additional products, credit score information, general credit-related questions, fraud resolution, suspected fraudulent items, monitoring and alert information, free credit reports, and general Consumer Product Website navigation. The appropriate toll-free Customer Care Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Care Center enrollment process. Customer Care Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time. The Customer Care Center will attempt to authenticate Individuals in accordance with Section 2.3 above. The Customer Care Center will not have access to and will not provide any information related to Client or its business and/or legal decisions in making the Consumer Product available to Individuals on a complimentary basis, and will refer any such inquiries back to Client.

**2.5 Third Party Companies.** The portions of the Consumer Product provided by ECD's partners, Affiliates and certain third parties, including consumer reporting companies (collectively, "Third Party Companies") are subject to such entities' own end-user/individual standard terms and conditions and information requirements; the names of the Third Party Companies currently providing portions of the Consumer Product are delineated in Exhibit A. Individuals must comply with the Third Party Companies' terms and conditions and other requirements in order to receive such portions of the Consumer Product. Some of the Third Party Companies are not subcontractors or agents of ECD, and therefore, ECD does not control such terms and conditions or requirements and shall not be obligated to intervene or assist Individuals in any way in meeting such requirements. Individuals shall be solely responsible for handling any issues relating to such terms and conditions and requirements directly with any such partners, Affiliates and third parties. ECD shall not be obligated to refund any amount of the Fee (as defined in Section 4.1 below) on account of an Individual's inability to receive portions of

the Consumer Product as a result of such Individual's failure to comply with any of the Third Parties' terms and conditions and/or other requirements. Without limiting the generality of the foregoing, Individuals shall be required to provide all necessary information and meet other criteria required by each applicable consumer reporting company in order to receive a credit report or other products and services from such company.

**2.6 Intellectual Property and Branding of Consumer Products.** Unless otherwise agreed to in writing by ECD, the Consumer Products shall be branded as determined by ECD, at its sole and absolute discretion, and Client shall not designate (through trademark, trade name, trade dress or otherwise) the Consumer Products as being provided by Client. Client shall retain ownership of any and all pre-existing Client intellectual property, including but not limited to Client's trademarks, patents and trade dress.

**2.7 Notification to Individuals.** Client shall prepare a press release or other public announcement which details the data loss incident that affects Individuals ("Release"). ECD must be provided an opportunity to review any and all Releases prior to their conveyance to the general public. Subsequent to the Release, ECD shall be prepared to receive phone calls at its Customer Care Center, however, the ECD Customer Care Center shall not be prepared to assist Individuals with both enrollment in the Consumer Product and delivery of Enhanced Customer Care Services as of the Consumer Product Launch Date. Client acknowledges and agrees that with respect to any and all calls from Individuals which ECD receives at its Customer Care Center after the Release *but prior to* the Consumer Product Launch Date, ECD will use reasonable commercial efforts to facilitate such calls to achieve a satisfactory consumer experience, but the requirements of Section 2.11 shall still apply. In addition to the foregoing specified phone enrollment process, within a mutually agreeable period of time following the Agreement Date, Client may elect to prepare a communication to Individuals in the form of a notification letter ("Notification Letter") to be sent via U.S. Mail or email which must include (a) one Activation Code per each Individual Client identifies as affected by the subject data breach or data loss incident and eligible to receive such a Notification Letter, (b) the procedures for enrollment of the Consumer Product (including, but not limited to the (i) ECD maintained URL where such Individuals may properly utilize their Activation Code and (ii) the appropriate ECD Customer Care Center phone numbers), and (c) a listing of the key Consumer Product features. Any Client notification process pertaining to the Consumer Products that includes elements other than the Notification Letter must be pre-approved by ECD in writing. CLIENT SHALL SUBMIT ALL NOTIFICATION LETTERS TO ECD FOR APPROVAL PRIOR TO DELIVERY OF SUCH NOTIFICATION LETTERS TO INDIVIDUALS. ECD shall have the right to approve only the limited portions of such Notification Letters that describe the Consumer Product, and/or the procedures for redemption of the Activation Codes, or which in anyway otherwise relate to ECD and/or its Affiliates or [annualcreditreport.com](http://annualcreditreport.com). Client shall not provide, in any Notification Letter or any other public communication (including but not limited to communications with Individuals), any representation, description or other statement regarding the Consumer Products or otherwise refer to ECD or its Affiliates in any way other than by such a prepared Notification Letter reviewed and approved by ECD, or otherwise in accordance with section 9.8, below. Upon ECD's reasonable request, Client must provide ECD a mailing schedule in advance of Client commencing delivery of any and all Notification Letters to Individuals. Once provided by Client, ECD will allocate Customer Care Center and other resources in accordance with such schedule; any significant updates or modifications by Client to the schedule must be provided to ECD immediately and may result in increased costs for ECD that will require revised pricing discussions with Client. Client agrees not to make any statement or undertake any act or omission that would result in civil or criminal liability for ECD.

**2.8 ECD Communication with Individuals and/or Third-Parties.** ECD may communicate with or send communications to Individuals relating to (a) a Consumer Product pursuant to the terms of this Agreement, (b) the expiration of a Consumer Product and provide options for such Individuals to extend or renew such Consumer Product (i.e. via an end-of-term service alert), and/or (c) other ECD specific credit related products that are available to the Individuals in their online proprietary member center section of the Consumer Product Website or via e-mailed (or in the case of offline Individuals, mailed) service alerts sent by ECD to such Individuals. In addition, an Individual may affirmatively opt-in to receive marketing offers from ECD, its Affiliates and third-parties. As it relates to (b) and (c) in the preceding sentence, ECD may charge Individuals a separate fee for (i) an extension or renewal of a Consumer Product beyond the Product Term stipulated herein, or (ii) for other products not included under this Agreement. ECD is not obliged to communicate with or provide services to any third-parties who may have contractual or other relationships with Client (other than those explicitly agreed to within this Agreement).

**2.9 Activation Code Availability.** On or before the time of the Release, Client shall provide to ECD a listing of Individuals eligible to receive Activation Codes Center ("List"). Client shall be solely responsible for development of the List, as well as all eligibility criteria associated with the List. Upon provision of the List to ECD, ECD shall make the Activation Codes available for distribution to Individuals via personnel within the ECD Customer Care Center. In the event Client elects to mail any Notification Letters, ECD shall not be required to provide the Activation Codes for such Notification Letters to Client until both parties have reviewed and finally approved the Notification Letter as described in Section 2.7 above.

**2.10 Distribution of Activation Codes.** Activation Codes for distribution to Individuals on the List shall be maintained by ECD, and within ECD's care, custody and control. In the event ECD delivers Client (or Client's agent) any Activation Codes for use by Client in a Notification Letter, Client agrees not to sell or otherwise distribute any such Activation Codes, except to Individuals and only as expressly permitted under this Agreement. In no event shall ECD be liable for any loss, damage, theft, corruption or destruction ("Loss") of Activation Codes once issued by ECD to Client, including, but not limited to, any such Loss attributable to Client's distribution, storage (if applicable) and/or mailing of such Activation Codes.

**2.11 No Early Commencement.** Client acknowledges and agrees that (a) the Consumer Product Website will not be accessible by Individuals prior to the date mutually agreed to by ECD and Client in writing, and (b) it shall not communicate with Individuals regarding the availability and description of the Consumer Product, including, without limitation, the procedures for enrollment of the Consumer Product, any earlier than the date of the Release and acknowledges and agrees that the Consumer Products shall not be available for enrollment prior to the Consumer Product Launch Date stipulated on the Order Form. CLIENT AGREES THAT IT SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL LIABILITIES, COSTS AND EXPENSES INCURRED BY ECD OR ITS AFFILIATES AS A RESULT OF CLIENT'S AND/OR ANY INDIVIDUAL'S FAILURE TO COMPLY WITH THE FOREGOING, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INDIVIDUAL ATTEMPTING TO ACCESS THE CONSUMER PRODUCT WEBSITE AND/OR OTHERWISE ENROLL IN THE CONSUMER PRODUCTS PRIOR TO THE CONSUMER PRODUCT LAUNCH DATE SET FORTH IN THE ORDER FORM.

**2.12 Additional Client Requirements.** In the event Client requires additional Activation Codes beyond the number stipulated in the Order Form during the Enrollment Period, ECD may provide such additional Activation Codes pursuant to a mutual written Order Form addendum between the Parties to supplement this Agreement, which such addendum shall be in a form provided by ECD and subject to the terms of this Agreement (unless otherwise agreed to in such addendum). An Order Form addendum may have ordering information that differs from the Order Form attached to this Agreement, including, but not limited to, Enrollment End Date, Product Term, and fees. Any additional Client requirements or other changes to this Agreement may be agreed to between the Parties via a signed written amendment to this Agreement.

**2.13 Exclusivity.** During the Product Term, Client agrees not to obtain products or services that are similar to the Consumer Products from any party other than ECD.

### **3. INSURANCE**

**3.1 Insurance.** The insurance provided to Individuals as a product feature of certain Consumer Products is strictly subject to the policies, terms and conditions of the designated third-party insurers. Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the Consumer Product. ECD does not directly sell such insurance to Client or Individuals. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of insurable losses. At the election of the designated third-party insurer or ECD, (a) the amount of insurance coverage to be provided to Individuals, and/or (b) the designation of the third-party insurer(s) are both subject to change at any time. Notwithstanding the foregoing, identity theft insurance may not be provided to any Individuals residing in any state where the provision of such insurance is prohibited by Law.

**3.2 Guarantee for FamilySecure.com.** The Guarantee provided to Individuals as a product feature of the Guarantee provided to Individuals as a product feature of the Family Secure Consumer Product is strictly subject to the policies, terms and conditions described at [http://www.familysecure.com/Member\\_Guarantee.aspx](http://www.familysecure.com/Member_Guarantee.aspx). Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the FamilySecure.com Consumer Product. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of losses. At the election of ECD, (a) the amount of the Guarantee to be provided to Individuals, and/or (b) the designation of the party providing the Guarantee are both subject to change at any time. Notwithstanding the foregoing, the Guarantee may not be provided to any Individuals residing in any state where the provision of such Guarantee is prohibited by Law. Due to New York State Law restrictions, the Guarantee cannot be offered to Individuals who are residents of the State of New York.

### **4. FEES**

**4.1 Fees.** Client hereby agrees to pay to ECD the Set-up Fee within thirty (30) calendar days of the Effective Date. Client also agrees to pay ECD the Fee per Activation Code Redeemed set forth in the Order Form for each Activation Code redeemed by Individuals during the Enrollment Period (the "Fee"). ECD will invoice the Fee to Client on a monthly basis for all Activation Codes redeemed by Individuals during the prior thirty (30) calendar days and Client agrees to pay the Fee within thirty (30) days from the date of such invoice. If Client does not make full payment of the Fee within such

period, ECD, at its option, may immediately (a) deactivate the Activation Codes and cease further performance under this Agreement until such Fee is paid in full by Client, or (b) terminate this Agreement and the Individuals' enrollment of the Consumer Product. Interest shall accrue on any past due amounts at the rate of one and one half percent (1.5%) per month. In addition, Client shall be liable to ECD for any costs and attorneys' fees incurred by ECD to collect unpaid amounts.

**4.2 Fees Non-Refundable.** The Fee is, without limitation, due and payable as provided for herein, including any changes to facts or circumstances that may negate the need for some or all of ECD's Consumer Products or Activation Codes hereunder, whether or not Client and/or any Individual utilizes the Consumer Product in accordance with the terms of this Agreement. Client agrees to not waive any of its payment obligations and ECD shall not be obligated to refund any amount of the Fee already paid by Client on account of (a) any of the foregoing circumstances, (b) an Individual's inability to receive all or a portion of the Consumer Product as a result of such Individual's failure to (i) successfully complete enrollment, or (ii) comply with any or all of the Third Party Companies' terms and conditions and/or other requirements, and/or (c) any circumstances relating to Section 2.10 above. Without limiting any remedies available to ECD, Client acknowledges that upon entering into this Agreement, ECD shall immediately begin to incur costs and expenses, as well as allocate certain resources away from other projects, for the purpose of performing ECD's obligations hereunder; therefore, Client acknowledges and agrees that Client is responsible to pay for a minimum of five (5) percent of the total Activation Codes ordered by Client, irrespective of the total number of Activation Codes finally redeemed. In the event more than five (5) percent of all Activation Codes ordered by Client are redeemed, then these redemptions will be credited towards the total owed by Client for all redemptions.

**4.3 Taxes.** Client shall be responsible for, and shall promptly pay or reimburse ECD for the payment of, any sales, use, excise, ad valorem, value-added or other similar taxes, assessments or duties imposed by any government agency that are associated with the Consumer Products (other than taxes based on ECD's net income).

## **5. OWNERSHIP; INDIVIDUAL INFORMATION**

**5.1 ECD Ownership.** ECD and/or its Affiliates or third party providers shall exclusively own all right, title and interest, including all copyrights, trade secrets, know-how, goodwill, trademarks, service marks, trade names, trade dress, logos, patents or other intellectual property (or any derivative works thereof) and underlying technology in (i) the Consumer Products and all other products provided by ECD hereunder, (ii) the Consumer Product Website, and (iii) all other materials and information provided by ECD to Client hereunder. No grant to use any intellectual property (including any trademarks) of ECD, its Affiliates or third-party providers is made under this Agreement.

**5.2 Individual Information.** As Individual Information is conveyed from an Individual directly to ECD, it is *not* defined as Confidential Information pursuant to the definition of that term in section 7., below, rather ECD shall use Individual Information in accordance with its posted privacy policy and the End-User Terms and Conditions; such policy and terms and conditions may be amended from time to time, at ECD's sole and absolute discretion and without prior notice to Client and/or Individuals, subject to any applicable restrictions of state or other Laws.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER AND LIMITATION OF LIABILITY; INDEMNIFICATION**

**6.1 Representations and Warranties by ECD.** ECD represents and warrants to Client that it (a) has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) will provide the Consumer Products in a manner consistent with the level of service provided to ECD's general customer base for such Consumer Products; and (c) will provide the Consumer Products and any other products and services provided under this Agreement in a professional manner.

**6.2 Representations and Warranties by Client.** Client represents and warrants to ECD that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) to the best of its knowledge, all information provided by Client to ECD are accurate in all material respects, (c) it will communicate with the Individuals in accordance with Section 2.7 above, such that each of its Individuals receive notification and one Activation Code, and (d) by entering into this Agreement and performing hereunder, Client will not be violating or breaching any other contract, agreement, commitment, promise, understanding or arrangement.

### **6.3 DISCLAIMER AND LIMITATION OF LIABILITY.**

(a) CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE CONSUMER PRODUCTS ARE INTENDED AS ELECTIVE AND OPTIONAL PRODUCT OFFERINGS THAT CLIENT MAY CHOOSE TO MAKE AVAILABLE TO ITS INDIVIDUALS, AND THAT SUCH PRODUCTS ARE SELECTED SOLELY BY CLIENT. THE CONSUMER PRODUCTS ARE NOT INTENDED TO, AND ECD EXPRESSLY DISCLAIMS ANY WARRANTY OR GUARANTEE THAT THEY WILL, ALLOW CLIENT TO COMPLY WITH



LAW, MITIGATE DAMAGES (INCLUDING, BUT NOT LIMITED TO, RELATING TO A DATA BREACH) OR AVOID ANY OTHER CONSEQUENCES OF A DATA BREACH OR FAILURE TO INSTITUTE PROPER SECURITY MEASURES. ANY COMPLIANCE OR NONCOMPLIANCE WITH LAW SHALL BE BASED SOLELY UPON THE PROCEDURES AND ACTIONS IMPLEMENTED BY CLIENT IN CLIENT'S SOLE DETERMINATION. OTHER THAN THE WARRANTIES SET FORTH UNDER SECTION 6.1, ALL PRODUCTS PROVIDED BY ECD, ITS AFFILIATES OR ITS THIRD-PARTY PROVIDERS PURSUANT TO THIS AGREEMENT ARE SO PROVIDED ON AN "AS IS" BASIS, AND ECD MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT. ECD FURTHER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES REGARDING THE CONSUMER PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) IN NO EVENT SHALL ECD BE LIABLE TO CLIENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND LOST SALES, SUFFERED BY OR OTHERWISE COMPENSABLE TO CLIENT, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECD'S AGGREGATE LIABILITY TO CLIENT AND/OR ITS AFFILIATES FOR DAMAGES (i) CONCERNING THE PERFORMANCE OR NON-PERFORMANCE BY ECD OF ITS OBLIGATIONS HEREUNDER, OR (ii) IN ANY WAY RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE PROVISION OF THE CONSUMER PRODUCTS, AND INCLUDING PURSUANT TO ECD'S INDEMNIFICATION OBLIGATIONS SET FORTH UNDER THIS AGREEMENT), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO ECD UNDER THE TERMS OF THIS AGREEMENT.

#### **6.4 Indemnification.**

(a) **Indemnification by Client.** Client will indemnify, defend, and hold ECD, its Affiliates and parent companies, and their respective directors, officers, shareholders, employees and agents (collectively, the "ECD Indemnified Parties"), harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including by way of example only, ECD's costs of responding to a subpoena in any cause of action where Client is a named party), including reasonable attorneys' fees (collectively, "Damages"), which may be asserted against or incurred by ECD, its Affiliates, or any of the ECD Indemnified Parties, arising out of or resulting from (i) any agreement, arrangement or relationship between Client and Individuals, including, without limitation, any duties or obligations (contractual, at Law or otherwise) owed by Client to Individuals, (ii) Client's data breach, failure to maintain security measures, or violation or failure by Client to comply with any Law (including any claim that the Consumer Products are inadequate for Client to comply with the same), (iii) Client's misconduct or disregard of ordinary care in performing any of its obligations hereunder, or (iv) Client's breach of any provisions of this Agreement, including, but not limited to, Sections 2.7 and 2.10 hereof.

(b) **Indemnification by ECD.** ECD will indemnify, defend, and hold Client and its directors, officers, shareholders and, agents (the "Client Indemnified Parties") harmless from and against any and all Damages, which may be asserted against or incurred by Client or any of the Client Indemnified Parties, arising out of or resulting from any material breach of the End-User Terms and Conditions by ECD.

(c) **Procedures for Control of Indemnifiable Claims.** In order for a Party (the "Indemnified Party") to be entitled to any indemnification provided for in Sections 6.4(a) or 6.4(b) above, such Indemnified Party must notify the Party obligated to provide such indemnification (the "Indemnifying Party") in writing of the indemnifiable claim within thirty (30) business days after receipt by such Indemnified Party of written notice of the indemnifiable claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. After receipt of such notice, the Indemnifying Party shall have the right to assume the defense of, compromise or settle the indemnifiable claim at its expense; provided, however, that the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that provides for non-monetary relief without the consent of the Indemnified Party. In any indemnifiable claim which the Indemnifying Party has elected to defend, compromise or settle, the Indemnifying Party shall not be responsible for any expenses, including counsel fees, incurred by the Indemnified Party after such election; but the Indemnified Party may participate therein and retain separate counsel at its own expense. The Indemnified Party shall provide to the Indemnifying Party all information, assistance and authority reasonably requested in order to evaluate any indemnifiable claim and effect any defense, compromise or settlement thereof. If the Indemnifying Party does not assume the defense of the indemnifiable claim as provided herein, the Indemnified Party may defend, compromise or settle the

claim in any manner it reasonably deems appropriate, provided that the Indemnifying Party shall remain responsible for any losses, liabilities or damages the Indemnified Party suffers arising from the indemnifiable claim to the fullest extent provided under this Section 6.4.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition and Obligations.** For the purposes of this Agreement, “Confidential Information” means the pricing, provisions of and all performance under this Agreement and information about the disclosing Party’s business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a Party marked or designated by such Party as “confidential” or “proprietary” or information which, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as confidential. Notwithstanding the foregoing, the Parties agree that any and all information provided by Individuals and collected by ECD from the Consumer Product Website shall not be deemed as Confidential Information and shall be collected in accordance with ECD’s privacy policy and End-User Terms and Conditions, which may be amended from time to time. For a period commencing on the Agreement Date and ending two (2) years after the Term, each Party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Upon the disclosing Party’s request, the receiving Party will promptly return to the disclosing Party all tangible items containing or consisting of the disclosing Party’s Confidential Information and all copies thereof. Each Party acknowledges that all of the disclosing Party’s Confidential Information is owned solely by the disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the disclosing Party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at Law or in equity in the event of such a breach.

**7.2 Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information which is: (a) now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public, (b) acquired by the receiving Party before receiving such information from the disclosing Party and without restriction as to use or disclosure, (c) hereafter rightfully furnished to the receiving Party by a third party, without restriction as to use or disclosure, (d) information which the receiving Party can document was independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, (e) required to be disclosed under any Law, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable notice of such required disclosure and an opportunity to obtain a protective order or other appropriate remedy, (f) disclosed with the prior written consent of the disclosing Party.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence upon the Agreement Date and shall expire at the end of the Enrollment Period (the “Term”); provided, however, the terms of this Agreement will continue as stipulated herein for delivery of Consumer Product(s) in accordance with an active Order Form addendum between the Parties to this Agreement (pursuant to Section 2.12 above). The Product Term will continue as stipulated herein for continued delivery of the Consumer Product to Individuals in accordance with and as may be required by the End-User Terms and Conditions.

**8.2 Termination for Breach.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. In the event either Party terminates this Agreement for breach, termination shall not affect the other Party’s financial obligation to make any required payments hereunder.

**8.3 Effect of Termination.** Except with respect to the Consumer Product for which both (a) Client has been invoiced and rendered payment, and (b) ECD has commenced delivery of the Consumer Product, ECD shall have no further obligation to continue to provide the Consumer Product following the termination of this Agreement pursuant to Section 8.2 above.

**8.4 Surviving Provisions.** The terms and conditions of Sections 2, 3, 4.2, 5, 6, 7, 8.3, 8.4, and 9 of this Agreement shall survive and continue after termination or expiration of this Agreement.

## **9. GENERAL PROVISIONS**

**9.1 Assignment.** Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of either Party shall be assigned or delegated without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any unauthorized assignment or delegation shall be null and

void. Notwithstanding the foregoing, either Party may assign or otherwise transfer its rights and obligations to its Affiliates or to successors in interest (whether by purchase of stock or assets, merger, operation of Law, or otherwise) of that portion of its business related to the subject matter hereof.

**9.2 Successors in Interest.** Subject to the provision of Section 9.1 above, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

**9.3 Choice of Law; Jurisdiction.** This Agreement shall be construed in accordance with the Laws of the State of California (excluding rules regarding conflicts of Law) and the United States of America. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal courts located in Orange County, California, unless such actions, suits or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy, and each Party irrevocably submits to the jurisdiction of such courts. Service of process may be effected in accordance with the procedures for providing notice under this Agreement.

**9.4 Notices.** Any notice given under this Agreement to Client will be given in writing to the Primary Contact at the Client address set forth in the Order Form. Any notice given under this Agreement to ECD will be given in writing and addressed to ECD's Corporate Counsel at 18500 Von Karman Avenue, Suite 400, Irvine, CA 92612. Either Party may substitute a new address and contact person by written notice to the other in the manner contemplated herein. All notices shall be effective when received, and shall be delivered personally, by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service.

**9.5 Independent Contractors.** In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, employment, partnership or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself in any manner that would be contrary to the provision of this Section 9.5.

**9.6 Entire Agreement; Amendments and Addenda.** This Agreement (including the exhibits hereto, as may be amended and supplemented from time to time, based upon mutual written consent) contains the entire agreement and understanding concerning the subject matter (as set forth in the Recitals) between Client and ECD. This Agreement supersedes all prior negotiations, agreements (whether written, oral or electronic), Client purchase orders, term sheets, or proposals that relate specifically to the subject matter (as set forth in the Recitals). Except as provided herein, this Agreement may be amended and/or supplemented via one or more Order Form addenda (as described in Section 2.12 above) only in writing, signed by authorized representatives for both ECD and Client.

**9.7 Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

**9.8 Publicity; Public Communication.** Neither Party shall provide, in any Release, any representation, description or other statement regarding the Consumer Products or otherwise refer to the other Party or its Affiliates in any way other than as set forth in Section 2.7 or as otherwise approved in writing in advance by the other Party. For avoidance of doubt, both parties must agree on the timing and complete content of any and all press releases which pertain to this Agreement or the provision of the Consumer Products herein.

**9.9 Adequate Review.** Each party represents to the other that, as deemed necessary by such party, this Agreement has been reviewed by each party and its legal and other advisors, and such party has had an opportunity to make all relevant inquiries and receive sufficient responses relating to this Agreement.

**9.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution of it.

**9.11 Binding Agreement.** The Parties (a) agree that this Agreement shall not be binding unless and until it has been executed by an authorized representative of ECD, and (b) represent and warrant that the individuals signing below are expressly invested with the requisite authority to bind their respective companies under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Credit Monitoring Products Agreement effective as of the Agreement Date.

**Client:**

**ConsumerInfo.com, Inc.,  
also known as Experian Consumer Direct**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## **Exhibit A** **Consumer Products**

These below listed products are delivered to Qualified (as defined below) Individuals using a single-use Activation Code. Description of each products benefits, which are subject to change:

<b>Features</b>	<b>ProtectMyID Alert 3B</b>
<b>Daily credit monitoring</b>	3 Bureau
<b>Daily credit alerts</b> - for new inquiries, accounts created, change of address, changes to public records and posting of potentially negative information	X
<b>Reports upon enrollment</b>	Experian report only
<b>Score upon enrollment</b>	
<b>Reports/Score during membership</b>	
<b>Customer and Fraud Resolution Support</b> - Customer services is available 7 days a week - One on one access to a fraud resolution agent - Link to forms to file fraud alerts	X
<b>All clear alerts when no activity has been detected</b> - Delivered monthly for online Individuals - Delivered quarterly for offline Individuals	X
<b>Identity Theft Insurance *</b>	\$1MM
<b>Enrollment method</b>	Phone or Internet
<b>Product delivery method (see section 2.2)</b>	Online or US mail
<b>Identity Theft Risk Assessment</b>	Online

**Family Secure<sup>SM</sup>** – This product is delivered to Qualified (as defined below) Individuals using an online enrollment process and a single-use, Activation Code. For purposes of Family Secure, “Individual” means the Parent or Legal Guardian. Description of Family Secure benefits, which are subject to change:

- Parent or Legal Guardian:

- a) Unlimited online access to an Individual’s Experian credit report and score for the duration of the Product Term
- b) Daily monitoring of the Individual’s Experian credit report
- c) Daily monitoring alerts to inform the Individuals of important changes to their Experian credit report
- d) Score Illustrator to help the Individuals understand how factors on their Experian credit report impact their Experian credit score

- Children who are enrolled by the Parent or Legal Guardian:

- a) Check whether an Experian credit report exists for each child enrolled by the Parent or Legal Guardian
- b) Monthly check to determine whether the child(ren) has/have an Experian credit report
- c) Monthly check for alerts of the child/ren’s Experian credit report (if any) to inform the Parent or Legal Guardian of any important changes or activity of the child/ren’s Experian credit report

- Entire Family:

- a) Toll-free access to ECD’s Customer Care Center
- b) Informative credit related articles
- c) \$2,000,000 Guarantee for certain identity theft related expenses\*\*\*\*

Additional Family Secure product information: (i) children are eligible for online enrollment up to three (3) months prior to their 18<sup>th</sup> birthday, however, the Parent or Legal Guardian may contact ECD’s Customer Care Center to enroll such

children up to two (2) weeks prior to their 18<sup>th</sup> birthday; (ii) children will automatically be de-enrolled within one (1) week prior to their eighteenth (18<sup>th</sup>) birthday and thereafter, such child/ren will no longer be eligible for the Family Secure product; (iii) child/ren's credit report (if any) are available offline only; and (iv) the Parent or Legal Guardian is required to authenticate prior to the ECD Customer Care Center can provide assistance regarding the child/ren's credit report.

**Definitions.**

For purposes of this Exhibit A, "Qualified" means Individuals who meet the following requirements to be eligible to enroll for the Consumer Product:

- a) Accurately complete and submit to ECD all of the required enrollment fields/pages;
- b) Provide ECD the correct answers to the out-of-wallet security questions;
- c) Accept the End-User Terms and Conditions (including ECD's terms, conditions and privacy policy);
- d) Are at least 18 years of age and a living person as of the date of enrollment in the Consumer Product
- e) Have a U.S. credit file with at least one of the national credit reporting companies (Experian, Equifax and TransUnion)\*\*;
- f) Provide ECD with a current U.S. phone number and a current U.S. postal address \*\*\*
- g) Provide a valid U.S. Social Security number or Tax Identification Number issued for the Individual by the U.S. Social Security Administration; and
- h) Pass all of ECD's identity, authentication and security requirements.

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As per section 2.5 of the Agreement, the following are current Third Party Companies:

- 1. Credit reporting agencies (Equifax Inc. and TransUnion LLC)
- 2. All Affiliates of ECD pursuant to the definition contained in Section 1.2 of the Agreement.
- 3. Chartis Inc. \*

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\*\* Delivery of the Consumer Product will be limited to the report(s) of the national credit reporting companies with whom each Individual has a current U.S. credit file (e.g., in the event an Individual only has a U.S. credit file with Experian, then such Individual shall only receive the Experian credit report).

\*\*\* The U.S. address provided by Individuals should be the U.S. address associated with such Individuals credit file (e.g. the address utilized by the Individual to obtain credit).

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\*\*\*\* Due to New York state law restrictions, the Guarantee cannot be offered to Individuals who are residents of New York.

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## **Exhibit B**

### **Supplemental Products**

**Enhanced Customer Care.** In addition to the standard customer service delineated within the Agreement, ECD will provide certain supplemental call center services (“Enhanced Call Center Services”). Enhanced Call Center Services shall be limited to (a) the ECD Customer Service Center responding to Individual queries via customized scripting (which will be mutually agreed to in writing by ECD and Client) and (b) other required Individual support on a case-by-case basis, as required and exclusively in connection with the Activation Codes provided herein. The appropriate toll-free Customer Service Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Service Center enrollment process. Customer Service Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time.

**Communication Facilitation.** Client has requested that ECD facilitate the transmission of the Notification Letter approved by ECD in accordance with section 2.7 of the Agreement (“Approved Communication”) to Individuals by means of ECD’s third-party print vendor. Client shall send the names and addresses of all such Individuals to whom Approved Communications should be conveyed to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its third-party print vendor and once ECD has established that its’ print vendor has received such information, ECD will purge all such information that is within ECD’s possession. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the preparation and provision of the Approved Communication to Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) complete and correct instructions regarding the date(s) that ECD’s print vendor is requested to mail the Approved Communication to Individuals. Client agrees to pay ECD for each Approved Communication that Client may request ECD’s print vendor to prepare in accordance with the pricing delineated on the Order Form. Any pages in addition to the one-page (double sided) Approved Communication that Client may request ECD’s print vendor to prepare shall be priced separately (and in addition to the costs already referenced therein) in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**Address Append Services.** Client is requesting address append services for use in locating or verifying Individual names and addresses when Client may have access to only an Individual’s social security number (SSN) and/or aged address data. *Client MUST certify via signature of a supplemental Rider to this agreement that the use of any of this data as delivered by ECD shall only be used by Client in compliance with Law.* Upon receipt of the Rider agreement from Client, the SSNs of all such Individuals will be provided by Client to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its Affiliate, Experian Information Solutions, Inc., in order to produce an address append deliverable. Reasonable commercial efforts will be used by Experian Information Solutions, Inc. to retrieve an Individual’s name and/or address. In some instances, multiple matches will be returned where Client is held solely responsible for identifying the best matched record to use. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the utilization of File One data to notify Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) properly formatted data file for optimal processing. Client agrees to pay ECD for each Individual record searched in accordance with the pricing delineated on the Order Form. Any subsequent record batches may be priced separately in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

# CREDIT MONITORING PRODUCTS AGREEMENT

## ORDER FORM

(Please complete all of the fields below)

CLIENT INFORMATION	
<b>CLIENT:</b> a STATE OF INCORPORATION Corporation	<u>Client Billing Address and Contact</u>
<b>Address:</b>	<b>Address:</b>
<b>City:</b>	<b>City:</b>
<b>State:</b> Zip Code:	<b>State:</b> Zip Code:
<b>Contact:</b>	<b>Contact:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Email:</b>	<b>Email:</b>
ORDERING INFORMATION	
<b>Agreement Date:</b> October 25, 2012 <b>Enrollment End Date:</b> January 31, 2013	
<b>Product Term (per Individual):</b> One (1) year	
<b>Number of Activation Codes:</b> 3,000,000	
<b>Fee per Activation Code Redeemed:</b> \$15.35 <b>Set-up Fee:</b> \$0.00	
<b>Vanity URL for Consumer Product Website, if applicable:</b> www.protectmyid.com/scdor	
<b>Consumer Product Website Launch Date:</b> Within 24 hours of ECD's receipt of the List from Client (This is an estimated date only)	
<b>Consumer Products shall include one or more of the following products, which are further described in Exhibit A:</b>	
<b>Primary Product:</b> ProtectMyID Alert 3B (online/offline enrollment and alerts)	
<b>Secondary Product:</b> N/A	
<b>Supplemental Client Services (check all that apply; services are described in greater detail in Exhibit B):</b>	
<input type="checkbox"/> <b>Communication Facilitation Services</b> – printing and mailing of letters - price is N/A (inclusive of postage)	
<input checked="" type="checkbox"/> <b>Enhanced Customer Care Services</b> – additional call center services – price is \$.23 per individual affected (3,000,000 X \$.23 = \$690,000 -- Dedicated number 866-578-5422)	
<input type="checkbox"/> <b>Address Append Services</b> – Consumer address look up – price is N/A. A Rider agreement must accompany this form prior to processing data.	
(The above Consumer Products are only available to Qualified (as defined in Exhibit A) Individuals who meet the requirements as defined and set forth in Exhibit A.)	
<b>ALL INFORMATION CONTAINED IN THIS ORDER FORM IS SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THE ATTACHED CREDIT MONITORING PRODUCTS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE REPRESENTATIONS AND WARRANTIES; DISCLAIMERS, LIMITATIONS OF LIABILITY AND PROVISIONS REGARDING EACH PARTY'S RESPECTIVE INDEMNIFICATION OBLIGATIONS.</b>	



## CREDIT MONITORING PRODUCTS AGREEMENT

This Credit Monitoring Products Agreement (the "Agreement") is made by and between ConsumerInfo.com, Inc., a California corporation, also known as Experian Consumer Direct ("ECD"), and the party identified as "Client" in the Order Form and its Affiliates (collectively, "Client"), and shall be effective as of the Agreement Date (as defined in the Order Form). Each of ECD and Client are sometimes referred to herein as a "Party" and collectively as the "Parties." The Order Form attached hereto is made a material part of this Agreement and is incorporated herein by this reference.

### RECITALS

**WHEREAS**, Client maintains personal and other sensitive information on certain individuals;

**WHEREAS**, ECD, directly and through one or more third-party providers, provides certain credit monitoring and other products; and

**WHEREAS**, Client desires for ECD to make available certain of ECD's products to certain Individuals (as defined below) identified by Client with respect to whom Client maintains personal and other sensitive information.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms herein shall have the meanings set forth in the Ordering Information section of the Order Form, or, if not set forth therein, as defined elsewhere in this Agreement. The following terms shall have the following meanings ascribed to them:

**1.1** "Activation Code" means a unique, single use code with respect to each Individual that allows such Individual to enroll for and receive the Consumer Product. Each Individual may only redeem his/her Activation Code for only one applicable Consumer Product.

**1.2** "Affiliates" means any entity controlled by, under common control with or that controls the applicable Party. "Control" means ownership of fifty percent (50%) or more of the ownership interest of an entity.

**1.3** "Consumer Product(s)" means those products and services provided by ECD hereunder, as selected by Client and set forth in the Order Form.

**1.4** "Enrollment Period" means the period commencing on the actual launch date of the Consumer Product Website and ending on the Enrollment End Date as set forth in the Order Form, whereby Individuals may redeem their Activation Code and receive the Consumer Product.

**1.5** "Individual" means any individual for whom Client maintains personal and other sensitive information.

**1.6** "Individual Information" means all information pertaining to an Individual obtained by ECD, including without limitation, (a) through Individual enrollment for the Consumer Product or visiting ECD's website(s), or (b) through provision of the Consumer Product.

**1.7** "Law" means any rules, laws, statutes, regulations or judgments, orders or decrees imposed by any governmental entity.

**1.8** "Product Term" means the period set forth in the Order Form, commencing on the date an Individual completes enrollment for the Consumer Product, which may occur at any time during the Enrollment Period.

### **2. CREDIT MONITORING PRODUCTS; SUPPORT**

**2.1 Access to Consumer Products.** ECD hereby agrees to provide to Client the number of Activation Codes set forth in the Order Form, for the purpose of Client providing such Activation Codes to Individuals. When ordering Activation Codes, Client shall order a number of Activation Codes equal to the number of notifications that it intends to provide to Individuals pursuant to Section 2.7 below. Client shall assign an Activation Code to each Individual and upon each Individual redeeming an Activation Code and completing the required enrollment, ECD shall provide to such Individual the selected Consumer Product for the Product Term. The Activation Codes may be redeemed by Individuals only during the Enrollment Period, and such Activation Codes will expire at the end of such Enrollment Period. Client may not distribute any Activation Codes thereafter.

**2.2 Enrollment; Consumer Product Website.** Each Individual may enroll for the applicable Consumer Product during the Enrollment Period ~~(a) via phone enrollment to ECD's Customer Care Center, and/or, in the event Client elects to send a Notification Letter at a point in time after the Release~~ (ab) online via a secure Website designated by ECD (the "Consumer Product Website"); ~~and/or (b) by such other means as may be available and agreed to in writing by ECD.~~ As a condition to receiving the Consumer Product, each Individual must complete ECD's applicable enrollment process and/or the other applicable credit reporting companies' enrollment process, including providing all requested information, and agree to all terms and conditions as well as ECD's privacy policy (collectively, the "End-User Terms and Conditions") for the Consumer Product. ECD shall have sole discretion to determine the End-User Terms and Conditions pursuant to which the Consumer Product shall be provided to Individuals; provided that, ECD shall not charge Individuals for the Consumer Product provided under this Agreement and as described in Exhibit A during the Product Term. The delivery method of the Consumer Products to the Individuals during the Product Term is not subject to change (i.e., if Individuals enroll or are enrolled online, the Consumer Product will be delivered online for the entire Product Term; and if Individuals enroll offline, the Consumer Product will be delivered via mail, and customer care will be available via phone (in accordance with Section 2.4 below) for the entire Product Term).

ECD shall build, host and maintain, at its own cost, the Consumer Product Website. Unless agreed to in writing by ECD, all content, including the design and look and feel, of the Consumer Product Website shall be determined by ECD, at its sole and absolute discretion. The Consumer Product Website shall be operated in accordance with ECD's standard procedures and shall be accessible by Individuals on a date that ECD and Client mutually agree to in writing after the Release date, the Consumer Product Website Launch Date as set forth in the Order Form.

**2.3 Enrollment Process; Authentication Failure.** Client hereby acknowledges that ECD shall maintain strict procedures and protocols relating to its enrollment process (including timed-out and other security measures), and failure by an Individual to follow such procedures and protocols may result in a failed enrollment. Client also acknowledges that there are a number of additional reasons and factors that may cause Individuals to fail authentication/enrollment, including, without limitation, corporate firewalls, proxy servers, spam blockers, fraud alerts, credit file freezes, data errors, inaccurate out-of-wallet information, or incorrect social security numbers. Upon any such failure, each affected Individual shall be provided with a toll-free Customer Care Center number to call. Upon an Individual initiating such call, a customer care representative will attempt to manually authenticate such Individual by asking additional security questions; provided, that, in the event such a telephonic authentication is not possible, additional steps may be taken. ECD shall endeavor to make the enrollment process as "user-friendly" as reasonably possible but without compromising its security standards. Notwithstanding the foregoing, ECD shall not be required to provide any refund of the Fee (as defined in Section 4.1 below) to Client in the event that such Individual fails to successfully complete such enrollment. ECD reserves the right, at its sole and absolute discretion, to modify or alter the enrollment process and/or the services associated therewith from time to time.

**2.4 Customer Care.** Customer care will be available to Individuals via access to a toll-free Customer Care Center located in the United States. Fraud resolution customer care shall be available to Individuals via customer care representatives in the United States. The services available via the Customer Care Center shall be limited to assistance with telephone and email inquiries regarding enrollment for the Consumer Product and technical issues relating to redemption of Activation Codes, authentication failure, username and password assistance, cancellations, locked accounts, changes in personal information, disputes, billing questions about additional products, credit score information, general credit-related questions, fraud resolution, suspected fraudulent items, monitoring and alert information, free credit reports, and general Consumer Product Website navigation. The appropriate toll-free Customer Care Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Care Center enrollment process. Customer Care Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time. The Customer Care Center will attempt to authenticate Individuals in accordance with Section 2.3 above. The Customer Care Center will not have access to and will not provide any information related to Client or its business and/or legal decisions in making the Consumer Product available to Individuals on a complimentary basis, and will refer any such inquiries back to Client.

**2.5 Third Party Companies.** The portions of the Consumer Product provided by ECD's partners, Affiliates and certain third parties, including consumer reporting companies (collectively, "Third Party Companies") are subject to such entities' own end-user/individual standard terms and conditions and information requirements; the names of the Third Party Companies currently providing portions of the Consumer Product are delineated in Exhibit A. Individuals must comply with the Third Party Companies' terms and conditions and other requirements in order to receive such portions of the Consumer Product. Some of the Third Party Companies are not subcontractors or agents of ECD, and therefore, ECD does not control such terms and conditions or requirements and shall not be obligated to intervene or assist Individuals in any way in meeting such requirements. Individuals shall be solely responsible for handling any issues relating to such terms and conditions and requirements directly with any such partners, Affiliates and third parties. ECD shall not be obligated to

refund any amount of the Fee (as defined in Section 4.1 below) on account of an Individual's inability to receive portions of the Consumer Product as a result of such Individual's failure to comply with any of the Third Parties' terms and conditions and/or other requirements. Without limiting the generality of the foregoing, Individuals shall be required to provide all necessary information and meet other criteria required by each applicable consumer reporting company in order to receive a credit report or other products and services from such company.

**2.6 Intellectual Property and Branding of Consumer Products.** Unless otherwise agreed to in writing by ECD, the Consumer Products shall be branded as determined by ECD, at its sole and absolute discretion, and Client shall not designate (through trademark, trade name, trade dress or otherwise) the Consumer Products as being provided by Client. Client shall retain ownership of any and all pre-existing Client intellectual property, including but not limited to Client's trademarks, patents and trade dress.

**2.7 Client Notification to Individuals.** Client shall prepare a press release or other public announcement which details the data loss incident that affects Individuals ("Release"). ECD must be provided an opportunity to review any and all Releases prior to their conveyance to the general public. Subsequent to the Release, ECD shall be prepared to receive phone calls at its Customer Care Center, however, the ECD Customer Care Center shall not be prepared to assist Individuals with both enrollment in the Consumer Product and delivery of Enhanced Customer Care Services as of the Consumer Product Launch Date. Client acknowledges and agrees that with respect to any and all calls from Individuals which ECD receives at its Customer Care Center after the Release but prior to the Consumer Product Launch Date, ECD will use reasonable commercial efforts to facilitate such calls to achieve a satisfactory consumer experience, but the requirements of Section 2.11 shall still apply. In addition to the foregoing specified phone enrollment process, Within a mutually agreeable period of time following the Agreement Date, Client shall may elect to prepare a communication to Individuals in the form of a notification letter ("Notification Letter") to be sent via U.S. Mail or email which must include (a) one Activation Code per each Individual Client identifies as affected by the subject data breach or data loss incident and eligible to receive such a Notification Letter, (b) the procedures for enrollment of the Consumer Product (including, but not limited to the (i) ECD maintained URL where such Individuals may properly utilize their Activation Code and (ii) the appropriate ECD Customer Care Center phone numbers), and (c) a listing of the key Consumer Product features. Any Client notification process pertaining to the Consumer Products that includes elements other than the Notification Letter must be pre-approved by ECD in writing. CLIENT SHALL SUBMIT ALL NOTIFICATION LETTERS TO ECD FOR APPROVAL PRIOR TO DELIVERY OF SUCH NOTIFICATION LETTERS TO INDIVIDUALS. ECD shall have the right to approve only the limited portions of such Notification Letters that describe the Consumer Product, and/or the procedures for redemption of the Activation Codes, or which in anyway otherwise relate to ECD and/or its Affiliates or annualcreditreport.com. Client shall not provide, in any Notification Letter or any other public communication (including but not limited to communications with Individuals), any representation, description or other statement regarding the Consumer Products or otherwise refer to ECD or its Affiliates in any way other than by such a prepared Notification Letter reviewed and approved by ECD, or otherwise in accordance with section 9.8, below. Upon ECD's reasonable request, Client must provide ECD a mailing schedule in advance of Client commencing delivery of any and all Notification Letters to Individuals. Once provided by Client, ECD will allocate Customer Care Center and other resources in accordance with such schedule; any significant updates or modifications by Client to the schedule must be provided to ECD immediately and may result in increased costs for ECD that will require revised pricing discussions with Client. Client agrees not to make any statement or undertake any act or omission that would result in civil or criminal liability for ECD.

**2.8 ECD Communication with Individuals and/or Third-Parties.** ECD may communicate with or send communications to Individuals relating to (a) a Consumer Product pursuant to the terms of this Agreement, (b) the expiration of a Consumer Product and provide options for such Individuals to extend or renew such Consumer Product (i.e. via an end-of-term service alert), and/or (c) other ECD specific credit related products that are available to the Individuals in their online proprietary member center section of the Consumer Product Website or via e-mailed (or in the case of offline Individuals, mailed) service alerts sent by ECD to such Individuals. In addition, an Individual may affirmatively opt-in to receive marketing offers from ECD, its Affiliates and third-parties. As it relates to (b) and (c) in the preceding sentence, ECD may charge Individuals a separate fee for (i) an extension or renewal of a Consumer Product beyond the Product Term stipulated herein, or (ii) for other products not included under this Agreement. ECD is not obliged to communicate with or provide services to any third-parties who may have contractual or other relationships with Client (other than those explicitly agreed to within this Agreement).

**2.9 Activation Code Availability.** On or before the time of the Release, Client shall provide to ECD a listing of Individuals eligible to receive Activation Codes Center ("List"). Client shall be solely responsible for development of the List, as well as all eligibility criteria associated with the List. Upon provision of the List to ECD, ECD shall make the Activation Codes available for distribution to Individuals via personnel within the ECD Customer Care Center. In the event Client elects to mail any Notification Letters, ECD shall not be required to provide the Activation Codes for such Notification Letters to Client until both parties have reviewed and finally approved the Individual

~~communication Notification Letter~~ as described in Section 2.7 above.

**2.10 Distribution of Activation Codes.** ~~Activation Codes for distribution to Individuals on the List shall be maintained by ECD, and within ECD's care, custody and control. In the event ECD delivers Client (or Client's agent) any Activation Codes for use by Client in a Notification Letter, Client agrees not to sell or otherwise distribute any such Activation Codes, except to Individuals and only as expressly permitted under this Agreement. In no event shall ECD be liable for any loss, damage, theft, corruption or destruction ("Loss") of Activation Codes once issued by ECD to Client, including, but not limited to, any such Loss attributable to Client's distribution, storage (if applicable) and/or mailing of such Activation Codes.~~

**2.11 No Early Commencement.** Client acknowledges and agrees that (a) the Consumer Product Website will not be accessible by Individuals prior to the date mutually agreed to by ECD and Client in writing ~~Consumer Product Website Launch Date as set forth in the Order Form~~, and (b) it shall not communicate with Individuals regarding the availability and description of the Consumer Product, including, without limitation, the procedures for enrollment of the Consumer Product, any earlier than the date of the Release and acknowledges and agrees that the Consumer Products shall not be available for enrollment prior to the Consumer Product Launch Date stipulated on the Order Form, mutually agreed to between ECD and Client in accordance with Section 2.7 above. CLIENT AGREES THAT IT SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL LIABILITIES, COSTS AND EXPENSES INCURRED BY ECD OR ITS AFFILIATES AS A RESULT OF CLIENT'S AND/OR ANY INDIVIDUAL'S FAILURE TO COMPLY WITH THE FOREGOING, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INDIVIDUAL ATTEMPTING TO ACCESS THE CONSUMER PRODUCT WEBSITE AND/OR OTHERWISE ENROLL IN THE CONSUMER PRODUCTS PRIOR TO THE CONSUMER PRODUCT WEBSITE LAUNCH/CONSUMER PRODUCT LAUNCH DATE SET FORTH IN THE ORDER FORM.

**2.12 Additional Client Requirements.** In the event Client requires additional Activation Codes beyond the number stipulated in the Order Form during the Enrollment Period, ECD may provide such additional Activation Codes pursuant to a mutual written Order Form addendum between the Parties to supplement this Agreement, which such addendum shall be in a form provided by ECD and subject to the terms of this Agreement (unless otherwise agreed to in such addendum). An Order Form addendum may have ordering information that differs from the Order Form attached to this Agreement, including, but not limited to, Enrollment End Date, Product Term, and fees. Any additional Client requirements or other changes to this Agreement may be agreed to between the Parties via a signed written amendment to this Agreement.

**2.13 Exclusivity.** During the Product Term, Client agrees not to obtain products or services that are similar to the Consumer Products from any party other than ECD.

### 3. INSURANCE

**3.1 Insurance.** The insurance provided to Individuals as a product feature of certain Consumer Products is strictly subject to the policies, terms and conditions of the designated third-party insurers. Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the Consumer Product. ECD does not directly sell such insurance to Client or Individuals. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of insurable losses. At the election of the designated third-party insurer or ECD, (a) the amount of insurance coverage to be provided to Individuals, and/or (b) the designation of the third-party insurer(s) are both subject to change at any time. Notwithstanding the foregoing, identity theft insurance may not be provided to any Individuals residing in any state where the provision of such insurance is prohibited by Law.

**3.2 Guarantee for FamilySecure.com.** The Guarantee provided to Individuals as a product feature of the Guarantee provided to Individuals as a product feature of the Family Secure Consumer Product is strictly subject to the policies, terms and conditions described at [http://www.familysecure.com/Member\\_Guarantee.aspx](http://www.familysecure.com/Member_Guarantee.aspx). Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the FamilySecure.com Consumer Product. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of losses. At the election of ECD, (a) the amount of the Guarantee to be provided to Individuals, and/or (b) the designation of the party providing the Guarantee are both subject to change at any time. Notwithstanding the foregoing, the Guarantee may not be provided to any Individuals residing in any state where the provision of such Guarantee is prohibited by Law. Due to New York State Law restrictions, the Guarantee cannot be offered to Individuals who are residents of the State of New York.

### 4. FEES

**4.1 Fees.** Client hereby agrees to pay to ECD the Set-up Fee within thirty (30) calendar days of the Effective Date. Client also agrees to pay ECD the Fee per Activation Code Redeemed set forth in the Order Form for each Activation

Code redeemed by Individuals during the Enrollment Period (the "Fee"). ECD will invoice the Fee to Client on a monthly basis for all Activation Codes redeemed by Individuals during the prior thirty (30) calendar days and Client agrees to pay the Fee within thirty (30) days from the date of such invoice. If Client does not make full payment of the Fee within such period, ECD, at its option, may immediately (a) deactivate the Activation Codes and cease further performance under this Agreement until such Fee is paid in full by Client, or (b) terminate this Agreement and the Individuals' enrollment of the Consumer Product. Interest shall accrue on any past due amounts at the rate of one and one half percent (1.5%) per month. In addition, Client shall be liable to ECD for any costs and attorneys' fees incurred by ECD to collect unpaid amounts.

**4.2 Fees Non-Refundable.** The Fee is, without limitation, due and payable as provided for herein, including any changes to facts or circumstances that may negate the need for some or all of ECD's Consumer Products or Activation Codes hereunder, whether or not Client and/or any Individual utilizes the Consumer Product in accordance with the terms of this Agreement. Client agrees to not waive any of its payment obligations and ECD shall not be obligated to refund any amount of the Fee already paid by Client on account of (a) any of the foregoing circumstances, (b) an Individual's inability to receive all or a portion of the Consumer Product as a result of such Individual's failure to (i) successfully complete enrollment, or (ii) comply with any or all of the Third Party Companies' terms and conditions and/or other requirements, and/or (c) any circumstances relating to Section 2.10 above. Without limiting any remedies available to ECD, Client acknowledges that upon entering into this Agreement, ECD shall immediately begin to incur costs and expenses, as well as allocate certain resources away from other projects, for the purpose of performing ECD's obligations hereunder; therefore, Client acknowledges and agrees that Client is responsible to pay for a minimum of ~~fifteen~~ (5+0) percent of the total Activation Codes ordered by Client, irrespective of the total number of Activation Codes finally redeemed. In the event more than ~~fifteen~~ (5+0) percent of all Activation Codes ordered by Client are redeemed, then these redemptions will be credited towards the total owed by Client for all redemptions.

**4.3 Taxes.** Client shall be responsible for, and shall promptly pay or reimburse ECD for the payment of, any sales, use, excise, ad valorem, value-added or other similar taxes, assessments or duties imposed by any government agency that are associated with the Consumer Products (other than taxes based on ECD's net income).

## **5. OWNERSHIP; INDIVIDUAL INFORMATION**

**5.1 ECD Ownership.** ECD and/or its Affiliates or third party providers shall exclusively own all right, title and interest, including all copyrights, trade secrets, know-how, goodwill, trademarks, service marks, trade names, trade dress, logos, patents or other intellectual property (or any derivative works thereof) and underlying technology in (i) the Consumer Products and all other products provided by ECD hereunder, (ii) the Consumer Product Website, and (iii) all other materials and information provided by ECD to Client hereunder. No grant to use any intellectual property (including any trademarks) of ECD, its Affiliates or third-party providers is made under this Agreement.

**5.2 Individual Information.** As Individual Information is conveyed from an Individual directly to ECD, it is *not* defined as Confidential Information pursuant to the definition of that term in section 7., below, rather ECD shall use Individual Information in accordance with its posted privacy policy and the End-User Terms and Conditions; such policy and terms and conditions may be amended from time to time, at ECD's sole and absolute discretion and without prior notice to Client and/or Individuals, subject to any applicable restrictions of state or other Laws.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER AND LIMITATION OF LIABILITY; INDEMNIFICATION**

**6.1 Representations and Warranties by ECD.** ECD represents and warrants to Client that it (a) has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) will provide the Consumer Products in a manner consistent with the level of service provided to ECD's general customer base for such Consumer Products; and (c) will provide the Consumer Products and any other products and services provided under this Agreement in a professional manner.

**6.2 Representations and Warranties by Client.** Client represents and warrants to ECD that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) to the best of its knowledge, all information provided by Client to ECD are accurate in all material respects, (c) it will communicate with the Individuals in accordance with Section 2.7 above, such that each of its Individuals receive notification and one Activation Code, and (d) by entering into this Agreement and performing hereunder, Client will not be violating or breaching any other contract, agreement, commitment, promise, understanding or arrangement.

### **6.3 DISCLAIMER AND LIMITATION OF LIABILITY.**

(a) CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE CONSUMER PRODUCTS ARE INTENDED AS ELECTIVE AND OPTIONAL PRODUCT OFFERINGS THAT CLIENT MAY

CHOOSE TO MAKE AVAILABLE TO ITS INDIVIDUALS, AND THAT SUCH PRODUCTS ARE SELECTED SOLELY BY CLIENT. THE CONSUMER PRODUCTS ARE NOT INTENDED TO, AND ECD EXPRESSLY DISCLAIMS ANY WARRANTY OR GUARANTEE THAT THEY WILL, ALLOW CLIENT TO COMPLY WITH LAW, MITIGATE DAMAGES (INCLUDING, BUT NOT LIMITED TO, RELATING TO A DATA BREACH) OR AVOID ANY OTHER CONSEQUENCES OF A DATA BREACH OR FAILURE TO INSTITUTE PROPER SECURITY MEASURES. ANY COMPLIANCE OR NONCOMPLIANCE WITH LAW SHALL BE BASED SOLELY UPON THE PROCEDURES AND ACTIONS IMPLEMENTED BY CLIENT IN CLIENT'S SOLE DETERMINATION. OTHER THAN THE WARRANTIES SET FORTH UNDER SECTION 6.1, ALL PRODUCTS PROVIDED BY ECD, ITS AFFILIATES OR ITS THIRD-PARTY PROVIDERS PURSUANT TO THIS AGREEMENT ARE SO PROVIDED ON AN "AS IS" BASIS, AND ECD MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT. ECD FURTHER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES REGARDING THE CONSUMER PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) IN NO EVENT SHALL ECD BE LIABLE TO CLIENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND LOST SALES, SUFFERED BY OR OTHERWISE COMPENSABLE TO CLIENT, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECD'S AGGREGATE LIABILITY TO CLIENT AND/OR ITS AFFILIATES FOR DAMAGES (i) CONCERNING THE PERFORMANCE OR NON-PERFORMANCE BY ECD OF ITS OBLIGATIONS HEREUNDER, OR (ii) IN ANY WAY RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE PROVISION OF THE CONSUMER PRODUCTS, AND INCLUDING PURSUANT TO ECD'S INDEMNIFICATION OBLIGATIONS SET FORTH UNDER THIS AGREEMENT), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO ECD UNDER THE TERMS OF THIS AGREEMENT.

#### **6.4 Indemnification.**

(a) **Indemnification by Client.** Client will indemnify, defend, and hold ECD, its Affiliates and parent companies, and their respective directors, officers, shareholders, employees and agents (collectively, the "ECD Indemnified Parties"), harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including by way of example only, ECD's costs of responding to a subpoena in any cause of action where Client is a named party), including reasonable attorneys' fees (collectively, "Damages"), which may be asserted against or incurred by ECD, its Affiliates, or any of the ECD Indemnified Parties, arising out of or resulting from (i) any agreement, arrangement or relationship between Client and Individuals, including, without limitation, any duties or obligations (contractual, at Law or otherwise) owed by Client to Individuals, (ii) Client's data breach, failure to maintain security measures, or violation or failure by Client to comply with any Law (including any claim that the Consumer Products are inadequate for Client to comply with the same), (iii) Client's misconduct or disregard of ordinary care in performing any of its obligations hereunder, or (iv) Client's breach of any provisions of this Agreement, including, but not limited to, Sections 2.7 and 2.10 hereof.

(b) **Indemnification by ECD.** ECD will indemnify, defend, and hold Client and its directors, officers, shareholders and, agents (the "Client Indemnified Parties") harmless from and against any and all Damages, which may be asserted against or incurred by Client or any of the Client Indemnified Parties, arising out of or resulting from any material breach of the End-User Terms and Conditions by ECD.

(c) **Procedures for Control of Indemnifiable Claims.** In order for a Party (the "Indemnified Party") to be entitled to any indemnification provided for in Sections 6.4(a) or 6.4(b) above, such Indemnified Party must notify the Party obligated to provide such indemnification (the "Indemnifying Party") in writing of the indemnifiable claim within thirty (30) business days after receipt by such Indemnified Party of written notice of the indemnifiable claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. After receipt of such notice, the Indemnifying Party shall have the right to assume the defense of, compromise or settle the indemnifiable claim at its expense; provided, however, that the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that provides for non-monetary relief without the consent of the Indemnified Party. In any indemnifiable claim which the Indemnifying Party has elected to defend, compromise or settle, the Indemnifying Party shall not be responsible for any expenses, including counsel fees, incurred by the Indemnified Party after such election; but the Indemnified Party may participate therein and retain separate counsel at its own expense. The Indemnified Party shall

provide to the Indemnifying Party all information, assistance and authority reasonably requested in order to evaluate any indemnifiable claim and effect any defense, compromise or settlement thereof. If the Indemnifying Party does not assume the defense of the indemnifiable claim as provided herein, the Indemnified Party may defend, compromise or settle the claim in any manner it reasonably deems appropriate, provided that the Indemnifying Party shall remain responsible for any losses, liabilities or damages the Indemnified Party suffers arising from the indemnifiable claim to the fullest extent provided under this Section 6.4.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition and Obligations.** For the purposes of this Agreement, “Confidential Information” means the pricing, provisions of and all performance under this Agreement and information about the disclosing Party’s business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a Party marked or designated by such Party as “confidential” or “proprietary” or information which, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as confidential. Notwithstanding the foregoing, the Parties agree that any and all information provided by Individuals and collected by ECD from the Consumer Product Website shall not be deemed as Confidential Information and shall be collected in accordance with ECD’s privacy policy and End-User Terms and Conditions, which may be amended from time to time. For a period commencing on the Agreement Date and ending two (2) years after the Term, each Party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Upon the disclosing Party’s request, the receiving Party will promptly return to the disclosing Party all tangible items containing or consisting of the disclosing Party’s Confidential Information and all copies thereof. Each Party acknowledges that all of the disclosing Party’s Confidential Information is owned solely by the disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the disclosing Party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at Law or in equity in the event of such a breach.

**7.2 Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information which is: (a) now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public, (b) acquired by the receiving Party before receiving such information from the disclosing Party and without restriction as to use or disclosure, (c) hereafter rightfully furnished to the receiving Party by a third party, without restriction as to use or disclosure, (d) information which the receiving Party can document was independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, (e) required to be disclosed under any Law, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable notice of such required disclosure and an opportunity to obtain a protective order or other appropriate remedy, (f) disclosed with the prior written consent of the disclosing Party.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence upon the Agreement Date and shall expire at the end of the Enrollment Period (the “Term”); provided, however, the terms of this Agreement will continue as stipulated herein for delivery of Consumer Product(s) in accordance with an active Order Form addendum between the Parties to this Agreement (pursuant to Section 2.12 above). The Product Term will continue as stipulated herein for continued delivery of the Consumer Product to Individuals in accordance with and as may be required by the End-User Terms and Conditions.

**8.2 Termination for Breach.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. In the event either Party terminates this Agreement for breach, termination shall not affect the other Party’s financial obligation to make any required payments hereunder.

**8.3 Effect of Termination.** Except with respect to the Consumer Product for which both (a) Client has been invoiced and rendered payment, and (b) ECD has commenced delivery of the Consumer Product, ECD shall have no further obligation to continue to provide the Consumer Product following the termination of this Agreement pursuant to Section 8.2 above.

**8.4 Surviving Provisions.** The terms and conditions of Sections 2, 3, 4.2, 5, 6, 7, 8.3, 8.4, and 9 of this Agreement shall survive and continue after termination or expiration of this Agreement.

## **9. GENERAL PROVISIONS**



**9.1 Assignment.** Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of either Party shall be assigned or delegated without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any unauthorized assignment or delegation shall be null and void. Notwithstanding the foregoing, either Party may assign or otherwise transfer its rights and obligations to its Affiliates or to successors in interest (whether by purchase of stock or assets, merger, operation of Law, or otherwise) of that portion of its business related to the subject matter hereof.

**9.2 Successors in Interest.** Subject to the provision of Section 9.1 above, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

**9.3 Choice of Law; Jurisdiction.** This Agreement shall be construed in accordance with the Laws of the State of California (excluding rules regarding conflicts of Law) and the United States of America. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal courts located in Orange County, California, unless such actions, suits or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy, and each Party irrevocably submits to the jurisdiction of such courts. Service of process may be effected in accordance with the procedures for providing notice under this Agreement.

**9.4 Notices.** Any notice given under this Agreement to Client will be given in writing to the Primary Contact at the Client address set forth in the Order Form. Any notice given under this Agreement to ECD will be given in writing and addressed to ECD's Corporate Counsel at 18500 Von Karman Avenue, Suite 400, Irvine, CA 92612. Either Party may substitute a new address and contact person by written notice to the other in the manner contemplated herein. All notices shall be effective when received, and shall be delivered personally, by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service.

**9.5 Independent Contractors.** In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, employment, partnership or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself in any manner that would be contrary to the provision of this Section 9.5.

**9.6 Entire Agreement; Amendments and Addenda.** This Agreement (including the exhibits hereto, as may be amended and supplemented from time to time, based upon mutual written consent) contains the entire agreement and understanding concerning the subject matter (as set forth in the Recitals) between Client and ECD. This Agreement supersedes all prior negotiations, agreements (whether written, oral or electronic), Client purchase orders, term sheets, or proposals that relate specifically to the subject matter (as set forth in the Recitals). Except as provided herein, this Agreement may be amended and/or supplemented via one or more Order Form addenda (as described in Section 2.12 above) only in writing, signed by authorized representatives for both ECD and Client.

**9.7 Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

**9.8 Publicity; Public Communication.** Neither Party shall provide, in any ~~Release-public communication (including press releases and communications with Individuals)~~, any representation, description or other statement regarding the Consumer Products or otherwise refer to the other Party or its Affiliates in any way other than as set forth in Section 2.7 or as otherwise approved in writing in advance by the other Party. For avoidance of doubt, both parties must agree on the timing and complete content of any and all press releases which pertain to this Agreement or the provision of the Consumer Products herein.

**9.9 Adequate Review.** Each party represents to the other that, as deemed necessary by such party, this Agreement has been reviewed by each party and its legal and other advisors, and such party has had an opportunity to make all relevant inquiries and receive sufficient responses relating to this Agreement.

**9.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution of it.



**9.11 Binding Agreement.** The Parties (a) agree that this Agreement shall not be binding unless and until it has been executed by an authorized representative of ECD, and (b) represent and warrant that the individuals signing below are expressly invested with the requisite authority to bind their respective companies under this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Credit Monitoring Products Agreement effective as of the Agreement Date.

**Client:**

**ConsumerInfo.com, Inc.,  
also known as Experian Consumer Direct**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Exhibit A**  
**Consumer Products**

These below listed products are delivered to Qualified (as defined below) Individuals using a single-use Activation Code. Description of each products benefits, which are subject to change:

Features	ProtectMyID Alert 3B
<b>Daily credit monitoring</b>	3 Bureau
<b>Daily credit alerts</b> - <i>for new inquiries, accounts created, change of address, changes to public records and posting of potentially negative information</i>	X
<b>Reports upon enrollment</b>	Experian report only
<b>Score upon enrollment</b>	
<b>Reports/Score during membership</b>	
<b>Customer and Fraud Resolution Support</b> - Customer services is available 7 days a week - One on one access to a fraud resolution agent - Link to forms to file fraud alerts	X
<b>All clear alerts when no activity has been detected</b> - Delivered monthly for online Individuals - Delivered quarterly for offline Individuals	X
<b>Identity Theft Insurance *</b>	\$1MM
<b>Enrollment method</b>	Phone or Internet
<b>Product delivery method (see section 2.2)</b>	Online or US mail
<b>Identity Theft Risk Assessment</b>	Online

**Family Secure<sup>SM</sup>** – This product is delivered to Qualified (as defined below) Individuals using an online enrollment process and a single-use, Activation Code. For purposes of Family Secure, “Individual” means the Parent or Legal Guardian. Description of Family Secure benefits, which are subject to change:

- Parent or Legal Guardian:

- a) Unlimited online access to an Individual’s Experian credit report and score for the duration of the Product Term
- b) Daily monitoring of the Individual’s Experian credit report
- c) Daily monitoring alerts to inform the Individuals of important changes to their Experian credit report
- d) Score Illustrator to help the Individuals understand how factors on their Experian credit report impact their Experian credit score

- Children who are enrolled by the Parent or Legal Guardian:

- a) Check whether an Experian credit report exists for each child enrolled by the Parent or Legal Guardian
- b) Monthly check to determine whether the child(ren) has/have an Experian credit report
- c) Monthly check for alerts of the child/ren’s Experian credit report (if any) to inform the Parent or Legal Guardian of any important changes or activity of the child/ren’s Experian credit report

- Entire Family:

- a) Toll-free access to ECD’s Customer Care Center
- b) Informative credit related articles
- c) \$2,000,000 Guarantee for certain identity theft related expenses\*\*\*\*

Additional Family Secure product information: (i) children are eligible for online enrollment up to three (3) months prior to their 18<sup>th</sup> birthday, however, the Parent or Legal Guardian may contact ECD’s Customer Care Center to enroll such

children up to two (2) weeks prior to their 18<sup>th</sup> birthday; (ii) children will automatically be de-enrolled within one (1) week prior to their eighteenth (18<sup>th</sup>) birthday and thereafter, such child/ren will no longer be eligible for the Family Secure product; (iii) child/ren's credit report (if any) are available offline only; and (iv) the Parent or Legal Guardian is required to authenticate prior to the ECD Customer Care Center can provide assistance regarding the child/ren's credit report.

**Definitions.**

For purposes of this Exhibit A, "Qualified" means Individuals who meet the following requirements to be eligible to enroll for the Consumer Product:

- a) Accurately complete and submit to ECD all of the required enrollment fields/pages;
- b) Provide ECD the correct answers to the out-of-wallet security questions;
- c) Accept the End-User Terms and Conditions (including ECD's terms, conditions and privacy policy);
- d) Are at least 18 years of age and a living person as of the date of enrollment in the Consumer Product
- e) Have a U.S. credit file with at least one of the national credit reporting companies (Experian, Equifax and TransUnion)\*\*;
- f) Provide ECD with a current U.S. phone number and a current U.S. postal address \*\*\*
- g) Provide a valid U.S. Social Security number or Tax Identification Number issued for the Individual by the U.S. Social Security Administration; and
- h) Pass all of ECD's identity, authentication and security requirements.

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As per section 2.5 of the Agreement, the following are current Third Party Companies:

- 1. Credit reporting agencies (Equifax Inc. and TransUnion LLC)
- 2. All Affiliates of ECD pursuant to the definition contained in Section 1.2 of the Agreement.
- 3. Chartis Inc. \*

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\*\* Delivery of the Consumer Product will be limited to the report(s) of the national credit reporting companies with whom each Individual has a current U.S. credit file (e.g., in the event an Individual only has a U.S. credit file with Experian, then such Individual shall only receive the Experian credit report).

\*\*\* The U.S. address provided by Individuals should be the U.S. address associated with such Individuals credit file (e.g. the address utilized by the Individual to obtain credit).

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\*\*\*\* Due to New York state law restrictions, the Guarantee cannot be offered to Individuals who are residents of New York.

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## **Exhibit B**

### **Supplemental Products**

**Enhanced Customer Care.** In addition to the standard customer service delineated within the Agreement, ECD will provide certain supplemental call center services (“Enhanced Call Center Services”). Enhanced Call Center Services shall be limited to (a) the ECD Customer Service Center responding to Individual queries via customized scripting (which will be mutually agreed to in writing by ECD and Client) and (b) other required Individual support on a case-by-case basis, as required and exclusively in connection with the Activation Codes provided herein. The appropriate toll-free Customer Service Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Service Center enrollment process. Customer Service Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time.

**Communication Facilitation.** Client has requested that ECD facilitate the transmission of the Notification Letter approved by ECD in accordance with section 2.7 of the Agreement (“Approved Communication”) to Individuals by means of ECD’s third-party print vendor. Client shall send the names and addresses of all such Individuals to whom Approved Communications should be conveyed to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its third-party print vendor and once ECD has established that its’ print vendor has received such information, ECD will purge all such information that is within ECD’s possession. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the preparation and provision of the Approved Communication to Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) complete and correct instructions regarding the date(s) that ECD’s print vendor is requested to mail the Approved Communication to Individuals. Client agrees to pay ECD for each Approved Communication that Client may request ECD’s print vendor to prepare in accordance with the pricing delineated on the Order Form. Any pages in addition to the one-page (double sided) Approved Communication that Client may request ECD’s print vendor to prepare shall be priced separately (and in addition to the costs already referenced therein) in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**Address Append Services.** Client is requesting address append services for use in locating or verifying Individual names and addresses when Client may have access to only an Individual’s social security number (SSN) and/or aged address data. Client MUST certify via signature of a supplemental Rider to this agreement that the use of any of this data as delivered by ECD shall only be used by Client in compliance with Law. Upon receipt of the Rider agreement from Client, the SSNs of all such Individuals will be provided by Client to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its Affiliate, Experian Information Solutions, Inc., in order to produce an address append deliverable. Reasonable commercial efforts will be used by Experian Information Solutions, Inc. to retrieve an Individual’s name and/or address. In some instances, multiple matches will be returned where Client is held solely responsible for identifying the best matched record to use. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the utilization of File One data to notify Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) properly formatted data file for optimal processing. Client agrees to pay ECD for each Individual record searched in accordance with the pricing delineated on the Order Form. Any subsequent record batches may be priced separately in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

## Executive Order 2012-10 and Letter to Maley

Schimsa, Rebecca

**Sent:** Friday, October 26, 2012 9:08 AM

**To:** Godfrey, Rob

**Cc:** Patel, Swati; Stirling, Bryan; Pitts, Ted; Soura, Christian

**Attachments:** 2012-10 Reviewing IT Secur~1.PDF (66 KB) ; Letter to Maley re EO 2012~1.PDF (27 KB)

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Two attachments.

Rebecca S. Schimsa  
Office of Governor Nikki R. Haley  
Staff Attorney & Commerce Liaison  
O: (803) 734-6068 | C: (803) 429-4561

State of South Carolina  
Executive Department

**FILED**

OCT 26 2012

*Mark Hammond*  
SECRETARY OF STATE



Office of the Governor

EXECUTIVE ORDER NO.

2012-10

**WHEREAS**, the State's information technology (IT) policy for governance of IT initiatives throughout state government, including security procedures and protocols, has been largely uncoordinated and outdated exposing the State to greater risks of internal and external cyber-attacks on IT infrastructure and records; and

**WHEREAS**, state government's fragmented approach to IT security makes South Carolina vulnerable to serious cyber and information breaches and requires immediate action to minimize cyber-attacks and protect personal information of our State's citizens; and

**WHEREAS**, Section 1-6-30 of the South Carolina Code of Laws authorizes the State Inspector General to "coordinate investigations" and "recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement . . . "; and

**WHEREAS**, Section 1-6-20(E) states, "Upon request of the State Inspector General for information or assistance, all agencies are directed to fully cooperate with and furnish the State Inspector General with all documents, reports, answers, records, accounts, papers, and other necessary data and documentary information to perform the mission of the State Inspector General[.]" and

**WHEREAS**, the State Inspector General is authorized to recommend policies to address holistic mismanagement of state government's information security policies and procedures and state agencies are required to fully cooperate with the State Inspector General to perform his mission.

**NOW, THEREFORE**, I hereby direct all cabinet agencies to immediately designate an information technology officer to cooperate with the State Inspector General who is authorized to make recommendations to improve information security policies and procedures in state agencies, on a comprehensive and holistic basis,


pursuant to his authority under Chapter 6 of Title 1 of the South Carolina Code of Laws with the following additional guidance:

1. Collaborate with the Division of State Information Technology of the Budget and Control Board to identify weaknesses in current statewide cyber-security systems, to include vulnerabilities to internal and external cyber-attacks, and develop a holistic strategy to improve information security;
2. Consult with national cyber-security sources including, but not limited to, the Multi-State Information and Sharing Analysis Center;
3. Determine state agencies' current information security staffing and their specific duties, and work with agencies to identify designated information security officers (ISOs) and their duties at each agency where appropriate; and
4. Improve and increase training of ISOs and all state government employees on information security measures to include cyber-security and records protection.

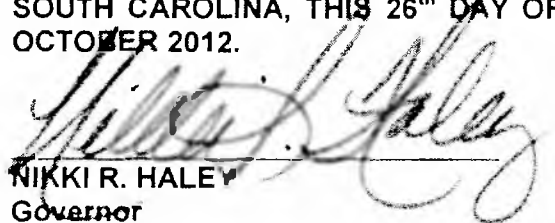
This Order shall take effect immediately.

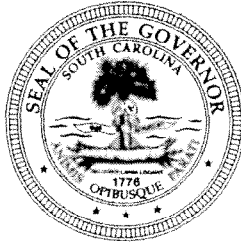


ATTEST:

  
MARK HAMMOND  
SECRETARY OF STATE

GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 26<sup>th</sup> DAY OF  
OCTOBER 2012.

  
NIKKI R. HALEY  
Governor



## State of South Carolina Office of the Governor

NIKKI R. HALEY  
GOVERNOR

1205 PENDLETON STREET  
COLUMBIA 29201

October 26, 2012

The Honorable Patrick Maley  
State Inspector General  
110 Centerview Drive, Suite 201  
Columbia, South Carolina 29210

Dear Inspector General Maley,

On behalf of the state agencies of South Carolina, I request your assistance in addressing a serious issue affecting state government information security.

Throughout state government, our information technology (IT) policy for security procedures and protocols has been largely uncoordinated and outdated exposing our state to greater risks of internal and external cyber-attacks.

I am committed to ensuring that state government minimize the risk of cyber-attacks and protect the personal information of our citizens kept by state agencies. Accordingly, today, I signed Executive Order 2012-10 directing the IT officers in my Cabinet agencies to take immediate action to work with the Office of the State Inspector General to review and strengthen IT security procedures and protocols.

Pursuant to your authority in Chapter 6 of Title 1 of the South Carolina Code of Laws, I ask that you make recommendations, on a comprehensive and holistic basis, to improve information security policies and procedures in our state agencies. I would appreciate your immediate attention to this matter. My staff is available to assist as needed.

Sincerely,

A handwritten signature in cursive script, reading "Nikki R. Haley".

Nikki R. Haley



## **FW: SLED/DOR agreements**

Schimsa, Rebecca

**Sent:** Thursday, October 25, 2012 9:23 PM

**To:** Stirling, Bryan

**Importance:** High

**Attachments:** SCRevenue(CLEAN).ECD PMID~1.docx (65 KB) ; SCRevenue.ECD PMID-Credit~1.docx (67 KB)

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**From:** Schimsa, Rebecca

**Sent:** Thursday, October 25, 2012 9:20 PM

**To:** hugh6644@gmail.com

**Subject:** SLED/DOR agreements

Senator Leatherman,

Per Bryan Stirling, I am forwarding these attachments to you. If you have any questions, Bryan's cell is 803.917.5442.

Thank you,

Rebecca Schimsa  
Office of the Governor

# CREDIT MONITORING PRODUCTS AGREEMENT

## ORDER FORM

(Please complete all of the fields below)

CLIENT INFORMATION	
<b>CLIENT:</b> a STATE OF INCORPORATION Corporation	<u>Client Billing Address and Contact</u>
<b>Address:</b>	<b>Address:</b>
<b>City:</b>	<b>City:</b>
<b>State:</b> Zip Code:	<b>State:</b> Zip Code:
<b>Contact:</b>	<b>Contact:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Email:</b>	<b>Email:</b>
ORDERING INFORMATION	
<b>Agreement Date:</b> October 25, 2012 <b>Enrollment End Date:</b> January 31, 2013	
<b>Product Term (per Individual):</b> One (1) year	
<b>Number of Activation Codes:</b> 3,000,000	
<b>Fee per Activation Code Redeemed:</b> \$15.35 <b>Set-up Fee:</b> \$0.00	
<b>Vanity URL for Consumer Product Website, if applicable:</b> www.protectmyid.com/scdor	
<b>Consumer Product Launch Date:</b> Within 24 hours of ECD's receipt of the List from Client <i>(This is an estimated date only)</i>	
<b>Consumer Products shall include one or more of the following products, which are further described in Exhibit A:</b>	
<b>Primary Product:</b> ProtectMyID Alert 3B (online/offline enrollment and alerts)	
<b>Secondary Product:</b> N/A	
<b>Supplemental Client Services (check all that apply; services are described in greater detail in <u>Exhibit B</u>):</b>	
<input type="checkbox"/> <b>Communication Facilitation Services</b> – printing and mailing of letters - price is N/A <i>(inclusive of postage)</i>	
<input checked="" type="checkbox"/> <b>Enhanced Customer Care Services</b> – additional call center services – price is \$.23 per individual affected (3,000,000 X \$.23 = \$690,000 -- Dedicated number 866-578-5422)	
<input type="checkbox"/> <b>Address Append Services</b> – Consumer address look up – price is N/A. A Rider agreement must accompany this form prior to processing data.	
<i>(The above Consumer Products are only available to Qualified (as defined in Exhibit A) Individuals who meet the requirements as defined and set forth in Exhibit A.)</i>	
<b>ALL INFORMATION CONTAINED IN THIS ORDER FORM IS SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THE ATTACHED CREDIT MONITORING PRODUCTS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE REPRESENTATIONS AND WARRANTIES; DISCLAIMERS, LIMITATIONS OF LIABILITY AND PROVISIONS REGARDING EACH PARTY'S RESPECTIVE INDEMNIFICATION OBLIGATIONS.</b>	

## CREDIT MONITORING PRODUCTS AGREEMENT

This Credit Monitoring Products Agreement (the “Agreement”) is made by and between ConsumerInfo.com, Inc., a California corporation, also known as Experian Consumer Direct (“ECD”), and the party identified as “Client” in the Order Form and its Affiliates (collectively, “Client”), and shall be effective as of the Agreement Date (as defined in the Order Form). Each of ECD and Client are sometimes referred to herein as a “Party” and collectively as the “Parties.” The Order Form attached hereto is made a material part of this Agreement and is incorporated herein by this reference.

### RECITALS

**WHEREAS**, Client maintains personal and other sensitive information on certain individuals;

**WHEREAS**, ECD, directly and through one or more third-party providers, provides certain credit monitoring and other products; and

**WHEREAS**, Client desires for ECD to make available certain of ECD’s products to certain Individuals (as defined below) identified by Client with respect to whom Client maintains personal and other sensitive information.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms herein shall have the meanings set forth in the Ordering Information section of the Order Form, or, if not set forth therein, as defined elsewhere in this Agreement. The following terms shall have the following meanings ascribed to them:

**1.1** “Activation Code” means a unique, single use code with respect to each Individual that allows such Individual to enroll for and receive the Consumer Product. Each Individual may only redeem his/her Activation Code for only one applicable Consumer Product.

**1.2** “Affiliates” means any entity controlled by, under common control with or that controls the applicable Party. “Control” means ownership of fifty percent (50%) or more of the ownership interest of an entity.

**1.3** “Consumer Product(s)” means those products and services provided by ECD hereunder, as selected by Client and set forth in the Order Form.

**1.4** “Enrollment Period” means the period commencing on the actual launch date of the Consumer Product Website and ending on the Enrollment End Date as set forth in the Order Form, whereby Individuals may redeem their Activation Code and receive the Consumer Product.

**1.5** “Individual” means any individual for whom Client maintains personal and other sensitive information.

**1.6** “Individual Information” means all information pertaining to an Individual obtained by ECD, including without limitation, (a) through Individual enrollment for the Consumer Product or visiting ECD’s website(s), or (b) through provision of the Consumer Product.

**1.7** “Law” means any rules, laws, statutes, regulations or judgments, orders or decrees imposed by any governmental entity.

**1.8** “Product Term” means the period set forth in the Order Form, commencing on the date an Individual completes enrollment for the Consumer Product, which may occur at any time during the Enrollment Period.

### 2. CREDIT MONITORING PRODUCTS; SUPPORT

**2.1 Access to Consumer Products.** ECD hereby agrees to provide to Client the number of Activation Codes set forth in the Order Form, for the purpose of Client providing such Activation Codes to Individuals. When ordering Activation Codes, Client shall order a number of Activation Codes equal to the number of notifications that it intends to provide to Individuals pursuant to Section 2.7 below. Client shall assign an Activation Code to each Individual and upon each Individual redeeming an Activation Code and completing the required enrollment, ECD shall provide to such Individual the selected Consumer Product for the Product Term. The Activation Codes may be redeemed by Individuals only during the Enrollment Period, and such Activation Codes will expire at the end of such Enrollment Period. Client may not distribute any Activation Codes thereafter.

**2.2 Enrollment; Consumer Product Website.** Each Individual may enroll for the applicable Consumer Product during the Enrollment Period (a) via phone enrollment to ECD's Customer Care Center, and/or, in the event Client elects to send a Notification Letter at a point in time after the Release (b) online via a secure Website designated by ECD (the "Consumer Product Website"). As a condition to receiving the Consumer Product, each Individual must complete ECD's applicable enrollment process and/or the other applicable credit reporting companies' enrollment process, including providing all requested information, and agree to all terms and conditions as well as ECD's privacy policy (collectively, the "End-User Terms and Conditions") for the Consumer Product. ECD shall have sole discretion to determine the End-User Terms and Conditions pursuant to which the Consumer Product shall be provided to Individuals; provided that, ECD shall not charge Individuals for the Consumer Product provided under this Agreement and as described in Exhibit A during the Product Term. The delivery method of the Consumer Products to the Individuals during the Product Term is not subject to change (i.e., if Individuals enroll or are enrolled online, the Consumer Product will be delivered online for the entire Product Term; and if Individuals enroll offline, the Consumer Product will be delivered via mail, and customer care will be available via phone (in accordance with Section 2.4 below) for the entire Product Term).

ECD shall build, host and maintain, at its own cost, the Consumer Product Website. Unless agreed to in writing by ECD, all content, including the design and look and feel, of the Consumer Product Website shall be determined by ECD, at its sole and absolute discretion. The Consumer Product Website shall be operated in accordance with ECD's standard procedures and shall be accessible by Individuals on a date that ECD and Client mutually agree to in writing after the Release date..

**2.3 Enrollment Process; Authentication Failure.** Client hereby acknowledges that ECD shall maintain strict procedures and protocols relating to its enrollment process (including timed-out and other security measures), and failure by an Individual to follow such procedures and protocols may result in a failed enrollment. Client also acknowledges that there are a number of additional reasons and factors that may cause Individuals to fail authentication/enrollment, including, without limitation, corporate firewalls, proxy servers, spam blockers, fraud alerts, credit file freezes, data errors, inaccurate out-of-wallet information, or incorrect social security numbers. Upon any such failure, each affected Individual shall be provided with a toll-free Customer Care Center number to call. Upon an Individual initiating such call, a customer care representative will attempt to manually authenticate such Individual by asking additional security questions; provided, that, in the event such a telephonic authentication is not possible, additional steps may be taken. ECD shall endeavor to make the enrollment process as "user-friendly" as reasonably possible but without compromising its security standards. Notwithstanding the foregoing, ECD shall not be required to provide any refund of the Fee (as defined in Section 4.1 below) to Client in the event that such Individual fails to successfully complete such enrollment. ECD reserves the right, at its sole and absolute discretion, to modify or alter the enrollment process and/or the services associated therewith from time to time.

**2.4 Customer Care.** Customer care will be available to Individuals via access to a toll-free Customer Care Center located in the United States. Fraud resolution customer care shall be available to Individuals via customer care representatives in the United States. The services available via the Customer Care Center shall be limited to assistance with telephone and email inquiries regarding enrollment for the Consumer Product and technical issues relating to redemption of Activation Codes, authentication failure, username and password assistance, cancellations, locked accounts, changes in personal information, disputes, billing questions about additional products, credit score information, general credit-related questions, fraud resolution, suspected fraudulent items, monitoring and alert information, free credit reports, and general Consumer Product Website navigation. The appropriate toll-free Customer Care Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Care Center enrollment process. Customer Care Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time. The Customer Care Center will attempt to authenticate Individuals in accordance with Section 2.3 above. The Customer Care Center will not have access to and will not provide any information related to Client or its business and/or legal decisions in making the Consumer Product available to Individuals on a complimentary basis, and will refer any such inquiries back to Client.

**2.5 Third Party Companies.** The portions of the Consumer Product provided by ECD's partners, Affiliates and certain third parties, including consumer reporting companies (collectively, "Third Party Companies") are subject to such entities' own end-user/individual standard terms and conditions and information requirements; the names of the Third Party Companies currently providing portions of the Consumer Product are delineated in Exhibit A. Individuals must comply with the Third Party Companies' terms and conditions and other requirements in order to receive such portions of the Consumer Product. Some of the Third Party Companies are not subcontractors or agents of ECD, and therefore, ECD does not control such terms and conditions or requirements and shall not be obligated to intervene or assist Individuals in any way in meeting such requirements. Individuals shall be solely responsible for handling any issues relating to such terms and conditions and requirements directly with any such partners, Affiliates and third parties. ECD shall not be obligated to refund any amount of the Fee (as defined in Section 4.1 below) on account of an Individual's inability to receive portions of

the Consumer Product as a result of such Individual's failure to comply with any of the Third Parties' terms and conditions and/or other requirements. Without limiting the generality of the foregoing, Individuals shall be required to provide all necessary information and meet other criteria required by each applicable consumer reporting company in order to receive a credit report or other products and services from such company.

**2.6 Intellectual Property and Branding of Consumer Products.** Unless otherwise agreed to in writing by ECD, the Consumer Products shall be branded as determined by ECD, at its sole and absolute discretion, and Client shall not designate (through trademark, trade name, trade dress or otherwise) the Consumer Products as being provided by Client. Client shall retain ownership of any and all pre-existing Client intellectual property, including but not limited to Client's trademarks, patents and trade dress.

**2.7 Notification to Individuals.** Client shall prepare a press release or other public announcement which details the data loss incident that affects Individuals ("Release"). ECD must be provided an opportunity to review any and all Releases prior to their conveyance to the general public. Subsequent to the Release, ECD shall be prepared to receive phone calls at its Customer Care Center, however, the ECD Customer Care Center shall not be prepared to assist Individuals with both enrollment in the Consumer Product and delivery of Enhanced Customer Care Services as of the Consumer Product Launch Date. Client acknowledges and agrees that with respect to any and all calls from Individuals which ECD receives at its Customer Care Center after the Release *but prior to* the Consumer Product Launch Date, ECD will use reasonable commercial efforts to facilitate such calls to achieve a satisfactory consumer experience, but the requirements of Section 2.11 shall still apply. In addition to the foregoing specified phone enrollment process, within a mutually agreeable period of time following the Agreement Date, Client may elect to prepare a communication to Individuals in the form of a notification letter ("Notification Letter") to be sent via U.S. Mail or email which must include (a) one Activation Code per each Individual Client identifies as affected by the subject data breach or data loss incident and eligible to receive such a Notification Letter, (b) the procedures for enrollment of the Consumer Product (including, but not limited to the (i) ECD maintained URL where such Individuals may properly utilize their Activation Code and (ii) the appropriate ECD Customer Care Center phone numbers), and (c) a listing of the key Consumer Product features. Any Client notification process pertaining to the Consumer Products that includes elements other than the Notification Letter must be pre-approved by ECD in writing. CLIENT SHALL SUBMIT ALL NOTIFICATION LETTERS TO ECD FOR APPROVAL PRIOR TO DELIVERY OF SUCH NOTIFICATION LETTERS TO INDIVIDUALS. ECD shall have the right to approve only the limited portions of such Notification Letters that describe the Consumer Product, and/or the procedures for redemption of the Activation Codes, or which in anyway otherwise relate to ECD and/or its Affiliates or [annualcreditreport.com](http://annualcreditreport.com). Client shall not provide, in any Notification Letter or any other public communication (including but not limited to communications with Individuals), any representation, description or other statement regarding the Consumer Products or otherwise refer to ECD or its Affiliates in any way other than by such a prepared Notification Letter reviewed and approved by ECD, or otherwise in accordance with section 9.8, below. Upon ECD's reasonable request, Client must provide ECD a mailing schedule in advance of Client commencing delivery of any and all Notification Letters to Individuals. Once provided by Client, ECD will allocate Customer Care Center and other resources in accordance with such schedule; any significant updates or modifications by Client to the schedule must be provided to ECD immediately and may result in increased costs for ECD that will require revised pricing discussions with Client. Client agrees not to make any statement or undertake any act or omission that would result in civil or criminal liability for ECD.

**2.8 ECD Communication with Individuals and/or Third-Parties.** ECD may communicate with or send communications to Individuals relating to (a) a Consumer Product pursuant to the terms of this Agreement, (b) the expiration of a Consumer Product and provide options for such Individuals to extend or renew such Consumer Product (i.e. via an end-of-term service alert), and/or (c) other ECD specific credit related products that are available to the Individuals in their online proprietary member center section of the Consumer Product Website or via e-mailed (or in the case of offline Individuals, mailed) service alerts sent by ECD to such Individuals. In addition, an Individual may affirmatively opt-in to receive marketing offers from ECD, its Affiliates and third-parties. As it relates to (b) and (c) in the preceding sentence, ECD may charge Individuals a separate fee for (i) an extension or renewal of a Consumer Product beyond the Product Term stipulated herein, or (ii) for other products not included under this Agreement. ECD is not obliged to communicate with or provide services to any third-parties who may have contractual or other relationships with Client (other than those explicitly agreed to within this Agreement).

**2.9 Activation Code Availability.** On or before the time of the Release, Client shall provide to ECD a listing of Individuals eligible to receive Activation Codes Center ("List"). Client shall be solely responsible for development of the List, as well as all eligibility criteria associated with the List. Upon provision of the List to ECD, ECD shall make the Activation Codes available for distribution to Individuals via personnel within the ECD Customer Care Center. In the event Client elects to mail any Notification Letters, ECD shall not be required to provide the Activation Codes for such Notification Letters to Client until both parties have reviewed and finally approved the Notification Letter as described in Section 2.7 above.

**2.10 Distribution of Activation Codes.** Activation Codes for distribution to Individuals on the List shall be maintained by ECD, and within ECD's care, custody and control. In the event ECD delivers Client (or Client's agent) any Activation Codes for use by Client in a Notification Letter, Client agrees not to sell or otherwise distribute any such Activation Codes, except to Individuals and only as expressly permitted under this Agreement. In no event shall ECD be liable for any loss, damage, theft, corruption or destruction ("Loss") of Activation Codes once issued by ECD to Client, including, but not limited to, any such Loss attributable to Client's distribution, storage (if applicable) and/or mailing of such Activation Codes.

**2.11 No Early Commencement.** Client acknowledges and agrees that (a) the Consumer Product Website will not be accessible by Individuals prior to the date mutually agreed to by ECD and Client in writing, and (b) it shall not communicate with Individuals regarding the availability and description of the Consumer Product, including, without limitation, the procedures for enrollment of the Consumer Product, any earlier than the date of the Release and acknowledges and agrees that the Consumer Products shall not be available for enrollment prior to the Consumer Product Launch Date stipulated on the Order Form. CLIENT AGREES THAT IT SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL LIABILITIES, COSTS AND EXPENSES INCURRED BY ECD OR ITS AFFILIATES AS A RESULT OF CLIENT'S AND/OR ANY INDIVIDUAL'S FAILURE TO COMPLY WITH THE FOREGOING, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INDIVIDUAL ATTEMPTING TO ACCESS THE CONSUMER PRODUCT WEBSITE AND/OR OTHERWISE ENROLL IN THE CONSUMER PRODUCTS PRIOR TO THE CONSUMER PRODUCT LAUNCH DATE SET FORTH IN THE ORDER FORM.

**2.12 Additional Client Requirements.** In the event Client requires additional Activation Codes beyond the number stipulated in the Order Form during the Enrollment Period, ECD may provide such additional Activation Codes pursuant to a mutual written Order Form addendum between the Parties to supplement this Agreement, which such addendum shall be in a form provided by ECD and subject to the terms of this Agreement (unless otherwise agreed to in such addendum). An Order Form addendum may have ordering information that differs from the Order Form attached to this Agreement, including, but not limited to, Enrollment End Date, Product Term, and fees. Any additional Client requirements or other changes to this Agreement may be agreed to between the Parties via a signed written amendment to this Agreement.

**2.13 Exclusivity.** During the Product Term, Client agrees not to obtain products or services that are similar to the Consumer Products from any party other than ECD.

### **3. INSURANCE**

**3.1 Insurance.** The insurance provided to Individuals as a product feature of certain Consumer Products is strictly subject to the policies, terms and conditions of the designated third-party insurers. Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the Consumer Product. ECD does not directly sell such insurance to Client or Individuals. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of insurable losses. At the election of the designated third-party insurer or ECD, (a) the amount of insurance coverage to be provided to Individuals, and/or (b) the designation of the third-party insurer(s) are both subject to change at any time. Notwithstanding the foregoing, identity theft insurance may not be provided to any Individuals residing in any state where the provision of such insurance is prohibited by Law.

**3.2 Guarantee for FamilySecure.com.** The Guarantee provided to Individuals as a product feature of the Guarantee provided to Individuals as a product feature of the Family Secure Consumer Product is strictly subject to the policies, terms and conditions described at [http://www.familysecure.com/Member\\_Guarantee.aspx](http://www.familysecure.com/Member_Guarantee.aspx). Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the FamilySecure.com Consumer Product. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of losses. At the election of ECD, (a) the amount of the Guarantee to be provided to Individuals, and/or (b) the designation of the party providing the Guarantee are both subject to change at any time. Notwithstanding the foregoing, the Guarantee may not be provided to any Individuals residing in any state where the provision of such Guarantee is prohibited by Law. Due to New York State Law restrictions, the Guarantee cannot be offered to Individuals who are residents of the State of New York.

### **4. FEES**

**4.1 Fees.** Client hereby agrees to pay to ECD the Set-up Fee within thirty (30) calendar days of the Effective Date. Client also agrees to pay ECD the Fee per Activation Code Redeemed set forth in the Order Form for each Activation Code redeemed by Individuals during the Enrollment Period (the "Fee"). ECD will invoice the Fee to Client on a monthly basis for all Activation Codes redeemed by Individuals during the prior thirty (30) calendar days and Client agrees to pay the Fee within thirty (30) days from the date of such invoice. If Client does not make full payment of the Fee within such

period, ECD, at its option, may immediately (a) deactivate the Activation Codes and cease further performance under this Agreement until such Fee is paid in full by Client, or (b) terminate this Agreement and the Individuals' enrollment of the Consumer Product. Interest shall accrue on any past due amounts at the rate of one and one half percent (1.5%) per month. In addition, Client shall be liable to ECD for any costs and attorneys' fees incurred by ECD to collect unpaid amounts.

**4.2 Fees Non-Refundable.** The Fee is, without limitation, due and payable as provided for herein, including any changes to facts or circumstances that may negate the need for some or all of ECD's Consumer Products or Activation Codes hereunder, whether or not Client and/or any Individual utilizes the Consumer Product in accordance with the terms of this Agreement. Client agrees to not waive any of its payment obligations and ECD shall not be obligated to refund any amount of the Fee already paid by Client on account of (a) any of the foregoing circumstances, (b) an Individual's inability to receive all or a portion of the Consumer Product as a result of such Individual's failure to (i) successfully complete enrollment, or (ii) comply with any or all of the Third Party Companies' terms and conditions and/or other requirements, and/or (c) any circumstances relating to Section 2.10 above. Without limiting any remedies available to ECD, Client acknowledges that upon entering into this Agreement, ECD shall immediately begin to incur costs and expenses, as well as allocate certain resources away from other projects, for the purpose of performing ECD's obligations hereunder; therefore, Client acknowledges and agrees that Client is responsible to pay for a minimum of five (5) percent of the total Activation Codes ordered by Client, irrespective of the total number of Activation Codes finally redeemed. In the event more than five (5) percent of all Activation Codes ordered by Client are redeemed, then these redemptions will be credited towards the total owed by Client for all redemptions.

**4.3 Taxes.** Client shall be responsible for, and shall promptly pay or reimburse ECD for the payment of, any sales, use, excise, ad valorem, value-added or other similar taxes, assessments or duties imposed by any government agency that are associated with the Consumer Products (other than taxes based on ECD's net income).

## **5. OWNERSHIP; INDIVIDUAL INFORMATION**

**5.1 ECD Ownership.** ECD and/or its Affiliates or third party providers shall exclusively own all right, title and interest, including all copyrights, trade secrets, know-how, goodwill, trademarks, service marks, trade names, trade dress, logos, patents or other intellectual property (or any derivative works thereof) and underlying technology in (i) the Consumer Products and all other products provided by ECD hereunder, (ii) the Consumer Product Website, and (iii) all other materials and information provided by ECD to Client hereunder. No grant to use any intellectual property (including any trademarks) of ECD, its Affiliates or third-party providers is made under this Agreement.

**5.2 Individual Information.** As Individual Information is conveyed from an Individual directly to ECD, it is *not* defined as Confidential Information pursuant to the definition of that term in section 7., below, rather ECD shall use Individual Information in accordance with its posted privacy policy and the End-User Terms and Conditions; such policy and terms and conditions may be amended from time to time, at ECD's sole and absolute discretion and without prior notice to Client and/or Individuals, subject to any applicable restrictions of state or other Laws.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER AND LIMITATION OF LIABILITY; INDEMNIFICATION**

**6.1 Representations and Warranties by ECD.** ECD represents and warrants to Client that it (a) has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) will provide the Consumer Products in a manner consistent with the level of service provided to ECD's general customer base for such Consumer Products; and (c) will provide the Consumer Products and any other products and services provided under this Agreement in a professional manner.

**6.2 Representations and Warranties by Client.** Client represents and warrants to ECD that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) to the best of its knowledge, all information provided by Client to ECD are accurate in all material respects, (c) it will communicate with the Individuals in accordance with Section 2.7 above, such that each of its Individuals receive notification and one Activation Code, and (d) by entering into this Agreement and performing hereunder, Client will not be violating or breaching any other contract, agreement, commitment, promise, understanding or arrangement.

### **6.3 DISCLAIMER AND LIMITATION OF LIABILITY.**

(a) CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE CONSUMER PRODUCTS ARE INTENDED AS ELECTIVE AND OPTIONAL PRODUCT OFFERINGS THAT CLIENT MAY CHOOSE TO MAKE AVAILABLE TO ITS INDIVIDUALS, AND THAT SUCH PRODUCTS ARE SELECTED SOLELY BY CLIENT. THE CONSUMER PRODUCTS ARE NOT INTENDED TO, AND ECD EXPRESSLY DISCLAIMS ANY WARRANTY OR GUARANTEE THAT THEY WILL, ALLOW CLIENT TO COMPLY WITH

LAW, MITIGATE DAMAGES (INCLUDING, BUT NOT LIMITED TO, RELATING TO A DATA BREACH) OR AVOID ANY OTHER CONSEQUENCES OF A DATA BREACH OR FAILURE TO INSTITUTE PROPER SECURITY MEASURES. ANY COMPLIANCE OR NONCOMPLIANCE WITH LAW SHALL BE BASED SOLELY UPON THE PROCEDURES AND ACTIONS IMPLEMENTED BY CLIENT IN CLIENT'S SOLE DETERMINATION. OTHER THAN THE WARRANTIES SET FORTH UNDER SECTION 6.1, ALL PRODUCTS PROVIDED BY ECD, ITS AFFILIATES OR ITS THIRD-PARTY PROVIDERS PURSUANT TO THIS AGREEMENT ARE SO PROVIDED ON AN "AS IS" BASIS, AND ECD MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT. ECD FURTHER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES REGARDING THE CONSUMER PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) IN NO EVENT SHALL ECD BE LIABLE TO CLIENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND LOST SALES, SUFFERED BY OR OTHERWISE COMPENSABLE TO CLIENT, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECD'S AGGREGATE LIABILITY TO CLIENT AND/OR ITS AFFILIATES FOR DAMAGES (i) CONCERNING THE PERFORMANCE OR NON-PERFORMANCE BY ECD OF ITS OBLIGATIONS HEREUNDER, OR (ii) IN ANY WAY RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE PROVISION OF THE CONSUMER PRODUCTS, AND INCLUDING PURSUANT TO ECD'S INDEMNIFICATION OBLIGATIONS SET FORTH UNDER THIS AGREEMENT), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO ECD UNDER THE TERMS OF THIS AGREEMENT.

#### **6.4 Indemnification.**

(a) **Indemnification by Client.** Client will indemnify, defend, and hold ECD, its Affiliates and parent companies, and their respective directors, officers, shareholders, employees and agents (collectively, the "ECD Indemnified Parties"), harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including by way of example only, ECD's costs of responding to a subpoena in any cause of action where Client is a named party), including reasonable attorneys' fees (collectively, "Damages"), which may be asserted against or incurred by ECD, its Affiliates, or any of the ECD Indemnified Parties, arising out of or resulting from (i) any agreement, arrangement or relationship between Client and Individuals, including, without limitation, any duties or obligations (contractual, at Law or otherwise) owed by Client to Individuals, (ii) Client's data breach, failure to maintain security measures, or violation or failure by Client to comply with any Law (including any claim that the Consumer Products are inadequate for Client to comply with the same), (iii) Client's misconduct or disregard of ordinary care in performing any of its obligations hereunder, or (iv) Client's breach of any provisions of this Agreement, including, but not limited to, Sections 2.7 and 2.10 hereof.

(b) **Indemnification by ECD.** ECD will indemnify, defend, and hold Client and its directors, officers, shareholders and, agents (the "Client Indemnified Parties") harmless from and against any and all Damages, which may be asserted against or incurred by Client or any of the Client Indemnified Parties, arising out of or resulting from any material breach of the End-User Terms and Conditions by ECD.

(c) **Procedures for Control of Indemnifiable Claims.** In order for a Party (the "Indemnified Party") to be entitled to any indemnification provided for in Sections 6.4(a) or 6.4(b) above, such Indemnified Party must notify the Party obligated to provide such indemnification (the "Indemnifying Party") in writing of the indemnifiable claim within thirty (30) business days after receipt by such Indemnified Party of written notice of the indemnifiable claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. After receipt of such notice, the Indemnifying Party shall have the right to assume the defense of, compromise or settle the indemnifiable claim at its expense; provided, however, that the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that provides for non-monetary relief without the consent of the Indemnified Party. In any indemnifiable claim which the Indemnifying Party has elected to defend, compromise or settle, the Indemnifying Party shall not be responsible for any expenses, including counsel fees, incurred by the Indemnified Party after such election; but the Indemnified Party may participate therein and retain separate counsel at its own expense. The Indemnified Party shall provide to the Indemnifying Party all information, assistance and authority reasonably requested in order to evaluate any indemnifiable claim and effect any defense, compromise or settlement thereof. If the Indemnifying Party does not assume the defense of the indemnifiable claim as provided herein, the Indemnified Party may defend, compromise or settle the



claim in any manner it reasonably deems appropriate, provided that the Indemnifying Party shall remain responsible for any losses, liabilities or damages the Indemnified Party suffers arising from the indemnifiable claim to the fullest extent provided under this Section 6.4.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition and Obligations.** For the purposes of this Agreement, “Confidential Information” means the pricing, provisions of and all performance under this Agreement and information about the disclosing Party’s business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a Party marked or designated by such Party as “confidential” or “proprietary” or information which, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as confidential. Notwithstanding the foregoing, the Parties agree that any and all information provided by Individuals and collected by ECD from the Consumer Product Website shall not be deemed as Confidential Information and shall be collected in accordance with ECD’s privacy policy and End-User Terms and Conditions, which may be amended from time to time. For a period commencing on the Agreement Date and ending two (2) years after the Term, each Party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Upon the disclosing Party’s request, the receiving Party will promptly return to the disclosing Party all tangible items containing or consisting of the disclosing Party’s Confidential Information and all copies thereof. Each Party acknowledges that all of the disclosing Party’s Confidential Information is owned solely by the disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the disclosing Party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at Law or in equity in the event of such a breach.

**7.2 Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information which is: (a) now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public, (b) acquired by the receiving Party before receiving such information from the disclosing Party and without restriction as to use or disclosure, (c) hereafter rightfully furnished to the receiving Party by a third party, without restriction as to use or disclosure, (d) information which the receiving Party can document was independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, (e) required to be disclosed under any Law, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable notice of such required disclosure and an opportunity to obtain a protective order or other appropriate remedy, (f) disclosed with the prior written consent of the disclosing Party.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence upon the Agreement Date and shall expire at the end of the Enrollment Period (the “Term”); provided, however, the terms of this Agreement will continue as stipulated herein for delivery of Consumer Product(s) in accordance with an active Order Form addendum between the Parties to this Agreement (pursuant to Section 2.12 above). The Product Term will continue as stipulated herein for continued delivery of the Consumer Product to Individuals in accordance with and as may be required by the End-User Terms and Conditions.

**8.2 Termination for Breach.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. In the event either Party terminates this Agreement for breach, termination shall not affect the other Party’s financial obligation to make any required payments hereunder.

**8.3 Effect of Termination.** Except with respect to the Consumer Product for which both (a) Client has been invoiced and rendered payment, and (b) ECD has commenced delivery of the Consumer Product, ECD shall have no further obligation to continue to provide the Consumer Product following the termination of this Agreement pursuant to Section 8.2 above.

**8.4 Surviving Provisions.** The terms and conditions of Sections 2, 3, 4.2, 5, 6, 7, 8.3, 8.4, and 9 of this Agreement shall survive and continue after termination or expiration of this Agreement.

## **9. GENERAL PROVISIONS**

**9.1 Assignment.** Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of either Party shall be assigned or delegated without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any unauthorized assignment or delegation shall be null and

void. Notwithstanding the foregoing, either Party may assign or otherwise transfer its rights and obligations to its Affiliates or to successors in interest (whether by purchase of stock or assets, merger, operation of Law, or otherwise) of that portion of its business related to the subject matter hereof.

**9.2 Successors in Interest.** Subject to the provision of Section 9.1 above, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

**9.3 Choice of Law; Jurisdiction.** This Agreement shall be construed in accordance with the Laws of the State of California (excluding rules regarding conflicts of Law) and the United States of America. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal courts located in Orange County, California, unless such actions, suits or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy, and each Party irrevocably submits to the jurisdiction of such courts. Service of process may be effected in accordance with the procedures for providing notice under this Agreement.

**9.4 Notices.** Any notice given under this Agreement to Client will be given in writing to the Primary Contact at the Client address set forth in the Order Form. Any notice given under this Agreement to ECD will be given in writing and addressed to ECD's Corporate Counsel at 18500 Von Karman Avenue, Suite 400, Irvine, CA 92612. Either Party may substitute a new address and contact person by written notice to the other in the manner contemplated herein. All notices shall be effective when received, and shall be delivered personally, by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service.

**9.5 Independent Contractors.** In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, employment, partnership or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself in any manner that would be contrary to the provision of this Section 9.5.

**9.6 Entire Agreement; Amendments and Addenda.** This Agreement (including the exhibits hereto, as may be amended and supplemented from time to time, based upon mutual written consent) contains the entire agreement and understanding concerning the subject matter (as set forth in the Recitals) between Client and ECD. This Agreement supersedes all prior negotiations, agreements (whether written, oral or electronic), Client purchase orders, term sheets, or proposals that relate specifically to the subject matter (as set forth in the Recitals). Except as provided herein, this Agreement may be amended and/or supplemented via one or more Order Form addenda (as described in Section 2.12 above) only in writing, signed by authorized representatives for both ECD and Client.

**9.7 Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

**9.8 Publicity; Public Communication.** Neither Party shall provide, in any Release, any representation, description or other statement regarding the Consumer Products or otherwise refer to the other Party or its Affiliates in any way other than as set forth in Section 2.7 or as otherwise approved in writing in advance by the other Party. For avoidance of doubt, both parties must agree on the timing and complete content of any and all press releases which pertain to this Agreement or the provision of the Consumer Products herein.

**9.9 Adequate Review.** Each party represents to the other that, as deemed necessary by such party, this Agreement has been reviewed by each party and its legal and other advisors, and such party has had an opportunity to make all relevant inquiries and receive sufficient responses relating to this Agreement.

**9.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution of it.

**9.11 Binding Agreement.** The Parties (a) agree that this Agreement shall not be binding unless and until it has been executed by an authorized representative of ECD, and (b) represent and warrant that the individuals signing below are expressly invested with the requisite authority to bind their respective companies under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Credit Monitoring Products Agreement effective as of the Agreement Date.

**Client:**

**ConsumerInfo.com, Inc.,  
also known as Experian Consumer Direct**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Exhibit A**  
**Consumer Products**

These below listed products are delivered to Qualified (as defined below) Individuals using a single-use Activation Code. Description of each products benefits, which are subject to change:

Features	ProtectMyID Alert 3B
<b>Daily credit monitoring</b>	3 Bureau
<b>Daily credit alerts</b> - <i>for new inquiries, accounts created, change of address, changes to public records and posting of potentially negative information</i>	X
<b>Reports upon enrollment</b>	Experian report only
<b>Score upon enrollment</b>	
<b>Reports/Score during membership</b>	
<b>Customer and Fraud Resolution Support</b> - Customer services is available 7 days a week - One on one access to a fraud resolution agent - Link to forms to file fraud alerts	X
<b>All clear alerts when no activity has been detected</b> - Delivered monthly for online Individuals - Delivered quarterly for offline Individuals	X
<b>Identity Theft Insurance *</b>	\$1MM
<b>Enrollment method</b>	Phone or Internet
<b>Product delivery method (see section 2.2)</b>	Online or US mail
<b>Identity Theft Risk Assessment</b>	Online

**Family Secure<sup>SM</sup>** – This product is delivered to Qualified (as defined below) Individuals using an online enrollment process and a single-use, Activation Code. For purposes of Family Secure, “Individual” means the Parent or Legal Guardian. Description of Family Secure benefits, which are subject to change:

- Parent or Legal Guardian:

- a) Unlimited online access to an Individual’s Experian credit report and score for the duration of the Product Term
- b) Daily monitoring of the Individual’s Experian credit report
- c) Daily monitoring alerts to inform the Individuals of important changes to their Experian credit report
- d) Score Illustrator to help the Individuals understand how factors on their Experian credit report impact their Experian credit score

- Children who are enrolled by the Parent or Legal Guardian:

- a) Check whether an Experian credit report exists for each child enrolled by the Parent or Legal Guardian
- b) Monthly check to determine whether the child(ren) has/have an Experian credit report
- c) Monthly check for alerts of the child/ren’s Experian credit report (if any) to inform the Parent or Legal Guardian of any important changes or activity of the child/ren’s Experian credit report

- Entire Family:

- a) Toll-free access to ECD’s Customer Care Center
- b) Informative credit related articles
- c) \$2,000,000 Guarantee for certain identity theft related expenses\*\*\*\*

Additional Family Secure product information: (i) children are eligible for online enrollment up to three (3) months prior to their 18<sup>th</sup> birthday, however, the Parent or Legal Guardian may contact ECD’s Customer Care Center to enroll such

children up to two (2) weeks prior to their 18<sup>th</sup> birthday; (ii) children will automatically be de-enrolled within one (1) week prior to their eighteenth (18<sup>th</sup>) birthday and thereafter, such child/ren will no longer be eligible for the Family Secure product; (iii) child/ren's credit report (if any) are available offline only; and (iv) the Parent or Legal Guardian is required to authenticate prior to the ECD Customer Care Center can provide assistance regarding the child/ren's credit report.

**Definitions.**

For purposes of this Exhibit A, "Qualified" means Individuals who meet the following requirements to be eligible to enroll for the Consumer Product:

- a) Accurately complete and submit to ECD all of the required enrollment fields/pages;
- b) Provide ECD the correct answers to the out-of-wallet security questions;
- c) Accept the End-User Terms and Conditions (including ECD's terms, conditions and privacy policy);
- d) Are at least 18 years of age and a living person as of the date of enrollment in the Consumer Product
- e) Have a U.S. credit file with at least one of the national credit reporting companies (Experian, Equifax and TransUnion)\*\*;
- f) Provide ECD with a current U.S. phone number and a current U.S. postal address \*\*\*
- g) Provide a valid U.S. Social Security number or Tax Identification Number issued for the Individual by the U.S. Social Security Administration; and
- h) Pass all of ECD's identity, authentication and security requirements.

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As per section 2.5 of the Agreement, the following are current Third Party Companies:

- 1. Credit reporting agencies (Equifax Inc. and TransUnion LLC)
- 2. All Affiliates of ECD pursuant to the definition contained in Section 1.2 of the Agreement.
- 3. Chartis Inc. \*

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\*\* Delivery of the Consumer Product will be limited to the report(s) of the national credit reporting companies with whom each Individual has a current U.S. credit file (e.g., in the event an Individual only has a U.S. credit file with Experian, then such Individual shall only receive the Experian credit report).

\*\*\* The U.S. address provided by Individuals should be the U.S. address associated with such Individuals credit file (e.g. the address utilized by the Individual to obtain credit).

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\*\*\*\* Due to New York state law restrictions, the Guarantee cannot be offered to Individuals who are residents of New York.

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## **Exhibit B**

### **Supplemental Products**

**Enhanced Customer Care.** In addition to the standard customer service delineated within the Agreement, ECD will provide certain supplemental call center services (“Enhanced Call Center Services”). Enhanced Call Center Services shall be limited to (a) the ECD Customer Service Center responding to Individual queries via customized scripting (which will be mutually agreed to in writing by ECD and Client) and (b) other required Individual support on a case-by-case basis, as required and exclusively in connection with the Activation Codes provided herein. The appropriate toll-free Customer Service Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Service Center enrollment process. Customer Service Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time.

**Communication Facilitation.** Client has requested that ECD facilitate the transmission of the Notification Letter approved by ECD in accordance with section 2.7 of the Agreement (“Approved Communication”) to Individuals by means of ECD’s third-party print vendor. Client shall send the names and addresses of all such Individuals to whom Approved Communications should be conveyed to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its third-party print vendor and once ECD has established that its’ print vendor has received such information, ECD will purge all such information that is within ECD’s possession. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the preparation and provision of the Approved Communication to Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) complete and correct instructions regarding the date(s) that ECD’s print vendor is requested to mail the Approved Communication to Individuals. Client agrees to pay ECD for each Approved Communication that Client may request ECD’s print vendor to prepare in accordance with the pricing delineated on the Order Form. Any pages in addition to the one-page (double sided) Approved Communication that Client may request ECD’s print vendor to prepare shall be priced separately (and in addition to the costs already referenced therein) in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**Address Append Services.** Client is requesting address append services for use in locating or verifying Individual names and addresses when Client may have access to only an Individual’s social security number (SSN) and/or aged address data. Client MUST certify via signature of a supplemental Rider to this agreement that the use of any of this data as delivered by ECD shall only be used by Client in compliance with Law. Upon receipt of the Rider agreement from Client, the SSNs of all such Individuals will be provided by Client to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its Affiliate, Experian Information Solutions, Inc., in order to produce an address append deliverable. Reasonable commercial efforts will be used by Experian Information Solutions, Inc. to retrieve an Individual’s name and/or address. In some instances, multiple matches will be returned where Client is held solely responsible for identifying the best matched record to use. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the utilization of File One data to notify Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) properly formatted data file for optimal processing. Client agrees to pay ECD for each Individual record searched in accordance with the pricing delineated on the Order Form. Any subsequent record batches may be priced separately in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

*(Please complete all of the fields below)*

## CREDIT MONITORING PRODUCTS AGREEMENT

This Credit Monitoring Products Agreement (the "Agreement") is made by and between ConsumerInfo.com, Inc., a California corporation, also known as Experian Consumer Direct ("ECD"), and the party identified as "Client" in the Order Form and its Affiliates (collectively, "Client"), and shall be effective as of the Agreement Date (as defined in the Order Form). Each of ECD and Client are sometimes referred to herein as a "Party" and collectively as the "Parties." The Order Form attached hereto is made a material part of this Agreement and is incorporated herein by this reference.

### RECITALS

**WHEREAS**, Client maintains personal and other sensitive information on certain individuals;

**WHEREAS**, ECD, directly and through one or more third-party providers, provides certain credit monitoring and other products; and

**WHEREAS**, Client desires for ECD to make available certain of ECD's products to certain Individuals (as defined below) identified by Client with respect to whom Client maintains personal and other sensitive information.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms herein shall have the meanings set forth in the Ordering Information section of the Order Form, or, if not set forth therein, as defined elsewhere in this Agreement. The following terms shall have the following meanings ascribed to them:

**1.1** "Activation Code" means a unique, single use code with respect to each Individual that allows such Individual to enroll for and receive the Consumer Product. Each Individual may only redeem his/her Activation Code for only one applicable Consumer Product.

**1.2** "Affiliates" means any entity controlled by, under common control with or that controls the applicable Party. "Control" means ownership of fifty percent (50%) or more of the ownership interest of an entity.

**1.3** "Consumer Product(s)" means those products and services provided by ECD hereunder, as selected by Client and set forth in the Order Form.

**1.4** "Enrollment Period" means the period commencing on the actual launch date of the Consumer Product Website and ending on the Enrollment End Date as set forth in the Order Form, whereby Individuals may redeem their Activation Code and receive the Consumer Product.

**1.5** "Individual" means any individual for whom Client maintains personal and other sensitive information.

**1.6** "Individual Information" means all information pertaining to an Individual obtained by ECD, including without limitation, (a) through Individual enrollment for the Consumer Product or visiting ECD's website(s), or (b) through provision of the Consumer Product.

**1.7** "Law" means any rules, laws, statutes, regulations or judgments, orders or decrees imposed by any governmental entity.

**1.8** "Product Term" means the period set forth in the Order Form, commencing on the date an Individual completes enrollment for the Consumer Product, which may occur at any time during the Enrollment Period.

### 2. CREDIT MONITORING PRODUCTS; SUPPORT

**2.1 Access to Consumer Products.** ECD hereby agrees to provide to Client the number of Activation Codes set forth in the Order Form, for the purpose of Client providing such Activation Codes to Individuals. When ordering Activation Codes, Client shall order a number of Activation Codes equal to the number of notifications that it intends to provide to Individuals pursuant to Section 2.7 below. Client shall assign an Activation Code to each Individual and upon each Individual redeeming an Activation Code and completing the required enrollment, ECD shall provide to such Individual the selected Consumer Product for the Product Term. The Activation Codes may be redeemed by Individuals only during the Enrollment Period, and such Activation Codes will expire at the end of such Enrollment Period. Client may not distribute any Activation Codes thereafter.



**2.2 Enrollment; Consumer Product Website.** Each Individual may enroll for the applicable Consumer Product during the Enrollment Period (a) via phone enrollment to ECD's Customer Care Center, and/or, in the event Client elects to send a Notification Letter at a point in time after the Release (ab) online via a secure Website designated by ECD (the "Consumer Product Website"); and/or (b) by such other means as may be available and agreed to in writing by ECD. As a condition to receiving the Consumer Product, each Individual must complete ECD's applicable enrollment process and/or the other applicable credit reporting companies' enrollment process, including providing all requested information, and agree to all terms and conditions as well as ECD's privacy policy (collectively, the "End-User Terms and Conditions") for the Consumer Product. ECD shall have sole discretion to determine the End-User Terms and Conditions pursuant to which the Consumer Product shall be provided to Individuals; provided that, ECD shall not charge Individuals for the Consumer Product provided under this Agreement and as described in Exhibit A during the Product Term. The delivery method of the Consumer Products to the Individuals during the Product Term is not subject to change (i.e., if Individuals enroll or are enrolled online, the Consumer Product will be delivered online for the entire Product Term; and if Individuals enroll offline, the Consumer Product will be delivered via mail, and customer care will be available via phone (in accordance with Section 2.4 below) for the entire Product Term).

ECD shall build, host and maintain, at its own cost, the Consumer Product Website. Unless agreed to in writing by ECD, all content, including the design and look and feel, of the Consumer Product Website shall be determined by ECD, at its sole and absolute discretion. The Consumer Product Website shall be operated in accordance with ECD's standard procedures and shall be accessible by Individuals on a date that ECD and Client mutually agree to in writing after the Release date, the Consumer Product Website Launch Date as set forth in the Order Form.

**2.3 Enrollment Process; Authentication Failure.** Client hereby acknowledges that ECD shall maintain strict procedures and protocols relating to its enrollment process (including timed-out and other security measures), and failure by an Individual to follow such procedures and protocols may result in a failed enrollment. Client also acknowledges that there are a number of additional reasons and factors that may cause Individuals to fail authentication/enrollment, including, without limitation, corporate firewalls, proxy servers, spam blockers, fraud alerts, credit file freezes, data errors, inaccurate out-of-wallet information, or incorrect social security numbers. Upon any such failure, each affected Individual shall be provided with a toll-free Customer Care Center number to call. Upon an Individual initiating such call, a customer care representative will attempt to manually authenticate such Individual by asking additional security questions; provided, that, in the event such a telephonic authentication is not possible, additional steps may be taken. ECD shall endeavor to make the enrollment process as "user-friendly" as reasonably possible but without compromising its security standards. Notwithstanding the foregoing, ECD shall not be required to provide any refund of the Fee (as defined in Section 4.1 below) to Client in the event that such Individual fails to successfully complete such enrollment. ECD reserves the right, at its sole and absolute discretion, to modify or alter the enrollment process and/or the services associated therewith from time to time.

**2.4 Customer Care.** Customer care will be available to Individuals via access to a toll-free Customer Care Center located in the United States. Fraud resolution customer care shall be available to Individuals via customer care representatives in the United States. The services available via the Customer Care Center shall be limited to assistance with telephone and email inquiries regarding enrollment for the Consumer Product and technical issues relating to redemption of Activation Codes, authentication failure, username and password assistance, cancellations, locked accounts, changes in personal information, disputes, billing questions about additional products, credit score information, general credit-related questions, fraud resolution, suspected fraudulent items, monitoring and alert information, free credit reports, and general Consumer Product Website navigation. The appropriate toll-free Customer Care Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Care Center enrollment process. Customer Care Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time. The Customer Care Center will attempt to authenticate Individuals in accordance with Section 2.3 above. The Customer Care Center will not have access to and will not provide any information related to Client or its business and/or legal decisions in making the Consumer Product available to Individuals on a complimentary basis, and will refer any such inquiries back to Client.

**2.5 Third Party Companies.** The portions of the Consumer Product provided by ECD's partners, Affiliates and certain third parties, including consumer reporting companies (collectively, "Third Party Companies") are subject to such entities' own end-user/individual standard terms and conditions and information requirements; the names of the Third Party Companies currently providing portions of the Consumer Product are delineated in Exhibit A. Individuals must comply with the Third Party Companies' terms and conditions and other requirements in order to receive such portions of the Consumer Product. Some of the Third Party Companies are not subcontractors or agents of ECD, and therefore, ECD does not control such terms and conditions or requirements and shall not be obligated to intervene or assist Individuals in any way in meeting such requirements. Individuals shall be solely responsible for handling any issues relating to such terms and conditions and requirements directly with any such partners, Affiliates and third parties. ECD shall not be obligated to

refund any amount of the Fee (as defined in Section 4.1 below) on account of an Individual's inability to receive portions of the Consumer Product as a result of such Individual's failure to comply with any of the Third Parties' terms and conditions and/or other requirements. Without limiting the generality of the foregoing, Individuals shall be required to provide all necessary information and meet other criteria required by each applicable consumer reporting company in order to receive a credit report or other products and services from such company.

**2.6 Intellectual Property and Branding of Consumer Products.** Unless otherwise agreed to in writing by ECD, the Consumer Products shall be branded as determined by ECD, at its sole and absolute discretion, and Client shall not designate (through trademark, trade name, trade dress or otherwise) the Consumer Products as being provided by Client. Client shall retain ownership of any and all pre-existing Client intellectual property, including but not limited to Client's trademarks, patents and trade dress.

**2.7 Client Notification to Individuals.** Client shall prepare a press release or other public announcement which details the data loss incident that affects Individuals ("Release"). ECD must be provided an opportunity to review any and all Releases prior to their conveyance to the general public. Subsequent to the Release, ECD shall be prepared to receive phone calls at its Customer Care Center, however, the ECD Customer Care Center shall not be prepared to assist Individuals with both enrollment in the Consumer Product and delivery of Enhanced Customer Care Services as of the Consumer Product Launch Date. Client acknowledges and agrees that with respect to any and all calls from Individuals which ECD receives at its Customer Care Center after the Release but prior to the Consumer Product Launch Date, ECD will use reasonable commercial efforts to facilitate such calls to achieve a satisfactory consumer experience, but the requirements of Section 2.11 shall still apply. In addition to the foregoing specified phone enrollment process, Within a mutually agreeable period of time following the Agreement Date, Client shall may elect to prepare a communication to Individuals in the form of a notification letter ("Notification Letter") to be sent via U.S. Mail or email which must include (a) one Activation Code per each Individual Client identifies as affected by the subject data breach or data loss incident and eligible to receive such a Notification Letter, (b) the procedures for enrollment of the Consumer Product (including, but not limited to the (i) ECD maintained URL where such Individuals may properly utilize their Activation Code and (ii) the appropriate ECD Customer Care Center phone numbers), and (c) a listing of the key Consumer Product features. Any Client notification process pertaining to the Consumer Products that includes elements other than the Notification Letter must be pre-approved by ECD in writing. CLIENT SHALL SUBMIT ALL NOTIFICATION LETTERS TO ECD FOR APPROVAL PRIOR TO DELIVERY OF SUCH NOTIFICATION LETTERS TO INDIVIDUALS. ECD shall have the right to approve only the limited portions of such Notification Letters that describe the Consumer Product, and/or the procedures for redemption of the Activation Codes, or which in anyway otherwise relate to ECD and/or its Affiliates or annualcreditreport.com. Client shall not provide, in any Notification Letter or any other public communication (including but not limited to communications with Individuals), any representation, description or other statement regarding the Consumer Products or otherwise refer to ECD or its Affiliates in any way other than by such a prepared Notification Letter reviewed and approved by ECD, or otherwise in accordance with section 9.8, below. Upon ECD's reasonable request, Client must provide ECD a mailing schedule in advance of Client commencing delivery of any and all Notification Letters to Individuals. Once provided by Client, ECD will allocate Customer Care Center and other resources in accordance with such schedule; any significant updates or modifications by Client to the schedule must be provided to ECD immediately and may result in increased costs for ECD that will require revised pricing discussions with Client. Client agrees not to make any statement or undertake any act or omission that would result in civil or criminal liability for ECD.

**2.8 ECD Communication with Individuals and/or Third-Parties.** ECD may communicate with or send communications to Individuals relating to (a) a Consumer Product pursuant to the terms of this Agreement, (b) the expiration of a Consumer Product and provide options for such Individuals to extend or renew such Consumer Product (i.e. via an end-of-term service alert), and/or (c) other ECD specific credit related products that are available to the Individuals in their online proprietary member center section of the Consumer Product Website or via e-mailed (or in the case of offline Individuals, mailed) service alerts sent by ECD to such Individuals. In addition, an Individual may affirmatively opt-in to receive marketing offers from ECD, its Affiliates and third-parties. As it relates to (b) and (c) in the preceding sentence, ECD may charge Individuals a separate fee for (i) an extension or renewal of a Consumer Product beyond the Product Term stipulated herein, or (ii) for other products not included under this Agreement. ECD is not obliged to communicate with or provide services to any third-parties who may have contractual or other relationships with Client (other than those explicitly agreed to within this Agreement).

**2.9 Activation Code Availability.** On or before the time of the Release, Client shall provide to ECD a listing of Individuals eligible to receive Activation Codes Center ("List"). Client shall be solely responsible for development of the List, as well as all eligibility criteria associated with the List. Upon provision of the List to ECD, ECD shall make the Activation Codes available for distribution to Individuals via personnel within the ECD Customer Care Center. In the event Client elects to mail any Notification Letters, ECD shall not be required to provide the Activation Codes for such Notification Letters to Client until both parties have reviewed and finally approved the Individual

~~communication Notification Letter~~ as described in Section 2.7 above.

**2.10 Distribution of Activation Codes.** Activation Codes for distribution to Individuals on the List shall be maintained by ECD, and within ECD's care, custody and control. In the event ECD delivers Client (or Client's agent) any ~~Activation Codes for use by Client in a Notification Letter~~, Client agrees not to sell or otherwise distribute any such Activation Codes, except to Individuals and only as expressly permitted under this Agreement. In no event shall ECD be liable for any loss, damage, theft, corruption or destruction ("Loss") of Activation Codes once issued by ECD to Client, including, but not limited to, any such Loss attributable to Client's distribution, storage (if applicable) and/or mailing of such Activation Codes.

**2.11 No Early Commencement.** Client acknowledges and agrees that (a) the Consumer Product Website will not be accessible by Individuals prior to the ~~date mutually agreed to by ECD and Client in writing~~ ~~Consumer Product Website Launch Date as set forth in the Order Form~~, and (b) it shall not communicate with Individuals regarding the availability and description of the Consumer Product, including, without limitation, the procedures for enrollment of the Consumer Product, any earlier than the date of the Release and acknowledges and agrees that the Consumer Products shall not be available for enrollment prior to the Consumer Product Launch Date stipulated on the Order Form, ~~mutually agreed to between ECD and Client in accordance with Section 2.7 above~~. CLIENT AGREES THAT IT SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL LIABILITIES, COSTS AND EXPENSES INCURRED BY ECD OR ITS AFFILIATES AS A RESULT OF CLIENT'S AND/OR ANY INDIVIDUAL'S FAILURE TO COMPLY WITH THE FOREGOING, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INDIVIDUAL ATTEMPTING TO ACCESS THE CONSUMER PRODUCT WEBSITE ~~AND/OR OTHERWISE ENROLL IN THE CONSUMER PRODUCTS PRIOR TO THE CONSUMER PRODUCT WEBSITE LAUNCH~~ CONSUMER PRODUCT LAUNCH DATE SET FORTH IN THE ORDER FORM.

**2.12 Additional Client Requirements.** In the event Client requires additional Activation Codes beyond the number stipulated in the Order Form during the Enrollment Period, ECD may provide such additional Activation Codes pursuant to a mutual written Order Form addendum between the Parties to supplement this Agreement, which such addendum shall be in a form provided by ECD and subject to the terms of this Agreement (unless otherwise agreed to in such addendum). An Order Form addendum may have ordering information that differs from the Order Form attached to this Agreement, including, but not limited to, Enrollment End Date, Product Term, and fees. Any additional Client requirements or other changes to this Agreement may be agreed to between the Parties via a signed written amendment to this Agreement.

**2.13 Exclusivity.** During the Product Term, Client agrees not to obtain products or services that are similar to the Consumer Products from any party other than ECD.

### 3. INSURANCE

**3.1 Insurance.** The insurance provided to Individuals as a product feature of certain Consumer Products is strictly subject to the policies, terms and conditions of the designated third-party insurers. Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the Consumer Product. ECD does not directly sell such insurance to Client or Individuals. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of insurable losses. At the election of the designated third-party insurer or ECD, (a) the amount of insurance coverage to be provided to Individuals, and/or (b) the designation of the third-party insurer(s) are both subject to change at any time. Notwithstanding the foregoing, identity theft insurance may not be provided to any Individuals residing in any state where the provision of such insurance is prohibited by Law.

**3.2 Guarantee for FamilySecure.com.** The Guarantee provided to Individuals as a product feature of the Guarantee provided to Individuals as a product feature of the Family Secure Consumer Product is strictly subject to the policies, terms and conditions described at [http://www.familysecure.com/Member\\_Guarantee.aspx](http://www.familysecure.com/Member_Guarantee.aspx). Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the FamilySecure.com Consumer Product. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of losses. At the election of ECD, (a) the amount of the Guarantee to be provided to Individuals, and/or (b) the designation of the party providing the Guarantee are both subject to change at any time. Notwithstanding the foregoing, the Guarantee may not be provided to any Individuals residing in any state where the provision of such Guarantee is prohibited by Law. Due to New York State Law restrictions, the Guarantee cannot be offered to Individuals who are residents of the State of New York.

### 4. FEES

**4.1 Fees.** Client hereby agrees to pay to ECD the Set-up Fee within thirty (30) calendar days of the Effective Date. Client also agrees to pay ECD the Fee per Activation Code Redeemed set forth in the Order Form for each Activation

Code redeemed by Individuals during the Enrollment Period (the "Fee"). ECD will invoice the Fee to Client on a monthly basis for all Activation Codes redeemed by Individuals during the prior thirty (30) calendar days and Client agrees to pay the Fee within thirty (30) days from the date of such invoice. If Client does not make full payment of the Fee within such period, ECD, at its option, may immediately (a) deactivate the Activation Codes and cease further performance under this Agreement until such Fee is paid in full by Client, or (b) terminate this Agreement and the Individuals' enrollment of the Consumer Product. Interest shall accrue on any past due amounts at the rate of one and one half percent (1.5%) per month. In addition, Client shall be liable to ECD for any costs and attorneys' fees incurred by ECD to collect unpaid amounts.

**4.2 Fees Non-Refundable.** The Fee is, without limitation, due and payable as provided for herein, including any changes to facts or circumstances that may negate the need for some or all of ECD's Consumer Products or Activation Codes hereunder, whether or not Client and/or any Individual utilizes the Consumer Product in accordance with the terms of this Agreement. Client agrees to not waive any of its payment obligations and ECD shall not be obligated to refund any amount of the Fee already paid by Client on account of (a) any of the foregoing circumstances, (b) an Individual's inability to receive all or a portion of the Consumer Product as a result of such Individual's failure to (i) successfully complete enrollment, or (ii) comply with any or all of the Third Party Companies' terms and conditions and/or other requirements, and/or (c) any circumstances relating to Section 2.10 above. Without limiting any remedies available to ECD, Client acknowledges that upon entering into this Agreement, ECD shall immediately begin to incur costs and expenses, as well as allocate certain resources away from other projects, for the purpose of performing ECD's obligations hereunder; therefore, Client acknowledges and agrees that Client is responsible to pay for a minimum of ~~fiveten~~ (540) percent of the total Activation Codes ordered by Client, irrespective of the total number of Activation Codes finally redeemed. In the event more than ~~fiveten~~ (540) percent of all Activation Codes ordered by Client are redeemed, then these redemptions will be credited towards the total owed by Client for all redemptions.

**4.3 Taxes.** Client shall be responsible for, and shall promptly pay or reimburse ECD for the payment of, any sales, use, excise, ad valorem, value-added or other similar taxes, assessments or duties imposed by any government agency that are associated with the Consumer Products (other than taxes based on ECD's net income).

## **5. OWNERSHIP; INDIVIDUAL INFORMATION**

**5.1 ECD Ownership.** ECD and/or its Affiliates or third party providers shall exclusively own all right, title and interest, including all copyrights, trade secrets, know-how, goodwill, trademarks, service marks, trade names, trade dress, logos, patents or other intellectual property (or any derivative works thereof) and underlying technology in (i) the Consumer Products and all other products provided by ECD hereunder, (ii) the Consumer Product Website, and (iii) all other materials and information provided by ECD to Client hereunder. No grant to use any intellectual property (including any trademarks) of ECD, its Affiliates or third-party providers is made under this Agreement.

**5.2 Individual Information.** As Individual Information is conveyed from an Individual directly to ECD, it is *not* defined as Confidential Information pursuant to the definition of that term in section 7., below, rather ECD shall use Individual Information in accordance with its posted privacy policy and the End-User Terms and Conditions; such policy and terms and conditions may be amended from time to time, at ECD's sole and absolute discretion and without prior notice to Client and/or Individuals, subject to any applicable restrictions of state or other Laws.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER AND LIMITATION OF LIABILITY; INDEMNIFICATION**

**6.1 Representations and Warranties by ECD.** ECD represents and warrants to Client that it (a) has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) will provide the Consumer Products in a manner consistent with the level of service provided to ECD's general customer base for such Consumer Products; and (c) will provide the Consumer Products and any other products and services provided under this Agreement in a professional manner.

**6.2 Representations and Warranties by Client.** Client represents and warrants to ECD that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) to the best of its knowledge, all information provided by Client to ECD are accurate in all material respects, (c) it will communicate with the Individuals in accordance with Section 2.7 above, such that each of its Individuals receive notification and one Activation Code, and (d) by entering into this Agreement and performing hereunder, Client will not be violating or breaching any other contract, agreement, commitment, promise, understanding or arrangement.

### **6.3 DISCLAIMER AND LIMITATION OF LIABILITY.**

(a) CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE CONSUMER PRODUCTS ARE INTENDED AS ELECTIVE AND OPTIONAL PRODUCT OFFERINGS THAT CLIENT MAY

CHOOSE TO MAKE AVAILABLE TO ITS INDIVIDUALS, AND THAT SUCH PRODUCTS ARE SELECTED SOLELY BY CLIENT. THE CONSUMER PRODUCTS ARE NOT INTENDED TO, AND ECD EXPRESSLY DISCLAIMS ANY WARRANTY OR GUARANTEE THAT THEY WILL, ALLOW CLIENT TO COMPLY WITH LAW, MITIGATE DAMAGES (INCLUDING, BUT NOT LIMITED TO, RELATING TO A DATA BREACH) OR AVOID ANY OTHER CONSEQUENCES OF A DATA BREACH OR FAILURE TO INSTITUTE PROPER SECURITY MEASURES. ANY COMPLIANCE OR NONCOMPLIANCE WITH LAW SHALL BE BASED SOLELY UPON THE PROCEDURES AND ACTIONS IMPLEMENTED BY CLIENT IN CLIENT'S SOLE DETERMINATION. OTHER THAN THE WARRANTIES SET FORTH UNDER SECTION 6.1, ALL PRODUCTS PROVIDED BY ECD, ITS AFFILIATES OR ITS THIRD-PARTY PROVIDERS PURSUANT TO THIS AGREEMENT ARE SO PROVIDED ON AN "AS IS" BASIS, AND ECD MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT. ECD FURTHER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES REGARDING THE CONSUMER PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) IN NO EVENT SHALL ECD BE LIABLE TO CLIENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND LOST SALES, SUFFERED BY OR OTHERWISE COMPENSABLE TO CLIENT, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECD'S AGGREGATE LIABILITY TO CLIENT AND/OR ITS AFFILIATES FOR DAMAGES (i) CONCERNING THE PERFORMANCE OR NON-PERFORMANCE BY ECD OF ITS OBLIGATIONS HEREUNDER, OR (ii) IN ANY WAY RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE PROVISION OF THE CONSUMER PRODUCTS, AND INCLUDING PURSUANT TO ECD'S INDEMNIFICATION OBLIGATIONS SET FORTH UNDER THIS AGREEMENT), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO ECD UNDER THE TERMS OF THIS AGREEMENT.

#### **6.4 Indemnification.**

(a) **Indemnification by Client.** Client will indemnify, defend, and hold ECD, its Affiliates and parent companies, and their respective directors, officers, shareholders, employees and agents (collectively, the "ECD Indemnified Parties"), harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including by way of example only, ECD's costs of responding to a subpoena in any cause of action where Client is a named party), including reasonable attorneys' fees (collectively, "Damages"), which may be asserted against or incurred by ECD, its Affiliates, or any of the ECD Indemnified Parties, arising out of or resulting from (i) any agreement, arrangement or relationship between Client and Individuals, including, without limitation, any duties or obligations (contractual, at Law or otherwise) owed by Client to Individuals, (ii) Client's data breach, failure to maintain security measures, or violation or failure by Client to comply with any Law (including any claim that the Consumer Products are inadequate for Client to comply with the same), (iii) Client's misconduct or disregard of ordinary care in performing any of its obligations hereunder, or (iv) Client's breach of any provisions of this Agreement, including, but not limited to, Sections 2.7 and 2.10 hereof.

(b) **Indemnification by ECD.** ECD will indemnify, defend, and hold Client and its directors, officers, shareholders and, agents (the "Client Indemnified Parties") harmless from and against any and all Damages, which may be asserted against or incurred by Client or any of the Client Indemnified Parties, arising out of or resulting from any material breach of the End-User Terms and Conditions by ECD.

(c) **Procedures for Control of Indemnifiable Claims.** In order for a Party (the "Indemnified Party") to be entitled to any indemnification provided for in Sections 6.4(a) or 6.4(b) above, such Indemnified Party must notify the Party obligated to provide such indemnification (the "Indemnifying Party") in writing of the indemnifiable claim within thirty (30) business days after receipt by such Indemnified Party of written notice of the indemnifiable claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. After receipt of such notice, the Indemnifying Party shall have the right to assume the defense of, compromise or settle the indemnifiable claim at its expense; provided, however, that the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that provides for non-monetary relief without the consent of the Indemnified Party. In any indemnifiable claim which the Indemnifying Party has elected to defend, compromise or settle, the Indemnifying Party shall not be responsible for any expenses, including counsel fees, incurred by the Indemnified Party after such election; but the Indemnified Party may participate therein and retain separate counsel at its own expense. The Indemnified Party shall

provide to the Indemnifying Party all information, assistance and authority reasonably requested in order to evaluate any indemnifiable claim and effect any defense, compromise or settlement thereof. If the Indemnifying Party does not assume the defense of the indemnifiable claim as provided herein, the Indemnified Party may defend, compromise or settle the claim in any manner it reasonably deems appropriate, provided that the Indemnifying Party shall remain responsible for any losses, liabilities or damages the Indemnified Party suffers arising from the indemnifiable claim to the fullest extent provided under this Section 6.4.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition and Obligations.** For the purposes of this Agreement, “Confidential Information” means the pricing, provisions of and all performance under this Agreement and information about the disclosing Party’s business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a Party marked or designated by such Party as “confidential” or “proprietary” or information which, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as confidential. Notwithstanding the foregoing, the Parties agree that any and all information provided by Individuals and collected by ECD from the Consumer Product Website shall not be deemed as Confidential Information and shall be collected in accordance with ECD’s privacy policy and End-User Terms and Conditions, which may be amended from time to time. For a period commencing on the Agreement Date and ending two (2) years after the Term, each Party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Upon the disclosing Party’s request, the receiving Party will promptly return to the disclosing Party all tangible items containing or consisting of the disclosing Party’s Confidential Information and all copies thereof. Each Party acknowledges that all of the disclosing Party’s Confidential Information is owned solely by the disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the disclosing Party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at Law or in equity in the event of such a breach.

**7.2 Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information which is: (a) now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public, (b) acquired by the receiving Party before receiving such information from the disclosing Party and without restriction as to use or disclosure, (c) hereafter rightfully furnished to the receiving Party by a third party, without restriction as to use or disclosure, (d) information which the receiving Party can document was independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, (e) required to be disclosed under any Law, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable notice of such required disclosure and an opportunity to obtain a protective order or other appropriate remedy, (f) disclosed with the prior written consent of the disclosing Party.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence upon the Agreement Date and shall expire at the end of the Enrollment Period (the “Term”); provided, however, the terms of this Agreement will continue as stipulated herein for delivery of Consumer Product(s) in accordance with an active Order Form addendum between the Parties to this Agreement (pursuant to Section 2.12 above). The Product Term will continue as stipulated herein for continued delivery of the Consumer Product to Individuals in accordance with and as may be required by the End-User Terms and Conditions.

**8.2 Termination for Breach.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. In the event either Party terminates this Agreement for breach, termination shall not affect the other Party’s financial obligation to make any required payments hereunder.

**8.3 Effect of Termination.** Except with respect to the Consumer Product for which both (a) Client has been invoiced and rendered payment, and (b) ECD has commenced delivery of the Consumer Product, ECD shall have no further obligation to continue to provide the Consumer Product following the termination of this Agreement pursuant to Section 8.2 above.

**8.4 Surviving Provisions.** The terms and conditions of Sections 2, 3, 4.2, 5, 6, 7, 8.3, 8.4, and 9 of this Agreement shall survive and continue after termination or expiration of this Agreement.

## **9. GENERAL PROVISIONS**

**9.1 Assignment.** Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of either Party shall be assigned or delegated without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any unauthorized assignment or delegation shall be null and void. Notwithstanding the foregoing, either Party may assign or otherwise transfer its rights and obligations to its Affiliates or to successors in interest (whether by purchase of stock or assets, merger, operation of Law, or otherwise) of that portion of its business related to the subject matter hereof.

**9.2 Successors in Interest.** Subject to the provision of Section 9.1 above, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

**9.3 Choice of Law; Jurisdiction.** This Agreement shall be construed in accordance with the Laws of the State of California (excluding rules regarding conflicts of Law) and the United States of America. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal courts located in Orange County, California, unless such actions, suits or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy, and each Party irrevocably submits to the jurisdiction of such courts. Service of process may be effected in accordance with the procedures for providing notice under this Agreement.

**9.4 Notices.** Any notice given under this Agreement to Client will be given in writing to the Primary Contact at the Client address set forth in the Order Form. Any notice given under this Agreement to ECD will be given in writing and addressed to ECD's Corporate Counsel at 18500 Von Karman Avenue, Suite 400, Irvine, CA 92612. Either Party may substitute a new address and contact person by written notice to the other in the manner contemplated herein. All notices shall be effective when received, and shall be delivered personally, by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service.

**9.5 Independent Contractors.** In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, employment, partnership or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself in any manner that would be contrary to the provision of this Section 9.5.

**9.6 Entire Agreement; Amendments and Addenda.** This Agreement (including the exhibits hereto, as may be amended and supplemented from time to time, based upon mutual written consent) contains the entire agreement and understanding concerning the subject matter (as set forth in the Recitals) between Client and ECD. This Agreement supersedes all prior negotiations, agreements (whether written, oral or electronic), Client purchase orders, term sheets, or proposals that relate specifically to the subject matter (as set forth in the Recitals). Except as provided herein, this Agreement may be amended and/or supplemented via one or more Order Form addenda (as described in Section 2.12 above) only in writing, signed by authorized representatives for both ECD and Client.

**9.7 Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

**9.8 Publicity; Public Communication.** Neither Party shall provide, in any ~~Release public communication (including press releases and communications with individuals)~~, any representation, description or other statement regarding the Consumer Products or otherwise refer to the other Party or its Affiliates in any way other than as set forth in Section 2.7 or as otherwise approved in writing in advance by the other Party. For avoidance of doubt, both parties must agree on the timing and complete content of any and all press releases which pertain to this Agreement or the provision of the Consumer Products herein.

**9.9 Adequate Review.** Each party represents to the other that, as deemed necessary by such party, this Agreement has been reviewed by each party and its legal and other advisors, and such party has had an opportunity to make all relevant inquiries and receive sufficient responses relating to this Agreement.

**9.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution of it.



**9.11 Binding Agreement.** The Parties (a) agree that this Agreement shall not be binding unless and until it has been executed by an authorized representative of ECD, and (b) represent and warrant that the individuals signing below are expressly invested with the requisite authority to bind their respective companies under this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Credit Monitoring Products Agreement effective as of the Agreement Date.

**Client:**

**ConsumerInfo.com, Inc.,  
also known as Experian Consumer Direct**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



## **Exhibit A** **Consumer Products**

These below listed products are delivered to Qualified (as defined below) Individuals using a single-use Activation Code. Description of each products benefits, which are subject to change:

<b>Features</b>	<b>ProtectMyID Alert 3B</b>
<b>Daily credit monitoring</b>	3 Bureau
<b>Daily credit alerts</b> - <i>for new inquiries, accounts created, change of address, changes to public records and posting of potentially negative information</i>	X
<b>Reports upon enrollment</b>	Experian report only
<b>Score upon enrollment</b>	
<b>Reports/Score during membership</b>	
<b>Customer and Fraud Resolution Support</b> - <i>Customer services is available 7 days a week</i> - <i>One on one access to a fraud resolution agent</i> - <i>Link to forms to file fraud alerts</i>	X
<b>All clear alerts when no activity has been detected</b> - <i>Delivered monthly for online Individuals</i> - <i>Delivered quarterly for offline Individuals</i>	X
<b>Identity Theft Insurance *</b>	\$1MM
<b>Enrollment method</b>	Phone or Internet
<b>Product delivery method (see section 2.2)</b>	Online or US mail
<b>Identity Theft Risk Assessment</b>	Online

**Family Secure<sup>SM</sup>** – This product is delivered to Qualified (as defined below) Individuals using an online enrollment process and a single-use, Activation Code. For purposes of Family Secure, “Individual” means the Parent or Legal Guardian. Description of Family Secure benefits, which are subject to change:

- Parent or Legal Guardian:

- a) Unlimited online access to an Individual’s Experian credit report and score for the duration of the Product Term
- b) Daily monitoring of the Individual’s Experian credit report
- c) Daily monitoring alerts to inform the Individuals of important changes to their Experian credit report
- d) Score Illustrator to help the Individuals understand how factors on their Experian credit report impact their Experian credit score

- Children who are enrolled by the Parent or Legal Guardian:

- a) Check whether an Experian credit report exists for each child enrolled by the Parent or Legal Guardian
- b) Monthly check to determine whether the child(ren) has/have an Experian credit report
- c) Monthly check for alerts of the child/ren’s Experian credit report (if any) to inform the Parent or Legal Guardian of any important changes or activity of the child/ren’s Experian credit report

- Entire Family:

- a) Toll-free access to ECD’s Customer Care Center
- b) Informative credit related articles
- c) \$2,000,000 Guarantee for certain identity theft related expenses\*\*\*\*

Additional Family Secure product information: (i) children are eligible for online enrollment up to three (3) months prior to their 18<sup>th</sup> birthday, however, the Parent or Legal Guardian may contact ECD’s Customer Care Center to enroll such

children up to two (2) weeks prior to their 18<sup>th</sup> birthday; (ii) children will automatically be de-enrolled within one (1) week prior to their eighteenth (18<sup>th</sup>) birthday and thereafter, such child/ren will no longer be eligible for the Family Secure product; (iii) child/ren's credit report (if any) are available offline only; and (iv) the Parent or Legal Guardian is required to authenticate prior to the ECD Customer Care Center can provide assistance regarding the child/ren's credit report.

**Definitions.**

For purposes of this Exhibit A, "Qualified" means Individuals who meet the following requirements to be eligible to enroll for the Consumer Product:

- a) Accurately complete and submit to ECD all of the required enrollment fields/pages;
- b) Provide ECD the correct answers to the out-of-wallet security questions;
- c) Accept the End-User Terms and Conditions (including ECD's terms, conditions and privacy policy);
- d) Are at least 18 years of age and a living person as of the date of enrollment in the Consumer Product
- e) Have a U.S. credit file with at least one of the national credit reporting companies (Experian, Equifax and TransUnion)\*\*;
- f) Provide ECD with a current U.S. phone number and a current U.S. postal address \*\*\*
- g) Provide a valid U.S. Social Security number or Tax Identification Number issued for the Individual by the U.S. Social Security Administration; and
- h) Pass all of ECD's identity, authentication and security requirements.

---

As per section 2.5 of the Agreement, the following are current Third Party Companies:

- 1. Credit reporting agencies (Equifax Inc. and TransUnion LLC)
- 2. All Affiliates of ECD pursuant to the definition contained in Section 1.2 of the Agreement.
- 3. Chartis Inc. \*

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\*\* Delivery of the Consumer Product will be limited to the report(s) of the national credit reporting companies with whom each Individual has a current U.S. credit file (e.g., in the event an Individual only has a U.S. credit file with Experian, then such Individual shall only receive the Experian credit report).

\*\*\* The U.S. address provided by Individuals should be the U.S. address associated with such Individuals credit file (e.g. the address utilized by the Individual to obtain credit).

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\*\*\*\* Due to New York state law restrictions, the Guarantee cannot be offered to Individuals who are residents of New York.

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## **Exhibit B**

### **Supplemental Products**

**Enhanced Customer Care.** In addition to the standard customer service delineated within the Agreement, ECD will provide certain supplemental call center services (“Enhanced Call Center Services”). Enhanced Call Center Services shall be limited to (a) the ECD Customer Service Center responding to Individual queries via customized scripting (which will be mutually agreed to in writing by ECD and Client) and (b) other required Individual support on a case-by-case basis, as required and exclusively in connection with the Activation Codes provided herein. The appropriate toll-free Customer Service Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Service Center enrollment process. Customer Service Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time.

**Communication Facilitation.** Client has requested that ECD facilitate the transmission of the Notification Letter approved by ECD in accordance with section 2.7 of the Agreement (“Approved Communication”) to Individuals by means of ECD’s third-party print vendor. Client shall send the names and addresses of all such Individuals to whom Approved Communications should be conveyed to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its third-party print vendor and once ECD has established that its’ print vendor has received such information, ECD will purge all such information that is within ECD’s possession. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the preparation and provision of the Approved Communication to Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) complete and correct instructions regarding the date(s) that ECD’s print vendor is requested to mail the Approved Communication to Individuals. Client agrees to pay ECD for each Approved Communication that Client may request ECD’s print vendor to prepare in accordance with the pricing delineated on the Order Form. Any pages in addition to the one-page (double sided) Approved Communication that Client may request ECD’s print vendor to prepare shall be priced separately (and in addition to the costs already referenced therein) in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**Address Append Services.** Client is requesting address append services for use in locating or verifying Individual names and addresses when Client may have access to only an Individual’s social security number (SSN) and/or aged address data. Client MUST certify via signature of a supplemental Rider to this agreement that the use of any of this data as delivered by ECD shall only be used by Client in compliance with Law. Upon receipt of the Rider agreement from Client, the SSNs of all such Individuals will be provided by Client to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its Affiliate, Experian Information Solutions, Inc., in order to produce an address append deliverable. Reasonable commercial efforts will be used by Experian Information Solutions, Inc. to retrieve an Individual’s name and/or address. In some instances, multiple matches will be returned where Client is held solely responsible for identifying the best matched record to use. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the utilization of File One data to notify Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) properly formatted data file for optimal processing. Client agrees to pay ECD for each Individual record searched in accordance with the pricing delineated on the Order Form. Any subsequent record batches may be priced separately in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

## Re: Updated proposed agreement

Patel, Swati

**Sent:** Thursday, October 25, 2012 9:05 PM

**To:** Pitts, Ted; Stirling, Bryan

---

I see that Nelson Mullins is reviewing the contract for DOR and us. I think that should satisfy Keel. But NM can run their issues thru me and Bryan too.

---

**From:** Pitts, Ted

**Sent:** Thursday, October 25, 2012 08:17 PM

**To:** Patel, Swati; Stirling, Bryan

**Subject:** Fw: Updated proposed agreement

---

**From:** Rush Smith [mailto:[rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)]

**Sent:** Thursday, October 25, 2012 06:15 PM

**To:** Pitts, Ted

**Cc:** etter\_jf@sctax.org <[etter\\_jf@sctax.org](mailto:etter_jf@sctax.org)>; KimpsoM@sctax.org <[KimpsoM@sctax.org](mailto:KimpsoM@sctax.org)>; Jon Neiditz <[Jon.Neiditz@nelsonmullins.com](mailto:Jon.Neiditz@nelsonmullins.com)>; Harry Cooper <[COOPERH@sctax.org](mailto:COOPERH@sctax.org)>; Rush Smith <[rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)>

**Subject:** FW: Updated proposed agreement

Ted,

Here's the updated agreement. We're in the process of reviewing it, but I wanted to get it in your hands ASAP.

Ozzie's attached email reflects where they are in the process. We will answer Ozzie's last question affirmatively.

Rush

Rush Smith | 803-255-9492 | [rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)

Nelson Mullins Riley & Scarborough, LLP, Columbia SC

---

**From:** Ozzie Fonseca [mailto:[ofonseca@experianinteractive.com](mailto:ofonseca@experianinteractive.com)]

**Sent:** Thursday, October 25, 2012 5:45 PM

**To:** Rush Smith; Ken Bixler

**Cc:** Jon Neiditz; KimpsoM@sctax.org

**Subject:** Updated agreement

Rush:

Attached please find redlined and clean versions of the agreement. Please review the document and let us know if you have any concerns.

I spoke with our executives about the possibility of getting started without a signed agreement, but I did not get approval for that approach. Given the size and scope of the engagement, they would be most comfortable with a formal contract.

Since time is of the essence, Ken and I are available to jump on a call to work out any final details.

On a final note we'll need 24 hours (we are aiming for less) to upload the eligible individual file, but will start getting calls right away. Are we at liberty to distribute codes to people who identify themselves as victims within the first 24 hours?

Thanks

**Ozzie Fonseca, CIPP/US**  
**Senior Director, Data Breach Resolution**



Experian Consumer Direct  
535 Anton, Suite 100. Costa Mesa, CA 92626  
(949) 567-3851 - Desk  
(949) 302-2299 - Cell  
(949) 242-2938 - Fax  
[ozzie.fonseca@experian.com](mailto:ozzie.fonseca@experian.com)

Blog: [www.Experian.com/blogs/data-breach](http://www.Experian.com/blogs/data-breach)  
Follow us on Twitter: [www.Twitter.com/Experian\\_DB](http://www.Twitter.com/Experian_DB)  
Visit us at <http://www.experian.com/databreach>

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**Fw: Updated proposed agreement**

Pitts, Ted

**Sent:** Thursday, October 25, 2012 8:17 PM**To:** Patel, Swati; Stirling, Bryan**Importance:** High**Attachments:** SCRevenue(CLEAN).ECD PMID~1.docx (65 KB) ; SCRevenue.ECD PMID-Credit~1.docx (67 KB)

---

**From:** Rush Smith [mailto:rush.smith@nelsonmullins.com]**Sent:** Thursday, October 25, 2012 06:15 PM**To:** Pitts, Ted**Cc:** etter\_jf@sctax.org <etter\_jf@sctax.org>; KimpsoM@sctax.org <KimpsoM@sctax.org>; Jon Neiditz <Jon.Neiditz@nelsonmullins.com>; Harry Cooper <COOPERH@sctax.org>; Rush Smith <rush.smith@nelsonmullins.com>**Subject:** FW: Updated proposed agreement

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I spoke with our executives about the possibility of getting started without a signed agreement, but I did not get approval for that approach. Given the size and scope of the engagement, they would be most comfortable with a formal contract.

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Thanks

**Ozzie Fonseca, CIPP/US**  
**Senior Director, Data Breach Resolution**



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535 Anton, Suite 100. Costa Mesa, CA 92626  
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(949) 242-2938 - Fax  
[ozzie.fonseca@experian.com](mailto:ozzie.fonseca@experian.com)

Blog: [www.Experian.com/blogs/data-breach](http://www.Experian.com/blogs/data-breach)  
Follow us on Twitter: [www.Twitter.com/Experian\\_DBR](http://www.Twitter.com/Experian_DBR)  
Visit us at <http://www.experian.com/databreach>

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# CREDIT MONITORING PRODUCTS AGREEMENT

## ORDER FORM

*(Please complete all of the fields below)*

CLIENT INFORMATION	
<b>CLIENT:</b> a STATE OF INCORPORATION Corporation	<b><u>Client Billing Address and Contact</u></b>
<b>Address:</b>	<b>Address:</b>
<b>City:</b>	<b>City:</b>
<b>State:</b> Zip Code:	<b>State:</b> Zip Code:
<b>Contact:</b>	<b>Contact:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Email:</b>	<b>Email:</b>

ORDERING INFORMATION	
<b>Agreement Date:</b> October 25, 2012	<b>Enrollment End Date:</b> January 31, 2013
<b>Product Term (per Individual):</b> One (1) year	
<b>Number of Activation Codes:</b> 3,000,000	
<b>Fee per Activation Code Redeemed:</b> \$15.35	<b>Set-up Fee:</b> \$0.00
<b>Vanity URL for Consumer Product Website, if applicable:</b> www.protectmyid.com/scdor	
<b>Consumer Product Launch Date:</b> Within 24 hours of ECD's receipt of the List from Client <i>(This is an estimated date only)</i>	
<b>Consumer Products shall include one or more of the following products, which are further described in Exhibit A:</b>	
<b>Primary Product:</b> ProtectMyID Alert 3B (online/offline enrollment and alerts)	
<b>Secondary Product:</b> N/A	
Supplemental Client Services (check all that apply; services are described in greater detail in <u>Exhibit B</u> ):	
<input type="checkbox"/> <b>Communication Facilitation Services</b> – printing and mailing of letters - price is N/A <i>(inclusive of postage)</i>	
<input checked="" type="checkbox"/> <b>Enhanced Customer Care Services</b> – additional call center services – price is \$.23 per individual affected (3,000,000 X \$.23 = \$690,000 -- Dedicated number 866-578-5422)	
<input type="checkbox"/> <b>Address Append Services</b> – Consumer address look up – price is N/A. A Rider agreement must accompany this form prior to processing data.	
<i>(The above Consumer Products are only available to Qualified (as defined in Exhibit A) Individuals who meet the requirements as defined and set forth in Exhibit A.)</i>	
<b>ALL INFORMATION CONTAINED IN THIS ORDER FORM IS SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THE ATTACHED CREDIT MONITORING PRODUCTS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE REPRESENTATIONS AND WARRANTIES; DISCLAIMERS, LIMITATIONS OF LIABILITY AND PROVISIONS REGARDING EACH PARTY'S RESPECTIVE INDEMNIFICATION OBLIGATIONS.</b>	



## CREDIT MONITORING PRODUCTS AGREEMENT

This Credit Monitoring Products Agreement (the "Agreement") is made by and between ConsumerInfo.com, Inc., a California corporation, also known as Experian Consumer Direct ("ECD"), and the party identified as "Client" in the Order Form and its Affiliates (collectively, "Client"), and shall be effective as of the Agreement Date (as defined in the Order Form). Each of ECD and Client are sometimes referred to herein as a "Party" and collectively as the "Parties." The Order Form attached hereto is made a material part of this Agreement and is incorporated herein by this reference.

### RECITALS

**WHEREAS**, Client maintains personal and other sensitive information on certain individuals;

**WHEREAS**, ECD, directly and through one or more third-party providers, provides certain credit monitoring and other products; and

**WHEREAS**, Client desires for ECD to make available certain of ECD's products to certain Individuals (as defined below) identified by Client with respect to whom Client maintains personal and other sensitive information.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms herein shall have the meanings set forth in the Ordering Information section of the Order Form, or, if not set forth therein, as defined elsewhere in this Agreement. The following terms shall have the following meanings ascribed to them:

**1.1** "Activation Code" means a unique, single use code with respect to each Individual that allows such Individual to enroll for and receive the Consumer Product. Each Individual may only redeem his/her Activation Code for only one applicable Consumer Product.

**1.2** "Affiliates" means any entity controlled by, under common control with or that controls the applicable Party. "Control" means ownership of fifty percent (50%) or more of the ownership interest of an entity.

**1.3** "Consumer Product(s)" means those products and services provided by ECD hereunder, as selected by Client and set forth in the Order Form.

**1.4** "Enrollment Period" means the period commencing on the actual launch date of the Consumer Product Website and ending on the Enrollment End Date as set forth in the Order Form, whereby Individuals may redeem their Activation Code and receive the Consumer Product.

**1.5** "Individual" means any individual for whom Client maintains personal and other sensitive information.

**1.6** "Individual Information" means all information pertaining to an Individual obtained by ECD, including without limitation, (a) through Individual enrollment for the Consumer Product or visiting ECD's website(s), or (b) through provision of the Consumer Product.

**1.7** "Law" means any rules, laws, statutes, regulations or judgments, orders or decrees imposed by any governmental entity.

**1.8** "Product Term" means the period set forth in the Order Form, commencing on the date an Individual completes enrollment for the Consumer Product, which may occur at any time during the Enrollment Period.

### **2. CREDIT MONITORING PRODUCTS; SUPPORT**

**2.1 Access to Consumer Products.** ECD hereby agrees to provide to Client the number of Activation Codes set forth in the Order Form, for the purpose of Client providing such Activation Codes to Individuals. When ordering Activation Codes, Client shall order a number of Activation Codes equal to the number of notifications that it intends to provide to Individuals pursuant to Section 2.7 below. Client shall assign an Activation Code to each Individual and upon each Individual redeeming an Activation Code and completing the required enrollment, ECD shall provide to such Individual the selected Consumer Product for the Product Term. The Activation Codes may be redeemed by Individuals only during the Enrollment Period, and such Activation Codes will expire at the end of such Enrollment Period. Client may not distribute any Activation Codes thereafter.

**2.2 Enrollment; Consumer Product Website.** Each Individual may enroll for the applicable Consumer Product during the Enrollment Period (a) via phone enrollment to ECD's Customer Care Center, and/or, in the event Client elects to send a Notification Letter at a point in time after the Release (b) online via a secure Website designated by ECD (the "Consumer Product Website"). As a condition to receiving the Consumer Product, each Individual must complete ECD's applicable enrollment process and/or the other applicable credit reporting companies' enrollment process, including providing all requested information, and agree to all terms and conditions as well as ECD's privacy policy (collectively, the "End-User Terms and Conditions") for the Consumer Product. ECD shall have sole discretion to determine the End-User Terms and Conditions pursuant to which the Consumer Product shall be provided to Individuals; provided that, ECD shall not charge Individuals for the Consumer Product provided under this Agreement and as described in Exhibit A during the Product Term. The delivery method of the Consumer Products to the Individuals during the Product Term is not subject to change (i.e., if Individuals enroll or are enrolled online, the Consumer Product will be delivered online for the entire Product Term; and if Individuals enroll offline, the Consumer Product will be delivered via mail, and customer care will be available via phone (in accordance with Section 2.4 below) for the entire Product Term).

ECD shall build, host and maintain, at its own cost, the Consumer Product Website. Unless agreed to in writing by ECD, all content, including the design and look and feel, of the Consumer Product Website shall be determined by ECD, at its sole and absolute discretion. The Consumer Product Website shall be operated in accordance with ECD's standard procedures and shall be accessible by Individuals on a date that ECD and Client mutually agree to in writing after the Release date..

**2.3 Enrollment Process; Authentication Failure.** Client hereby acknowledges that ECD shall maintain strict procedures and protocols relating to its enrollment process (including timed-out and other security measures), and failure by an Individual to follow such procedures and protocols may result in a failed enrollment. Client also acknowledges that there are a number of additional reasons and factors that may cause Individuals to fail authentication/enrollment, including, without limitation, corporate firewalls, proxy servers, spam blockers, fraud alerts, credit file freezes, data errors, inaccurate out-of-wallet information, or incorrect social security numbers. Upon any such failure, each affected Individual shall be provided with a toll-free Customer Care Center number to call. Upon an Individual initiating such call, a customer care representative will attempt to manually authenticate such Individual by asking additional security questions; provided, that, in the event such a telephonic authentication is not possible, additional steps may be taken. ECD shall endeavor to make the enrollment process as "user-friendly" as reasonably possible but without compromising its security standards. Notwithstanding the foregoing, ECD shall not be required to provide any refund of the Fee (as defined in Section 4.1 below) to Client in the event that such Individual fails to successfully complete such enrollment. ECD reserves the right, at its sole and absolute discretion, to modify or alter the enrollment process and/or the services associated therewith from time to time.

**2.4 Customer Care.** Customer care will be available to Individuals via access to a toll-free Customer Care Center located in the United States. Fraud resolution customer care shall be available to Individuals via customer care representatives in the United States. The services available via the Customer Care Center shall be limited to assistance with telephone and email inquiries regarding enrollment for the Consumer Product and technical issues relating to redemption of Activation Codes, authentication failure, username and password assistance, cancellations, locked accounts, changes in personal information, disputes, billing questions about additional products, credit score information, general credit-related questions, fraud resolution, suspected fraudulent items, monitoring and alert information, free credit reports, and general Consumer Product Website navigation. The appropriate toll-free Customer Care Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Care Center enrollment process. Customer Care Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time. The Customer Care Center will attempt to authenticate Individuals in accordance with Section 2.3 above. The Customer Care Center will not have access to and will not provide any information related to Client or its business and/or legal decisions in making the Consumer Product available to Individuals on a complimentary basis, and will refer any such inquiries back to Client.

**2.5 Third Party Companies.** The portions of the Consumer Product provided by ECD's partners, Affiliates and certain third parties, including consumer reporting companies (collectively, "Third Party Companies") are subject to such entities' own end-user/individual standard terms and conditions and information requirements; the names of the Third Party Companies currently providing portions of the Consumer Product are delineated in Exhibit A. Individuals must comply with the Third Party Companies' terms and conditions and other requirements in order to receive such portions of the Consumer Product. Some of the Third Party Companies are not subcontractors or agents of ECD, and therefore, ECD does not control such terms and conditions or requirements and shall not be obligated to intervene or assist Individuals in any way in meeting such requirements. Individuals shall be solely responsible for handling any issues relating to such terms and conditions and requirements directly with any such partners, Affiliates and third parties. ECD shall not be obligated to refund any amount of the Fee (as defined in Section 4.1 below) on account of an Individual's inability to receive portions of

the Consumer Product as a result of such Individual's failure to comply with any of the Third Parties' terms and conditions and/or other requirements. Without limiting the generality of the foregoing, Individuals shall be required to provide all necessary information and meet other criteria required by each applicable consumer reporting company in order to receive a credit report or other products and services from such company.

**2.6 Intellectual Property and Branding of Consumer Products.** Unless otherwise agreed to in writing by ECD, the Consumer Products shall be branded as determined by ECD, at its sole and absolute discretion, and Client shall not designate (through trademark, trade name, trade dress or otherwise) the Consumer Products as being provided by Client. Client shall retain ownership of any and all pre-existing Client intellectual property, including but not limited to Client's trademarks, patents and trade dress.

**2.7 Notification to Individuals.** Client shall prepare a press release or other public announcement which details the data loss incident that affects Individuals ("Release"). ECD must be provided an opportunity to review any and all Releases prior to their conveyance to the general public. Subsequent to the Release, ECD shall be prepared to receive phone calls at its Customer Care Center, however, the ECD Customer Care Center shall not be prepared to assist Individuals with both enrollment in the Consumer Product and delivery of Enhanced Customer Care Services as of the Consumer Product Launch Date. Client acknowledges and agrees that with respect to any and all calls from Individuals which ECD receives at its Customer Care Center after the Release *but prior to* the Consumer Product Launch Date, ECD will use reasonable commercial efforts to facilitate such calls to achieve a satisfactory consumer experience, but the requirements of Section 2.11 shall still apply. In addition to the foregoing specified phone enrollment process, within a mutually agreeable period of time following the Agreement Date, Client may elect to prepare a communication to Individuals in the form of a notification letter ("Notification Letter") to be sent via U.S. Mail or email which *must* include (a) one Activation Code per each Individual Client identifies as affected by the subject data breach or data loss incident and eligible to receive such a Notification Letter, (b) the procedures for enrollment of the Consumer Product (including, but not limited to the (i) ECD maintained URL where such Individuals may properly utilize their Activation Code and (ii) the appropriate ECD Customer Care Center phone numbers), and (c) a listing of the key Consumer Product features. Any Client notification process pertaining to the Consumer Products that includes elements other than the Notification Letter must be pre-approved by ECD in writing. CLIENT SHALL SUBMIT ALL NOTIFICATION LETTERS TO ECD FOR APPROVAL PRIOR TO DELIVERY OF SUCH NOTIFICATION LETTERS TO INDIVIDUALS. ECD shall have the right to approve only the limited portions of such Notification Letters that describe the Consumer Product, and/or the procedures for redemption of the Activation Codes, or which in anyway otherwise relate to ECD and/or its Affiliates or [annualcreditreport.com](http://annualcreditreport.com). Client shall not provide, in any Notification Letter or any other public communication (including but not limited to communications with Individuals), any representation, description or other statement regarding the Consumer Products or otherwise refer to ECD or its Affiliates in any way other than by such a prepared Notification Letter reviewed and approved by ECD, or otherwise in accordance with section 9.8, below. Upon ECD's reasonable request, Client must provide ECD a mailing schedule in advance of Client commencing delivery of any and all Notification Letters to Individuals. Once provided by Client, ECD will allocate Customer Care Center and other resources in accordance with such schedule; any significant updates or modifications by Client to the schedule must be provided to ECD immediately and may result in increased costs for ECD that will require revised pricing discussions with Client. Client agrees not to make any statement or undertake any act or omission that would result in civil or criminal liability for ECD.

**2.8 ECD Communication with Individuals and/or Third-Parties.** ECD may communicate with or send communications to Individuals relating to (a) a Consumer Product pursuant to the terms of this Agreement, (b) the expiration of a Consumer Product and provide options for such Individuals to extend or renew such Consumer Product (i.e. via an end-of-term service alert), and/or (c) other ECD specific credit related products that are available to the Individuals in their online proprietary member center section of the Consumer Product Website or via e-mailed (or in the case of offline Individuals, mailed) service alerts sent by ECD to such Individuals. In addition, an Individual may affirmatively opt-in to receive marketing offers from ECD, its Affiliates and third-parties. As it relates to (b) and (c) in the preceding sentence, ECD may charge Individuals a separate fee for (i) an extension or renewal of a Consumer Product beyond the Product Term stipulated herein, or (ii) for other products not included under this Agreement. ECD is not obliged to communicate with or provide services to any third-parties who may have contractual or other relationships with Client (other than those explicitly agreed to within this Agreement).

**2.9 Activation Code Availability.** On or before the time of the Release, Client shall provide to ECD a listing of Individuals eligible to receive Activation Codes Center ("List"). Client shall be solely responsible for development of the List, as well as all eligibility criteria associated with the List. Upon provision of the List to ECD, ECD shall make the Activation Codes available for distribution to Individuals via personnel within the ECD Customer Care Center. In the event Client elects to mail any Notification Letters, ECD shall not be required to provide the Activation Codes for such Notification Letters to Client until both parties have reviewed and finally approved the Notification Letter as described in Section 2.7 above.

**2.10 Distribution of Activation Codes.** Activation Codes for distribution to Individuals on the List shall be maintained by ECD, and within ECD's care, custody and control. In the event ECD delivers Client (or Client's agent) any Activation Codes for use by Client in a Notification Letter, Client agrees not to sell or otherwise distribute any such Activation Codes, except to Individuals and only as expressly permitted under this Agreement. In no event shall ECD be liable for any loss, damage, theft, corruption or destruction ("Loss") of Activation Codes once issued by ECD to Client, including, but not limited to, any such Loss attributable to Client's distribution, storage (if applicable) and/or mailing of such Activation Codes.

**2.11 No Early Commencement.** Client acknowledges and agrees that (a) the Consumer Product Website will not be accessible by Individuals prior to the date mutually agreed to by ECD and Client in writing, and (b) it shall not communicate with Individuals regarding the availability and description of the Consumer Product, including, without limitation, the procedures for enrollment of the Consumer Product, any earlier than the date of the Release and acknowledges and agrees that the Consumer Products shall not be available for enrollment prior to the Consumer Product Launch Date stipulated on the Order Form. CLIENT AGREES THAT IT SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL LIABILITIES, COSTS AND EXPENSES INCURRED BY ECD OR ITS AFFILIATES AS A RESULT OF CLIENT'S AND/OR ANY INDIVIDUAL'S FAILURE TO COMPLY WITH THE FOREGOING, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INDIVIDUAL ATTEMPTING TO ACCESS THE CONSUMER PRODUCT WEBSITE AND/OR OTHERWISE ENROLL IN THE CONSUMER PRODUCTS PRIOR TO THE CONSUMER PRODUCT LAUNCH DATE SET FORTH IN THE ORDER FORM.

**2.12 Additional Client Requirements.** In the event Client requires additional Activation Codes beyond the number stipulated in the Order Form during the Enrollment Period, ECD may provide such additional Activation Codes pursuant to a mutual written Order Form addendum between the Parties to supplement this Agreement, which such addendum shall be in a form provided by ECD and subject to the terms of this Agreement (unless otherwise agreed to in such addendum). An Order Form addendum may have ordering information that differs from the Order Form attached to this Agreement, including, but not limited to, Enrollment End Date, Product Term, and fees. Any additional Client requirements or other changes to this Agreement may be agreed to between the Parties via a signed written amendment to this Agreement.

**2.13 Exclusivity.** During the Product Term, Client agrees not to obtain products or services that are similar to the Consumer Products from any party other than ECD.

### **3. INSURANCE**

**3.1 Insurance.** The insurance provided to Individuals as a product feature of certain Consumer Products is strictly subject to the policies, terms and conditions of the designated third-party insurers. Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the Consumer Product. ECD does not directly sell such insurance to Client or Individuals. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of insurable losses. At the election of the designated third-party insurer or ECD, (a) the amount of insurance coverage to be provided to Individuals, and/or (b) the designation of the third-party insurer(s) are both subject to change at any time. Notwithstanding the foregoing, identity theft insurance may not be provided to any Individuals residing in any state where the provision of such insurance is prohibited by Law.

**3.2 Guarantee for FamilySecure.com.** The Guarantee provided to Individuals as a product feature of the Guarantee provided to Individuals as a product feature of the Family Secure Consumer Product is strictly subject to the policies, terms and conditions described at [http://www.familysecure.com/Member\\_Guarantee.aspx](http://www.familysecure.com/Member_Guarantee.aspx). Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the FamilySecure.com Consumer Product. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of losses. At the election of ECD, (a) the amount of the Guarantee to be provided to Individuals, and/or (b) the designation of the party providing the Guarantee are both subject to change at any time. Notwithstanding the foregoing, the Guarantee may not be provided to any Individuals residing in any state where the provision of such Guarantee is prohibited by Law. Due to New York State Law restrictions, the Guarantee cannot be offered to Individuals who are residents of the State of New York.

### **4. FEES**

**4.1 Fees.** Client hereby agrees to pay to ECD the Set-up Fee within thirty (30) calendar days of the Effective Date. Client also agrees to pay ECD the Fee per Activation Code Redeemed set forth in the Order Form for each Activation Code redeemed by Individuals during the Enrollment Period (the "Fee"). ECD will invoice the Fee to Client on a monthly basis for all Activation Codes redeemed by Individuals during the prior thirty (30) calendar days and Client agrees to pay the Fee within thirty (30) days from the date of such invoice. If Client does not make full payment of the Fee within such

period, ECD, at its option, may immediately (a) deactivate the Activation Codes and cease further performance under this Agreement until such Fee is paid in full by Client, or (b) terminate this Agreement and the Individuals' enrollment of the Consumer Product. Interest shall accrue on any past due amounts at the rate of one and one half percent (1.5%) per month. In addition, Client shall be liable to ECD for any costs and attorneys' fees incurred by ECD to collect unpaid amounts.

**4.2 Fees Non-Refundable.** The Fee is, without limitation, due and payable as provided for herein, including any changes to facts or circumstances that may negate the need for some or all of ECD's Consumer Products or Activation Codes hereunder, whether or not Client and/or any Individual utilizes the Consumer Product in accordance with the terms of this Agreement. Client agrees to not waive any of its payment obligations and ECD shall not be obligated to refund any amount of the Fee already paid by Client on account of (a) any of the foregoing circumstances, (b) an Individual's inability to receive all or a portion of the Consumer Product as a result of such Individual's failure to (i) successfully complete enrollment, or (ii) comply with any or all of the Third Party Companies' terms and conditions and/or other requirements, and/or (c) any circumstances relating to Section 2.10 above. Without limiting any remedies available to ECD, Client acknowledges that upon entering into this Agreement, ECD shall immediately begin to incur costs and expenses, as well as allocate certain resources away from other projects, for the purpose of performing ECD's obligations hereunder; therefore, Client acknowledges and agrees that Client is responsible to pay for a minimum of five (5) percent of the total Activation Codes ordered by Client, irrespective of the total number of Activation Codes finally redeemed. In the event more than five (5) percent of all Activation Codes ordered by Client are redeemed, then these redemptions will be credited towards the total owed by Client for all redemptions.

**4.3 Taxes.** Client shall be responsible for, and shall promptly pay or reimburse ECD for the payment of, any sales, use, excise, ad valorem, value-added or other similar taxes, assessments or duties imposed by any government agency that are associated with the Consumer Products (other than taxes based on ECD's net income).

## **5. OWNERSHIP; INDIVIDUAL INFORMATION**

**5.1 ECD Ownership.** ECD and/or its Affiliates or third party providers shall exclusively own all right, title and interest, including all copyrights, trade secrets, know-how, goodwill, trademarks, service marks, trade names, trade dress, logos, patents or other intellectual property (or any derivative works thereof) and underlying technology in (i) the Consumer Products and all other products provided by ECD hereunder, (ii) the Consumer Product Website, and (iii) all other materials and information provided by ECD to Client hereunder. No grant to use any intellectual property (including any trademarks) of ECD, its Affiliates or third-party providers is made under this Agreement.

**5.2 Individual Information.** As Individual Information is conveyed from an Individual directly to ECD, it is not defined as Confidential Information pursuant to the definition of that term in section 7., below, rather ECD shall use Individual Information in accordance with its posted privacy policy and the End-User Terms and Conditions; such policy and terms and conditions may be amended from time to time, at ECD's sole and absolute discretion and without prior notice to Client and/or Individuals, subject to any applicable restrictions of state or other Laws.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER AND LIMITATION OF LIABILITY; INDEMNIFICATION**

**6.1 Representations and Warranties by ECD.** ECD represents and warrants to Client that it (a) has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) will provide the Consumer Products in a manner consistent with the level of service provided to ECD's general customer base for such Consumer Products; and (c) will provide the Consumer Products and any other products and services provided under this Agreement in a professional manner.

**6.2 Representations and Warranties by Client.** Client represents and warrants to ECD that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) to the best of its knowledge, all information provided by Client to ECD are accurate in all material respects, (c) it will communicate with the Individuals in accordance with Section 2.7 above, such that each of its Individuals receive notification and one Activation Code, and (d) by entering into this Agreement and performing hereunder, Client will not be violating or breaching any other contract, agreement, commitment, promise, understanding or arrangement.

### **6.3 DISCLAIMER AND LIMITATION OF LIABILITY.**

(a) CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE CONSUMER PRODUCTS ARE INTENDED AS ELECTIVE AND OPTIONAL PRODUCT OFFERINGS THAT CLIENT MAY CHOOSE TO MAKE AVAILABLE TO ITS INDIVIDUALS, AND THAT SUCH PRODUCTS ARE SELECTED SOLELY BY CLIENT. THE CONSUMER PRODUCTS ARE NOT INTENDED TO, AND ECD EXPRESSLY DISCLAIMS ANY WARRANTY OR GUARANTEE THAT THEY WILL, ALLOW CLIENT TO COMPLY WITH

LAW, MITIGATE DAMAGES (INCLUDING, BUT NOT LIMITED TO, RELATING TO A DATA BREACH) OR AVOID ANY OTHER CONSEQUENCES OF A DATA BREACH OR FAILURE TO INSTITUTE PROPER SECURITY MEASURES. ANY COMPLIANCE OR NONCOMPLIANCE WITH LAW SHALL BE BASED SOLELY UPON THE PROCEDURES AND ACTIONS IMPLEMENTED BY CLIENT IN CLIENT'S SOLE DETERMINATION. OTHER THAN THE WARRANTIES SET FORTH UNDER SECTION 6.1, ALL PRODUCTS PROVIDED BY ECD, ITS AFFILIATES OR ITS THIRD-PARTY PROVIDERS PURSUANT TO THIS AGREEMENT ARE SO PROVIDED ON AN "AS IS" BASIS, AND ECD MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT. ECD FURTHER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES REGARDING THE CONSUMER PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) IN NO EVENT SHALL ECD BE LIABLE TO CLIENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND LOST SALES, SUFFERED BY OR OTHERWISE COMPENSABLE TO CLIENT, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECD'S AGGREGATE LIABILITY TO CLIENT AND/OR ITS AFFILIATES FOR DAMAGES (i) CONCERNING THE PERFORMANCE OR NON-PERFORMANCE BY ECD OF ITS OBLIGATIONS HEREUNDER, OR (ii) IN ANY WAY RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE PROVISION OF THE CONSUMER PRODUCTS, AND INCLUDING PURSUANT TO ECD'S INDEMNIFICATION OBLIGATIONS SET FORTH UNDER THIS AGREEMENT), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO ECD UNDER THE TERMS OF THIS AGREEMENT.

#### **6.4 Indemnification.**

(a) **Indemnification by Client.** Client will indemnify, defend, and hold ECD, its Affiliates and parent companies, and their respective directors, officers, shareholders, employees and agents (collectively, the "ECD Indemnified Parties"), harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including by way of example only, ECD's costs of responding to a subpoena in any cause of action where Client is a named party), including reasonable attorneys' fees (collectively, "Damages"), which may be asserted against or incurred by ECD, its Affiliates, or any of the ECD Indemnified Parties, arising out of or resulting from (i) any agreement, arrangement or relationship between Client and Individuals, including, without limitation, any duties or obligations (contractual, at Law or otherwise) owed by Client to Individuals, (ii) Client's data breach, failure to maintain security measures, or violation or failure by Client to comply with any Law (including any claim that the Consumer Products are inadequate for Client to comply with the same), (iii) Client's misconduct or disregard of ordinary care in performing any of its obligations hereunder, or (iv) Client's breach of any provisions of this Agreement, including, but not limited to, Sections 2.7 and 2.10 hereof.

(b) **Indemnification by ECD.** ECD will indemnify, defend, and hold Client and its directors, officers, shareholders and, agents (the "Client Indemnified Parties") harmless from and against any and all Damages, which may be asserted against or incurred by Client or any of the Client Indemnified Parties, arising out of or resulting from any material breach of the End-User Terms and Conditions by ECD.

(c) **Procedures for Control of Indemnifiable Claims.** In order for a Party (the "Indemnified Party") to be entitled to any indemnification provided for in Sections 6.4(a) or 6.4(b) above, such Indemnified Party must notify the Party obligated to provide such indemnification (the "Indemnifying Party") in writing of the indemnifiable claim within thirty (30) business days after receipt by such Indemnified Party of written notice of the indemnifiable claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. After receipt of such notice, the Indemnifying Party shall have the right to assume the defense of, compromise or settle the indemnifiable claim at its expense; provided, however, that the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that provides for non-monetary relief without the consent of the Indemnified Party. In any indemnifiable claim which the Indemnifying Party has elected to defend, compromise or settle, the Indemnifying Party shall not be responsible for any expenses, including counsel fees, incurred by the Indemnified Party after such election; but the Indemnified Party may participate therein and retain separate counsel at its own expense. The Indemnified Party shall provide to the Indemnifying Party all information, assistance and authority reasonably requested in order to evaluate any indemnifiable claim and effect any defense, compromise or settlement thereof. If the Indemnifying Party does not assume the defense of the indemnifiable claim as provided herein, the Indemnified Party may defend, compromise or settle the

claim in any manner it reasonably deems appropriate, provided that the Indemnifying Party shall remain responsible for any losses, liabilities or damages the Indemnified Party suffers arising from the indemnifiable claim to the fullest extent provided under this Section 6.4.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition and Obligations.** For the purposes of this Agreement, “Confidential Information” means the pricing, provisions of and all performance under this Agreement and information about the disclosing Party’s business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a Party marked or designated by such Party as “confidential” or “proprietary” or information which, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as confidential. Notwithstanding the foregoing, the Parties agree that any and all information provided by Individuals and collected by ECD from the Consumer Product Website shall not be deemed as Confidential Information and shall be collected in accordance with ECD’s privacy policy and End-User Terms and Conditions, which may be amended from time to time. For a period commencing on the Agreement Date and ending two (2) years after the Term, each Party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Upon the disclosing Party’s request, the receiving Party will promptly return to the disclosing Party all tangible items containing or consisting of the disclosing Party’s Confidential Information and all copies thereof. Each Party acknowledges that all of the disclosing Party’s Confidential Information is owned solely by the disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the disclosing Party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at Law or in equity in the event of such a breach.

**7.2 Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information which is: (a) now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public, (b) acquired by the receiving Party before receiving such information from the disclosing Party and without restriction as to use or disclosure, (c) hereafter rightfully furnished to the receiving Party by a third party, without restriction as to use or disclosure, (d) information which the receiving Party can document was independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, (e) required to be disclosed under any Law, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable notice of such required disclosure and an opportunity to obtain a protective order or other appropriate remedy, (f) disclosed with the prior written consent of the disclosing Party.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence upon the Agreement Date and shall expire at the end of the Enrollment Period (the “Term”); provided, however, the terms of this Agreement will continue as stipulated herein for delivery of Consumer Product(s) in accordance with an active Order Form addendum between the Parties to this Agreement (pursuant to Section 2.12 above). The Product Term will continue as stipulated herein for continued delivery of the Consumer Product to Individuals in accordance with and as may be required by the End-User Terms and Conditions.

**8.2 Termination for Breach.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. In the event either Party terminates this Agreement for breach, termination shall not affect the other Party’s financial obligation to make any required payments hereunder.

**8.3 Effect of Termination.** Except with respect to the Consumer Product for which both (a) Client has been invoiced and rendered payment, and (b) ECD has commenced delivery of the Consumer Product, ECD shall have no further obligation to continue to provide the Consumer Product following the termination of this Agreement pursuant to Section 8.2 above.

**8.4 Surviving Provisions.** The terms and conditions of Sections 2, 3, 4.2, 5, 6, 7, 8.3, 8.4, and 9 of this Agreement shall survive and continue after termination or expiration of this Agreement.

## **9. GENERAL PROVISIONS**

**9.1 Assignment.** Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of either Party shall be assigned or delegated without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any unauthorized assignment or delegation shall be null and



void. Notwithstanding the foregoing, either Party may assign or otherwise transfer its rights and obligations to its Affiliates or to successors in interest (whether by purchase of stock or assets, merger, operation of Law, or otherwise) of that portion of its business related to the subject matter hereof.

**9.2 Successors in Interest.** Subject to the provision of Section 9.1 above, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

**9.3 Choice of Law; Jurisdiction.** This Agreement shall be construed in accordance with the Laws of the State of California (excluding rules regarding conflicts of Law) and the United States of America. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal courts located in Orange County, California, unless such actions, suits or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy, and each Party irrevocably submits to the jurisdiction of such courts. Service of process may be effected in accordance with the procedures for providing notice under this Agreement.

**9.4 Notices.** Any notice given under this Agreement to Client will be given in writing to the Primary Contact at the Client address set forth in the Order Form. Any notice given under this Agreement to ECD will be given in writing and addressed to ECD's Corporate Counsel at 18500 Von Karman Avenue, Suite 400, Irvine, CA 92612. Either Party may substitute a new address and contact person by written notice to the other in the manner contemplated herein. All notices shall be effective when received, and shall be delivered personally, by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service.

**9.5 Independent Contractors.** In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, employment, partnership or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself in any manner that would be contrary to the provision of this Section 9.5.

**9.6 Entire Agreement; Amendments and Addenda.** This Agreement (including the exhibits hereto, as may be amended and supplemented from time to time, based upon mutual written consent) contains the entire agreement and understanding concerning the subject matter (as set forth in the Recitals) between Client and ECD. This Agreement supersedes all prior negotiations, agreements (whether written, oral or electronic), Client purchase orders, term sheets, or proposals that relate specifically to the subject matter (as set forth in the Recitals). Except as provided herein, this Agreement may be amended and/or supplemented via one or more Order Form addenda (as described in Section 2.12 above) only in writing, signed by authorized representatives for both ECD and Client.

**9.7 Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

**9.8 Publicity; Public Communication.** Neither Party shall provide, in any Release, any representation, description or other statement regarding the Consumer Products or otherwise refer to the other Party or its Affiliates in any way other than as set forth in Section 2.7 or as otherwise approved in writing in advance by the other Party. For avoidance of doubt, both parties must agree on the timing and complete content of any and all press releases which pertain to this Agreement or the provision of the Consumer Products herein.

**9.9 Adequate Review.** Each party represents to the other that, as deemed necessary by such party, this Agreement has been reviewed by each party and its legal and other advisors, and such party has had an opportunity to make all relevant inquiries and receive sufficient responses relating to this Agreement.

**9.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution of it.

**9.11 Binding Agreement.** The Parties (a) agree that this Agreement shall not be binding unless and until it has been executed by an authorized representative of ECD, and (b) represent and warrant that the individuals signing below are expressly invested with the requisite authority to bind their respective companies under this Agreement.



**IN WITNESS WHEREOF**, the Parties hereto have executed this Credit Monitoring Products Agreement effective as of the Agreement Date.

**Client:**

**ConsumerInfo.com, Inc.,  
also known as Experian Consumer Direct**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## **Exhibit A** **Consumer Products**

These below listed products are delivered to Qualified (as defined below) Individuals using a single-use Activation Code. Description of each products benefits, which are subject to change:

<b>Features</b>	<b>ProtectMyID Alert 3B</b>
<b>Daily credit monitoring</b>	3 Bureau
<b>Daily credit alerts</b> - <i>for new inquiries, accounts created, change of address, changes to public records and posting of potentially negative information</i>	X
<b>Reports upon enrollment</b>	Experian report only
<b>Score upon enrollment</b>	
<b>Reports/Score during membership</b>	
<b>Customer and Fraud Resolution Support</b> - <i>Customer services is available 7 days a week</i> - <i>One on one access to a fraud resolution agent</i> - <i>Link to forms to file fraud alerts</i>	X
<b>All clear alerts when no activity has been detected</b> - <i>Delivered monthly for online Individuals</i> - <i>Delivered quarterly for offline Individuals</i>	X
<b>Identity Theft Insurance *</b>	\$1MM
<b>Enrollment method</b>	Phone or Internet
<b>Product delivery method (see section 2.2)</b>	Online or US mail
<b>Identity Theft Risk Assessment</b>	Online

**Family Secure<sup>SM</sup>** – This product is delivered to Qualified (as defined below) Individuals using an online enrollment process and a single-use, Activation Code. For purposes of Family Secure, “Individual” means the Parent or Legal Guardian. Description of Family Secure benefits, which are subject to change:

- Parent or Legal Guardian:

- a) Unlimited online access to an Individual’s Experian credit report and score for the duration of the Product Term
- b) Daily monitoring of the Individual’s Experian credit report
- c) Daily monitoring alerts to inform the Individuals of important changes to their Experian credit report
- d) Score Illustrator to help the Individuals understand how factors on their Experian credit report impact their Experian credit score

- Children who are enrolled by the Parent or Legal Guardian:

- a) Check whether an Experian credit report exists for each child enrolled by the Parent or Legal Guardian
- b) Monthly check to determine whether the child(ren) has/have an Experian credit report
- c) Monthly check for alerts of the child/ren’s Experian credit report (if any) to inform the Parent or Legal Guardian of any important changes or activity of the child/ren’s Experian credit report

- Entire Family:

- a) Toll-free access to ECD’s Customer Care Center
- b) Informative credit related articles
- c) \$2,000,000 Guarantee for certain identity theft related expenses\*\*\*\*

Additional Family Secure product information: (i) children are eligible for online enrollment up to three (3) months prior to their 18<sup>th</sup> birthday, however, the Parent or Legal Guardian may contact ECD’s Customer Care Center to enroll such

children up to two (2) weeks prior to their 18<sup>th</sup> birthday; (ii) children will automatically be de-enrolled within one (1) week prior to their eighteenth (18<sup>th</sup>) birthday and thereafter, such child/ren will no longer be eligible for the Family Secure product; (iii) child/ren's credit report (if any) are available offline only; and (iv) the Parent or Legal Guardian is required to authenticate prior to the ECD Customer Care Center can provide assistance regarding the child/ren's credit report.

**Definitions.**

For purposes of this Exhibit A, "Qualified" means Individuals who meet the following requirements to be eligible to enroll for the Consumer Product:

- a) Accurately complete and submit to ECD all of the required enrollment fields/pages;
- b) Provide ECD the correct answers to the out-of-wallet security questions;
- c) Accept the End-User Terms and Conditions (including ECD's terms, conditions and privacy policy);
- d) Are at least 18 years of age and a living person as of the date of enrollment in the Consumer Product
- e) Have a U.S. credit file with at least one of the national credit reporting companies (Experian, Equifax and TransUnion)\*\*;
- f) Provide ECD with a current U.S. phone number and a current U.S. postal address \*\*\*
- g) Provide a valid U.S. Social Security number or Tax Identification Number issued for the Individual by the U.S. Social Security Administration; and
- h) Pass all of ECD's identity, authentication and security requirements.

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As per section 2.5 of the Agreement, the following are current Third Party Companies:

- 1. Credit reporting agencies (Equifax Inc. and TransUnion LLC)
- 2. All Affiliates of ECD pursuant to the definition contained in Section 1.2 of the Agreement.
- 3. Chartis Inc. \*

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\*\* Delivery of the Consumer Product will be limited to the report(s) of the national credit reporting companies with whom each Individual has a current U.S. credit file (e.g., in the event an Individual only has a U.S. credit file with Experian, then such Individual shall only receive the Experian credit report).

\*\*\* The U.S. address provided by Individuals should be the U.S. address associated with such Individuals credit file (e.g. the address utilized by the Individual to obtain credit).

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\*\*\*\* Due to New York state law restrictions, the Guarantee cannot be offered to Individuals who are residents of New York.

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## **Exhibit B**

### **Supplemental Products**

**Enhanced Customer Care.** In addition to the standard customer service delineated within the Agreement, ECD will provide certain supplemental call center services (“Enhanced Call Center Services”). Enhanced Call Center Services shall be limited to (a) the ECD Customer Service Center responding to Individual queries via customized scripting (which will be mutually agreed to in writing by ECD and Client) and (b) other required Individual support on a case-by-case basis, as required and exclusively in connection with the Activation Codes provided herein. The appropriate toll-free Customer Service Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Service Center enrollment process. Customer Service Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time.

**Communication Facilitation.** Client has requested that ECD facilitate the transmission of the Notification Letter approved by ECD in accordance with section 2.7 of the Agreement (“Approved Communication”) to Individuals by means of ECD’s third-party print vendor. Client shall send the names and addresses of all such Individuals to whom Approved Communications should be conveyed to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its third-party print vendor and once ECD has established that its’ print vendor has received such information, ECD will purge all such information that is within ECD’s possession. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the preparation and provision of the Approved Communication to Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) complete and correct instructions regarding the date(s) that ECD’s print vendor is requested to mail the Approved Communication to Individuals. Client agrees to pay ECD for each Approved Communication that Client may request ECD’s print vendor to prepare in accordance with the pricing delineated on the Order Form. Any pages in addition to the one-page (double sided) Approved Communication that Client may request ECD’s print vendor to prepare shall be priced separately (and in addition to the costs already referenced therein) in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**Address Append Services.** Client is requesting address append services for use in locating or verifying Individual names and addresses when Client may have access to only an Individual’s social security number (SSN) and/or aged address data. Client MUST certify via signature of a supplemental Rider to this agreement that the use of any of this data as delivered by ECD shall only be used by Client in compliance with Law. Upon receipt of the Rider agreement from Client, the SSNs of all such Individuals will be provided by Client to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its Affiliate, Experian Information Solutions, Inc., in order to produce an address append deliverable. Reasonable commercial efforts will be used by Experian Information Solutions, Inc. to retrieve an Individual’s name and/or address. In some instances, multiple matches will be returned where Client is held solely responsible for identifying the best matched record to use. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the utilization of File One data to notify Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) properly formatted data file for optimal processing. Client agrees to pay ECD for each Individual record searched in accordance with the pricing delineated on the Order Form. Any subsequent record batches may be priced separately in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**CREDIT MONITORING PRODUCTS AGREEMENT  
ORDER FORM**

*(Please complete all of the fields below)*

CLIENT INFORMATION	
<b>CLIENT:</b> a STATE OF INCORPORATION Corporation	<u>Client Billing Address and Contact</u>
<b>Address:</b>	<b>Address:</b>
<b>City:</b>	<b>City:</b>
<b>State:</b> <b>Zip Code:</b>	<b>State:</b> <b>Zip Code:</b>
<b>Contact:</b>	<b>Contact:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Email:</b>	<b>Email:</b>
ORDERING INFORMATION	
<b>Agreement Date:</b> October 25, 2012 <b>Enrollment End Date:</b> January 31, 2013	
<b>Product Term (per Individual):</b> One (1) year	
<b>Number of Activation Codes:</b> 3,000,000	
<b>Fee per Activation Code Redeemed:</b> \$15.35 <b>Set-up Fee:</b> \$0.00	
<b>Vanity URL for Consumer Product Website, if applicable:</b> www.protectmyid.com/scdor	
<b>Consumer Product Website Launch Date:</b> <u>Within 24 hours of ECD's receipt of the List from Client</u> <i>(This is an estimated date only)</i>	
<b>Consumer Products shall include one or more of the following products, which are further described in Exhibit A:</b>	
<b>Primary Product:</b> ProtectMyID Alert 3B (online/offline enrollment and alerts)	
<b>Secondary Product:</b> N/A	
<b>Supplemental Client Services</b> (check all that apply; services are described in greater detail in <u>Exhibit B</u> ):	
<input type="checkbox"/> <b>Communication Facilitation Services</b> – printing and mailing of letters - price is N/A ( <i>inclusive</i> of postage)	
<input checked="" type="checkbox"/> <b>Enhanced Customer Care Services</b> – additional call center services – price is \$.23 per individual affected (3,000,000 X \$.23 = \$690,000 -- Dedicated number 866-578-5422)	
<input type="checkbox"/> <b>Address Append Services</b> – Consumer address look up – price is N/A. A Rider agreement must accompany this form prior to processing data.	
<i>(The above Consumer Products are only available to Qualified (as defined in Exhibit A) Individuals who meet the requirements as defined and set forth in Exhibit A.)</i>	
<b>ALL INFORMATION CONTAINED IN THIS ORDER FORM IS SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THE ATTACHED CREDIT MONITORING PRODUCTS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE REPRESENTATIONS AND WARRANTIES; DISCLAIMERS, LIMITATIONS OF LIABILITY AND PROVISIONS REGARDING EACH PARTY'S RESPECTIVE INDEMNIFICATION OBLIGATIONS.</b>	

## CREDIT MONITORING PRODUCTS AGREEMENT

This Credit Monitoring Products Agreement (the "Agreement") is made by and between ConsumerInfo.com, Inc., a California corporation, also known as Experian Consumer Direct ("ECD"), and the party identified as "Client" in the Order Form and its Affiliates (collectively, "Client"), and shall be effective as of the Agreement Date (as defined in the Order Form). Each of ECD and Client are sometimes referred to herein as a "Party" and collectively as the "Parties." The Order Form attached hereto is made a material part of this Agreement and is incorporated herein by this reference.

### RECITALS

**WHEREAS**, Client maintains personal and other sensitive information on certain individuals;

**WHEREAS**, ECD, directly and through one or more third-party providers, provides certain credit monitoring and other products; and

**WHEREAS**, Client desires for ECD to make available certain of ECD's products to certain Individuals (as defined below) identified by Client with respect to whom Client maintains personal and other sensitive information.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms herein shall have the meanings set forth in the Ordering Information section of the Order Form, or, if not set forth therein, as defined elsewhere in this Agreement. The following terms shall have the following meanings ascribed to them:

**1.1** "Activation Code" means a unique, single use code with respect to each Individual that allows such Individual to enroll for and receive the Consumer Product. Each Individual may only redeem his/her Activation Code for only one applicable Consumer Product.

**1.2** "Affiliates" means any entity controlled by, under common control with or that controls the applicable Party. "Control" means ownership of fifty percent (50%) or more of the ownership interest of an entity.

**1.3** "Consumer Product(s)" means those products and services provided by ECD hereunder, as selected by Client and set forth in the Order Form.

**1.4** "Enrollment Period" means the period commencing on the actual launch date of the Consumer Product Website and ending on the Enrollment End Date as set forth in the Order Form, whereby Individuals may redeem their Activation Code and receive the Consumer Product.

**1.5** "Individual" means any individual for whom Client maintains personal and other sensitive information.

**1.6** "Individual Information" means all information pertaining to an Individual obtained by ECD, including without limitation, (a) through Individual enrollment for the Consumer Product or visiting ECD's website(s), or (b) through provision of the Consumer Product.

**1.7** "Law" means any rules, laws, statutes, regulations or judgments, orders or decrees imposed by any governmental entity.

**1.8** "Product Term" means the period set forth in the Order Form, commencing on the date an Individual completes enrollment for the Consumer Product, which may occur at any time during the Enrollment Period.

### 2. CREDIT MONITORING PRODUCTS; SUPPORT

**2.1 Access to Consumer Products.** ECD hereby agrees to provide to Client the number of Activation Codes set forth in the Order Form, for the purpose of Client providing such Activation Codes to Individuals. When ordering Activation Codes, Client shall order a number of Activation Codes equal to the number of notifications that it intends to provide to Individuals pursuant to Section 2.7 below. Client shall assign an Activation Code to each Individual and upon each Individual redeeming an Activation Code and completing the required enrollment, ECD shall provide to such Individual the selected Consumer Product for the Product Term. The Activation Codes may be redeemed by Individuals only during the Enrollment Period, and such Activation Codes will expire at the end of such Enrollment Period. Client may not distribute any Activation Codes thereafter.

**2.2 Enrollment; Consumer Product Website.** Each Individual may enroll for the applicable Consumer Product during the Enrollment Period (a) via phone enrollment to ECD's Customer Care Center, and/or, in the event Client elects to send a Notification Letter at a point in time after the Release (ab) online via a secure Website designated by ECD (the "Consumer Product Website"), and/or (b) by such other means as may be available and agreed to in writing by ECD. As a condition to receiving the Consumer Product, each Individual must complete ECD's applicable enrollment process and/or the other applicable credit reporting companies' enrollment process, including providing all requested information, and agree to all terms and conditions as well as ECD's privacy policy (collectively, the "End-User Terms and Conditions") for the Consumer Product. ECD shall have sole discretion to determine the End-User Terms and Conditions pursuant to which the Consumer Product shall be provided to Individuals; provided that, ECD shall not charge Individuals for the Consumer Product provided under this Agreement and as described in Exhibit A during the Product Term. The delivery method of the Consumer Products to the Individuals during the Product Term is not subject to change (i.e., if Individuals enroll or are enrolled online, the Consumer Product will be delivered online for the entire Product Term; and if Individuals enroll offline, the Consumer Product will be delivered via mail, and customer care will be available via phone (in accordance with Section 2.4 below) for the entire Product Term).

ECD shall build, host and maintain, at its own cost, the Consumer Product Website. Unless agreed to in writing by ECD, all content, including the design and look and feel, of the Consumer Product Website shall be determined by ECD, at its sole and absolute discretion. The Consumer Product Website shall be operated in accordance with ECD's standard procedures and shall be accessible by Individuals on a date that ECD and Client mutually agree to in writing after the Release date, the Consumer Product Website Launch Date as set forth in the Order Form.

**2.3 Enrollment Process; Authentication Failure.** Client hereby acknowledges that ECD shall maintain strict procedures and protocols relating to its enrollment process (including timed-out and other security measures), and failure by an Individual to follow such procedures and protocols may result in a failed enrollment. Client also acknowledges that there are a number of additional reasons and factors that may cause Individuals to fail authentication/enrollment, including, without limitation, corporate firewalls, proxy servers, spam blockers, fraud alerts, credit file freezes, data errors, inaccurate out-of-wallet information, or incorrect social security numbers. Upon any such failure, each affected Individual shall be provided with a toll-free Customer Care Center number to call. Upon an Individual initiating such call, a customer care representative will attempt to manually authenticate such Individual by asking additional security questions; provided, that, in the event such a telephonic authentication is not possible, additional steps may be taken. ECD shall endeavor to make the enrollment process as "user-friendly" as reasonably possible but without compromising its security standards. Notwithstanding the foregoing, ECD shall not be required to provide any refund of the Fee (as defined in Section 4.1 below) to Client in the event that such Individual fails to successfully complete such enrollment. ECD reserves the right, at its sole and absolute discretion, to modify or alter the enrollment process and/or the services associated therewith from time to time.

**2.4 Customer Care.** Customer care will be available to Individuals via access to a toll-free Customer Care Center located in the United States. Fraud resolution customer care shall be available to Individuals via customer care representatives in the United States. The services available via the Customer Care Center shall be limited to assistance with telephone and email inquiries regarding enrollment for the Consumer Product and technical issues relating to redemption of Activation Codes, authentication failure, username and password assistance, cancellations, locked accounts, changes in personal information, disputes, billing questions about additional products, credit score information, general credit-related questions, fraud resolution, suspected fraudulent items, monitoring and alert information, free credit reports, and general Consumer Product Website navigation. The appropriate toll-free Customer Care Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Care Center enrollment process. Customer Care Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time. The Customer Care Center will attempt to authenticate Individuals in accordance with Section 2.3 above. The Customer Care Center will not have access to and will not provide any information related to Client or its business and/or legal decisions in making the Consumer Product available to Individuals on a complimentary basis, and will refer any such inquiries back to Client.

**2.5 Third Party Companies.** The portions of the Consumer Product provided by ECD's partners, Affiliates and certain third parties, including consumer reporting companies (collectively, "Third Party Companies") are subject to such entities' own end-user/individual standard terms and conditions and information requirements; the names of the Third Party Companies currently providing portions of the Consumer Product are delineated in Exhibit A. Individuals must comply with the Third Party Companies' terms and conditions and other requirements in order to receive such portions of the Consumer Product. Some of the Third Party Companies are not subcontractors or agents of ECD, and therefore, ECD does not control such terms and conditions or requirements and shall not be obligated to intervene or assist Individuals in any way in meeting such requirements. Individuals shall be solely responsible for handling any issues relating to such terms and conditions and requirements directly with any such partners, Affiliates and third parties. ECD shall not be obligated to

refund any amount of the Fee (as defined in Section 4.1 below) on account of an Individual's inability to receive portions of the Consumer Product as a result of such Individual's failure to comply with any of the Third Parties' terms and conditions and/or other requirements. Without limiting the generality of the foregoing, Individuals shall be required to provide all necessary information and meet other criteria required by each applicable consumer reporting company in order to receive a credit report or other products and services from such company.

**2.6 Intellectual Property and Branding of Consumer Products.** Unless otherwise agreed to in writing by ECD, the Consumer Products shall be branded as determined by ECD, at its sole and absolute discretion, and Client shall not designate (through trademark, trade name, trade dress or otherwise) the Consumer Products as being provided by Client. Client shall retain ownership of any and all pre-existing Client intellectual property, including but not limited to Client's trademarks, patents and trade dress.

**2.7 Client Notification to Individuals.** Client shall prepare a press release or other public announcement which details the data loss incident that affects Individuals ("Release"). ECD must be provided an opportunity to review any and all Releases prior to their conveyance to the general public. Subsequent to the Release, ECD shall be prepared to receive phone calls at its Customer Care Center, however, the ECD Customer Care Center shall not be prepared to assist Individuals with both enrollment in the Consumer Product and delivery of Enhanced Customer Care Services as of the Consumer Product Launch Date. Client acknowledges and agrees that with respect to any and all calls from Individuals which ECD receives at its Customer Care Center after the Release but prior to the Consumer Product Launch Date, ECD will use reasonable commercial efforts to facilitate such calls to achieve a satisfactory consumer experience, but the requirements of Section 2.11 shall still apply. In addition to the foregoing specified phone enrollment process, Within a mutually agreeable period of time following the Agreement Date, Client shall may elect to prepare a communication to Individuals in the form of a notification letter ("Notification Letter") to be sent via U.S. Mail or email which must include (a) one Activation Code per each Individual Client identified as affected by the subject data breach or data loss incident and eligible to receive such a Notification Letter, (b) the procedures for enrollment of the Consumer Product (including, but not limited to the (i) ECD maintained URL where such Individuals may properly utilize their Activation Code and (ii) the appropriate ECD Customer Care Center phone numbers), and (c) a listing of the key Consumer Product features. Any Client notification process pertaining to the Consumer Products that includes elements other than the Notification Letter must be pre-approved by ECD in writing. CLIENT SHALL SUBMIT ALL NOTIFICATION LETTERS TO ECD FOR APPROVAL PRIOR TO DELIVERY OF SUCH NOTIFICATION LETTERS TO INDIVIDUALS. ECD shall have the right to approve only the limited portions of such Notification Letters that describe the Consumer Product, and/or the procedures for redemption of the Activation Codes, or which in anyway otherwise relate to ECD and/or its Affiliates or annualcreditreport.com. Client shall not provide, in any Notification Letter or any other public communication (including but not limited to communications with Individuals), any representation, description or other statement regarding the Consumer Products or otherwise refer to ECD or its Affiliates in any way other than by such a prepared Notification Letter reviewed and approved by ECD, or otherwise in accordance with section 9.8, below. Upon ECD's reasonable request, Client must provide ECD a mailing schedule in advance of Client commencing delivery of any and all Notification Letters to Individuals. Once provided by Client, ECD will allocate Customer Care Center and other resources in accordance with such schedule; any significant updates or modifications by Client to the schedule must be provided to ECD immediately and may result in increased costs for ECD that will require revised pricing discussions with Client. Client agrees not to make any statement or undertake any act or omission that would result in civil or criminal liability for ECD.

**2.8 ECD Communication with Individuals and/or Third-Parties.** ECD may communicate with or send communications to Individuals relating to (a) a Consumer Product pursuant to the terms of this Agreement, (b) the expiration of a Consumer Product and provide options for such Individuals to extend or renew such Consumer Product (i.e. via an end-of-term service alert), and/or (c) other ECD specific credit related products that are available to the Individuals in their online proprietary member center section of the Consumer Product Website or via e-mailed (or in the case of offline Individuals, mailed) service alerts sent by ECD to such Individuals. In addition, an Individual may affirmatively opt-in to receive marketing offers from ECD, its Affiliates and third-parties. As it relates to (b) and (c) in the preceding sentence, ECD may charge Individuals a separate fee for (i) an extension or renewal of a Consumer Product beyond the Product Term stipulated herein, or (ii) for other products not included under this Agreement. ECD is not obliged to communicate with or provide services to any third-parties who may have contractual or other relationships with Client (other than those explicitly agreed to within this Agreement).

**2.9 Activation Code Availability.** On or before the time of the Release, Client shall provide to ECD a listing of Individuals eligible to receive Activation Codes Center ("List"). Client shall be solely responsible for development of the List, as well as all eligibility criteria associated with the List. Upon provision of the List to ECD, ECD shall make the Activation Codes available for distribution to Individuals via personnel within the ECD Customer Care Center. In the event Client elects to mail any Notification Letters, ECD shall not be required to provide the Activation Codes for such Notification Letters to Client until both parties have reviewed and finally approved the Individual



~~communication~~ Notification Letter as described in Section 2.7 above.

**2.10 Distribution of Activation Codes.** Activation Codes for distribution to Individuals on the List shall be maintained by ECD, and within ECD's care, custody and control. In the event ECD delivers Client (or Client's agent) any Activation Codes for use by Client in a Notification Letter, Client agrees not to sell or otherwise distribute any such Activation Codes, except to Individuals and only as expressly permitted under this Agreement. In no event shall ECD be liable for any loss, damage, theft, corruption or destruction ("Loss") of Activation Codes once issued by ECD to Client, including, but not limited to, any such Loss attributable to Client's distribution, storage (if applicable) and/or mailing of such Activation Codes.

**2.11 No Early Commencement.** Client acknowledges and agrees that (a) the Consumer Product Website will not be accessible by Individuals prior to the ~~date mutually agreed to by ECD and Client in writing~~ ~~Consumer Product Website Launch Date as set forth in the Order Form~~, and (b) it shall not communicate with Individuals regarding the availability and description of the Consumer Product, including, without limitation, the procedures for enrollment of the Consumer Product, any earlier than the date ~~of the Release and acknowledges and agrees that the Consumer Products shall not be available for enrollment prior to the Consumer Product Launch Date stipulated on the Order Form~~ ~~mutually agreed to between ECD and Client in accordance with Section 2.7 above~~. CLIENT AGREES THAT IT SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL LIABILITIES, COSTS AND EXPENSES INCURRED BY ECD OR ITS AFFILIATES AS A RESULT OF CLIENT'S AND/OR ANY INDIVIDUAL'S FAILURE TO COMPLY WITH THE FOREGOING, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INDIVIDUAL ATTEMPTING TO ACCESS THE CONSUMER PRODUCT WEBSITE ~~AND/OR OTHERWISE ENROLL IN THE CONSUMER PRODUCTS PRIOR TO THE CONSUMER PRODUCT WEBSITE LAUNCH~~ CONSUMER PRODUCT LAUNCH DATE SET FORTH IN THE ORDER FORM.

**2.12 Additional Client Requirements.** In the event Client requires additional Activation Codes beyond the number stipulated in the Order Form during the Enrollment Period, ECD may provide such additional Activation Codes pursuant to a mutual written Order Form addendum between the Parties to supplement this Agreement, which such addendum shall be in a form provided by ECD and subject to the terms of this Agreement (unless otherwise agreed to in such addendum). An Order Form addendum may have ordering information that differs from the Order Form attached to this Agreement, including, but not limited to, Enrollment End Date, Product Term, and fees. Any additional Client requirements or other changes to this Agreement may be agreed to between the Parties via a signed written amendment to this Agreement.

**2.13 Exclusivity.** During the Product Term, Client agrees not to obtain products or services that are similar to the Consumer Products from any party other than ECD.

### 3. INSURANCE

**3.1 Insurance.** The insurance provided to Individuals as a product feature of certain Consumer Products is strictly subject to the policies, terms and conditions of the designated third-party insurers. Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the Consumer Product. ECD does not directly sell such insurance to Client or Individuals. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of insurable losses. At the election of the designated third-party insurer or ECD, (a) the amount of insurance coverage to be provided to Individuals, and/or (b) the designation of the third-party insurer(s) are both subject to change at any time. Notwithstanding the foregoing, identity theft insurance may not be provided to any Individuals residing in any state where the provision of such insurance is prohibited by Law.

**3.2 Guarantee for FamilySecure.com.** The Guarantee provided to Individuals as a product feature of the Guarantee provided to Individuals as a product feature of the Family Secure Consumer Product is strictly subject to the policies, terms and conditions described at [http://www.familysecure.com/Member\\_Guarantee.aspx](http://www.familysecure.com/Member_Guarantee.aspx). Such policies, terms and conditions are provided to Individuals at the time each Individual enrolls for the FamilySecure.com Consumer Product. Individuals should be urged to carefully review such policies to determine their terms and conditions, including limits and coverage of losses. At the election of ECD, (a) the amount of the Guarantee to be provided to Individuals, and/or (b) the designation of the party providing the Guarantee are both subject to change at any time. Notwithstanding the foregoing, the Guarantee may not be provided to any Individuals residing in any state where the provision of such Guarantee is prohibited by Law. Due to New York State Law restrictions, the Guarantee cannot be offered to Individuals who are residents of the State of New York.

### 4. FEES

**4.1 Fees.** Client hereby agrees to pay to ECD the Set-up Fee within thirty (30) calendar days of the Effective Date. Client also agrees to pay ECD the Fee per Activation Code Redeemed set forth in the Order Form for each Activation  
(v11/2009.PMID.R)

Code redeemed by Individuals during the Enrollment Period (the "Fee"). ECD will invoice the Fee to Client on a monthly basis for all Activation Codes redeemed by Individuals during the prior thirty (30) calendar days and Client agrees to pay the Fee within thirty (30) days from the date of such invoice. If Client does not make full payment of the Fee within such period, ECD, at its option, may immediately (a) deactivate the Activation Codes and cease further performance under this Agreement until such Fee is paid in full by Client, or (b) terminate this Agreement and the Individuals' enrollment of the Consumer Product. Interest shall accrue on any past due amounts at the rate of one and one half percent (1.5%) per month. In addition, Client shall be liable to ECD for any costs and attorneys' fees incurred by ECD to collect unpaid amounts.

**4.2 Fees Non-Refundable.** The Fee is, without limitation, due and payable as provided for herein, including any changes to facts or circumstances that may negate the need for some or all of ECD's Consumer Products or Activation Codes hereunder, whether or not Client and/or any Individual utilizes the Consumer Product in accordance with the terms of this Agreement. Client agrees to not waive any of its payment obligations and ECD shall not be obligated to refund any amount of the Fee already paid by Client on account of (a) any of the foregoing circumstances, (b) an Individual's inability to receive all or a portion of the Consumer Product as a result of such Individual's failure to (i) successfully complete enrollment, or (ii) comply with any or all of the Third Party Companies' terms and conditions and/or other requirements, and/or (c) any circumstances relating to Section 2.10 above. Without limiting any remedies available to ECD, Client acknowledges that upon entering into this Agreement, ECD shall immediately begin to incur costs and expenses, as well as allocate certain resources away from other projects, for the purpose of performing ECD's obligations hereunder; therefore, Client acknowledges and agrees that Client is responsible to pay for a minimum of ~~fifteen~~ five (5) percent of the total Activation Codes ordered by Client, irrespective of the total number of Activation Codes finally redeemed. In the event more than ~~fifteen~~ five (5) percent of all Activation Codes ordered by Client are redeemed, then these redemptions will be credited towards the total owed by Client for all redemptions.

**4.3 Taxes.** Client shall be responsible for, and shall promptly pay or reimburse ECD for the payment of, any sales, use, excise, ad valorem, value-added or other similar taxes, assessments or duties imposed by any government agency that are associated with the Consumer Products (other than taxes based on ECD's net income).

## **5. OWNERSHIP; INDIVIDUAL INFORMATION**

**5.1 ECD Ownership.** ECD and/or its Affiliates or third party providers shall exclusively own all right, title and interest, including all copyrights, trade secrets, know-how, goodwill, trademarks, service marks, trade names, trade dress, logos, patents or other intellectual property (or any derivative works thereof) and underlying technology in (i) the Consumer Products and all other products provided by ECD hereunder, (ii) the Consumer Product Website, and (iii) all other materials and information provided by ECD to Client hereunder. No grant to use any intellectual property (including any trademarks) of ECD, its Affiliates or third-party providers is made under this Agreement.

**5.2 Individual Information.** As Individual Information is conveyed from an Individual directly to ECD, it is not defined as Confidential Information pursuant to the definition of that term in section 7., below, rather ECD shall use Individual Information in accordance with its posted privacy policy and the End-User Terms and Conditions; such policy and terms and conditions may be amended from time to time, at ECD's sole and absolute discretion and without prior notice to Client and/or Individuals, subject to any applicable restrictions of state or other Laws.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER AND LIMITATION OF LIABILITY; INDEMNIFICATION**

**6.1 Representations and Warranties by ECD.** ECD represents and warrants to Client that it (a) has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) will provide the Consumer Products in a manner consistent with the level of service provided to ECD's general customer base for such Consumer Products; and (c) will provide the Consumer Products and any other products and services provided under this Agreement in a professional manner.

**6.2 Representations and Warranties by Client.** Client represents and warrants to ECD that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, (b) to the best of its knowledge, all information provided by Client to ECD are accurate in all material respects, (c) it will communicate with the Individuals in accordance with Section 2.7 above, such that each of its Individuals receive notification and one Activation Code, and (d) by entering into this Agreement and performing hereunder, Client will not be violating or breaching any other contract, agreement, commitment, promise, understanding or arrangement.

### **6.3 DISCLAIMER AND LIMITATION OF LIABILITY.**

(a) CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE CONSUMER PRODUCTS ARE INTENDED AS ELECTIVE AND OPTIONAL PRODUCT OFFERINGS THAT CLIENT MAY

CHOOSE TO MAKE AVAILABLE TO ITS INDIVIDUALS, AND THAT SUCH PRODUCTS ARE SELECTED SOLELY BY CLIENT. THE CONSUMER PRODUCTS ARE NOT INTENDED TO, AND ECD EXPRESSLY DISCLAIMS ANY WARRANTY OR GUARANTEE THAT THEY WILL, ALLOW CLIENT TO COMPLY WITH LAW, MITIGATE DAMAGES (INCLUDING, BUT NOT LIMITED TO, RELATING TO A DATA BREACH) OR AVOID ANY OTHER CONSEQUENCES OF A DATA BREACH OR FAILURE TO INSTITUTE PROPER SECURITY MEASURES. ANY COMPLIANCE OR NONCOMPLIANCE WITH LAW SHALL BE BASED SOLELY UPON THE PROCEDURES AND ACTIONS IMPLEMENTED BY CLIENT IN CLIENT'S SOLE DETERMINATION. OTHER THAN THE WARRANTIES SET FORTH UNDER SECTION 6.1, ALL PRODUCTS PROVIDED BY ECD, ITS AFFILIATES OR ITS THIRD-PARTY PROVIDERS PURSUANT TO THIS AGREEMENT ARE SO PROVIDED ON AN "AS IS" BASIS, AND ECD MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT. ECD FURTHER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES REGARDING THE CONSUMER PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) IN NO EVENT SHALL ECD BE LIABLE TO CLIENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND LOST SALES, SUFFERED BY OR OTHERWISE COMPENSABLE TO CLIENT, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECD'S AGGREGATE LIABILITY TO CLIENT AND/OR ITS AFFILIATES FOR DAMAGES (i) CONCERNING THE PERFORMANCE OR NON-PERFORMANCE BY ECD OF ITS OBLIGATIONS HEREUNDER, OR (ii) IN ANY WAY RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE PROVISION OF THE CONSUMER PRODUCTS, AND INCLUDING PURSUANT TO ECD'S INDEMNIFICATION OBLIGATIONS SET FORTH UNDER THIS AGREEMENT), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO ECD UNDER THE TERMS OF THIS AGREEMENT.

#### **6.4 Indemnification.**

(a) **Indemnification by Client.** Client will indemnify, defend, and hold ECD, its Affiliates and parent companies, and their respective directors, officers, shareholders, employees and agents (collectively, the "ECD Indemnified Parties"), harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including by way of example only, ECD's costs of responding to a subpoena in any cause of action where Client is a named party), including reasonable attorneys' fees (collectively, "Damages"), which may be asserted against or incurred by ECD, its Affiliates, or any of the ECD Indemnified Parties, arising out of or resulting from (i) any agreement, arrangement or relationship between Client and Individuals, including, without limitation, any duties or obligations (contractual, at Law or otherwise) owed by Client to Individuals, (ii) Client's data breach, failure to maintain security measures, or violation or failure by Client to comply with any Law (including any claim that the Consumer Products are inadequate for Client to comply with the same), (iii) Client's misconduct or disregard of ordinary care in performing any of its obligations hereunder, or (iv) Client's breach of any provisions of this Agreement, including, but not limited to, Sections 2.7 and 2.10 hereof.

(b) **Indemnification by ECD.** ECD will indemnify, defend, and hold Client and its directors, officers, shareholders and, agents (the "Client Indemnified Parties") harmless from and against any and all Damages, which may be asserted against or incurred by Client or any of the Client Indemnified Parties, arising out of or resulting from any material breach of the End-User Terms and Conditions by ECD.

(c) **Procedures for Control of Indemnifiable Claims.** In order for a Party (the "Indemnified Party") to be entitled to any indemnification provided for in Sections 6.4(a) or 6.4(b) above, such Indemnified Party must notify the Party obligated to provide such indemnification (the "Indemnifying Party") in writing of the indemnifiable claim within thirty (30) business days after receipt by such Indemnified Party of written notice of the indemnifiable claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. After receipt of such notice, the Indemnifying Party shall have the right to assume the defense of, compromise or settle the indemnifiable claim at its expense; provided, however, that the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that provides for non-monetary relief without the consent of the Indemnified Party. In any indemnifiable claim which the Indemnifying Party has elected to defend, compromise or settle, the Indemnifying Party shall not be responsible for any expenses, including counsel fees, incurred by the Indemnified Party after such election; but the Indemnified Party may participate therein and retain separate counsel at its own expense. The Indemnified Party shall

provide to the Indemnifying Party all information, assistance and authority reasonably requested in order to evaluate any indemnifiable claim and effect any defense, compromise or settlement thereof. If the Indemnifying Party does not assume the defense of the indemnifiable claim as provided herein, the Indemnified Party may defend, compromise or settle the claim in any manner it reasonably deems appropriate, provided that the Indemnifying Party shall remain responsible for any losses, liabilities or damages the Indemnified Party suffers arising from the indemnifiable claim to the fullest extent provided under this Section 6.4.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition and Obligations.** For the purposes of this Agreement, “Confidential Information” means the pricing, provisions of and all performance under this Agreement and information about the disclosing Party’s business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a Party marked or designated by such Party as “confidential” or “proprietary” or information which, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as confidential. Notwithstanding the foregoing, the Parties agree that any and all information provided by Individuals and collected by ECD from the Consumer Product Website shall not be deemed as Confidential Information and shall be collected in accordance with ECD’s privacy policy and End-User Terms and Conditions, which may be amended from time to time. For a period commencing on the Agreement Date and ending two (2) years after the Term, each Party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Upon the disclosing Party’s request, the receiving Party will promptly return to the disclosing Party all tangible items containing or consisting of the disclosing Party’s Confidential Information and all copies thereof. Each Party acknowledges that all of the disclosing Party’s Confidential Information is owned solely by the disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the disclosing Party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at Law or in equity in the event of such a breach.

**7.2 Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information which is: (a) now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public, (b) acquired by the receiving Party before receiving such information from the disclosing Party and without restriction as to use or disclosure, (c) hereafter rightfully furnished to the receiving Party by a third party, without restriction as to use or disclosure, (d) information which the receiving Party can document was independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, (e) required to be disclosed under any Law, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable notice of such required disclosure and an opportunity to obtain a protective order or other appropriate remedy, (f) disclosed with the prior written consent of the disclosing Party.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence upon the Agreement Date and shall expire at the end of the Enrollment Period (the “Term”); provided, however, the terms of this Agreement will continue as stipulated herein for delivery of Consumer Product(s) in accordance with an active Order Form addendum between the Parties to this Agreement (pursuant to Section 2.12 above). The Product Term will continue as stipulated herein for continued delivery of the Consumer Product to Individuals in accordance with and as may be required by the End-User Terms and Conditions.

**8.2 Termination for Breach.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. In the event either Party terminates this Agreement for breach, termination shall not affect the other Party’s financial obligation to make any required payments hereunder.

**8.3 Effect of Termination.** Except with respect to the Consumer Product for which both (a) Client has been invoiced and rendered payment, and (b) ECD has commenced delivery of the Consumer Product, ECD shall have no further obligation to continue to provide the Consumer Product following the termination of this Agreement pursuant to Section 8.2 above.

**8.4 Surviving Provisions.** The terms and conditions of Sections 2, 3, 4.2, 5, 6, 7, 8.3, 8.4, and 9 of this Agreement shall survive and continue after termination or expiration of this Agreement.

## **9. GENERAL PROVISIONS**

**9.1 Assignment.** Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of either Party shall be assigned or delegated without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any unauthorized assignment or delegation shall be null and void. Notwithstanding the foregoing, either Party may assign or otherwise transfer its rights and obligations to its Affiliates or to successors in interest (whether by purchase of stock or assets, merger, operation of Law, or otherwise) of that portion of its business related to the subject matter hereof.

**9.2 Successors in Interest.** Subject to the provision of Section 9.1 above, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

**9.3 Choice of Law; Jurisdiction.** This Agreement shall be construed in accordance with the Laws of the State of California (excluding rules regarding conflicts of Law) and the United States of America. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal courts located in Orange County, California, unless such actions, suits or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy, and each Party irrevocably submits to the jurisdiction of such courts. Service of process may be effected in accordance with the procedures for providing notice under this Agreement.

**9.4 Notices.** Any notice given under this Agreement to Client will be given in writing to the Primary Contact at the Client address set forth in the Order Form. Any notice given under this Agreement to ECD will be given in writing and addressed to ECD's Corporate Counsel at 18500 Von Karman Avenue, Suite 400, Irvine, CA 92612. Either Party may substitute a new address and contact person by written notice to the other in the manner contemplated herein. All notices shall be effective when received, and shall be delivered personally, by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service.

**9.5 Independent Contractors.** In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, employment, partnership or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself in any manner that would be contrary to the provision of this Section 9.5.

**9.6 Entire Agreement; Amendments and Addenda.** This Agreement (including the exhibits hereto, as may be amended and supplemented from time to time, based upon mutual written consent) contains the entire agreement and understanding concerning the subject matter (as set forth in the Recitals) between Client and ECD. This Agreement supersedes all prior negotiations, agreements (whether written, oral or electronic), Client purchase orders, term sheets, or proposals that relate specifically to the subject matter (as set forth in the Recitals). Except as provided herein, this Agreement may be amended and/or supplemented via one or more Order Form addenda (as described in Section 2.12 above) only in writing, signed by authorized representatives for both ECD and Client.

**9.7 Severability.** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

**9.8 Publicity; Public Communication.** Neither Party shall provide, in any ~~Release-public communication (including press releases and communications with individuals)~~, any representation, description or other statement regarding the Consumer Products or otherwise refer to the other Party or its Affiliates in any way other than as set forth in Section 2.7 or as otherwise approved in writing in advance by the other Party. For avoidance of doubt, both parties must agree on the timing and complete content of any and all press releases which pertain to this Agreement or the provision of the Consumer Products herein.

**9.9 Adequate Review.** Each party represents to the other that, as deemed necessary by such party, this Agreement has been reviewed by each party and its legal and other advisors, and such party has had an opportunity to make all relevant inquiries and receive sufficient responses relating to this Agreement.

**9.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution of it.

**9.11 Binding Agreement.** The Parties (a) agree that this Agreement shall not be binding unless and until it has been executed by an authorized representative of ECD, and (b) represent and warrant that the individuals signing below are expressly invested with the requisite authority to bind their respective companies under this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Credit Monitoring Products Agreement effective as of the Agreement Date.

**Client:**

**ConsumerInfo.com, Inc.,  
also known as Experian Consumer Direct**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Exhibit A**  
**Consumer Products**

These below listed products are delivered to Qualified (as defined below) Individuals using a single-use Activation Code. Description of each products benefits, which are subject to change:

Features	ProtectMyID Alert 3B
<b>Daily credit monitoring</b>	3 Bureau
<b>Daily credit alerts</b> - <i>for new inquiries, accounts created, change of address, changes to public records and posting of potentially negative information</i>	X
<b>Reports upon enrollment</b>	Experian report only
<b>Score upon enrollment</b>	
<b>Reports/Score during membership</b>	
<b>Customer and Fraud Resolution Support</b> - Customer services is available 7 days a week - One on one access to a fraud resolution agent - Link to forms to file fraud alerts	X
<b>All clear alerts when no activity has been detected</b> - Delivered monthly for online Individuals - Delivered quarterly for offline Individuals	X
<b>Identity Theft Insurance *</b>	\$1MM
<b>Enrollment method</b>	Phone or Internet
<b>Product delivery method (see section 2.2)</b>	Online or US mail
<b>Identity Theft Risk Assessment</b>	Online

**Family Secure<sup>SM</sup>** – This product is delivered to Qualified (as defined below) Individuals using an online enrollment process and a single-use, Activation Code. For purposes of Family Secure, “Individual” means the Parent or Legal Guardian. Description of Family Secure benefits, which are subject to change:

- Parent or Legal Guardian:

- a) Unlimited online access to an Individual’s Experian credit report and score for the duration of the Product Term
- b) Daily monitoring of the Individual’s Experian credit report
- c) Daily monitoring alerts to inform the Individuals of important changes to their Experian credit report
- d) Score Illustrator to help the Individuals understand how factors on their Experian credit report impact their Experian credit score

- Children who are enrolled by the Parent or Legal Guardian:

- a) Check whether an Experian credit report exists for each child enrolled by the Parent or Legal Guardian
- b) Monthly check to determine whether the child(ren) has/have an Experian credit report
- c) Monthly check for alerts of the child/ren’s Experian credit report (if any) to inform the Parent or Legal Guardian of any important changes or activity of the child/ren’s Experian credit report

- Entire Family:

- a) Toll-free access to ECD’s Customer Care Center
- b) Informative credit related articles
- c) \$2,000,000 Guarantee for certain identity theft related expenses\*\*\*\*

Additional Family Secure product information: (i) children are eligible for online enrollment up to three (3) months prior to their 18<sup>th</sup> birthday, however, the Parent or Legal Guardian may contact ECD’s Customer Care Center to enroll such

children up to two (2) weeks prior to their 18<sup>th</sup> birthday; (ii) children will automatically be de-enrolled within one (1) week prior to their eighteenth (18<sup>th</sup>) birthday and thereafter, such child/ren will no longer be eligible for the Family Secure product; (iii) child/ren's credit report (if any) are available offline only; and (iv) the Parent or Legal Guardian is required to authenticate prior to the ECD Customer Care Center can provide assistance regarding the child/ren's credit report.

**Definitions.**

For purposes of this Exhibit A, "Qualified" means Individuals who meet the following requirements to be eligible to enroll for the Consumer Product:

- a) Accurately complete and submit to ECD all of the required enrollment fields/pages;
- b) Provide ECD the correct answers to the out-of-wallet security questions;
- c) Accept the End-User Terms and Conditions (including ECD's terms, conditions and privacy policy);
- d) Are at least 18 years of age and a living person as of the date of enrollment in the Consumer Product
- e) Have a U.S. credit file with at least one of the national credit reporting companies (Experian, Equifax and TransUnion)\*\*;
- f) Provide ECD with a current U.S. phone number and a current U.S. postal address \*\*\*
- g) Provide a valid U.S. Social Security number or Tax Identification Number issued for the Individual by the U.S. Social Security Administration; and
- h) Pass all of ECD's identity, authentication and security requirements.

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As per section 2.5 of the Agreement, the following are current Third Party Companies:

- 1. Credit reporting agencies (Equifax Inc. and TransUnion LLC)
- 2. All Affiliates of ECD pursuant to the definition contained in Section 1.2 of the Agreement.
- 3. Chartis Inc. \*

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\*\* Delivery of the Consumer Product will be limited to the report(s) of the national credit reporting companies with whom each Individual has a current U.S. credit file (e.g., in the event an Individual only has a U.S. credit file with Experian, then such Individual shall only receive the Experian credit report).

\*\*\* The U.S. address provided by Individuals should be the U.S. address associated with such Individuals credit file (e.g. the address utilized by the Individual to obtain credit).

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\*\*\*\* Due to New York state law restrictions, the Guarantee cannot be offered to Individuals who are residents of New York.

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## **Exhibit B**

### **Supplemental Products**

**Enhanced Customer Care.** In addition to the standard customer service delineated within the Agreement, ECD will provide certain supplemental call center services (“Enhanced Call Center Services”). Enhanced Call Center Services shall be limited to (a) the ECD Customer Service Center responding to Individual queries via customized scripting (which will be mutually agreed to in writing by ECD and Client) and (b) other required Individual support on a case-by-case basis, as required and exclusively in connection with the Activation Codes provided herein. The appropriate toll-free Customer Service Center number shall be presented to Individuals as part of an enrollment failure notification with a message requesting that Individuals call such toll-free number to complete the Customer Service Center enrollment process. Customer Service Center hours of operation are Monday through Friday, 6 a.m. to 6 p.m. Pacific Time, and Saturday through Sunday, 8 a.m. to 5 p.m. Pacific Time.

**Communication Facilitation.** Client has requested that ECD facilitate the transmission of the Notification Letter approved by ECD in accordance with section 2.7 of the Agreement (“Approved Communication”) to Individuals by means of ECD’s third-party print vendor. Client shall send the names and addresses of all such Individuals to whom Approved Communications should be conveyed to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its third-party print vendor and once ECD has established that its’ print vendor has received such information, ECD will purge all such information that is within ECD’s possession. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the preparation and provision of the Approved Communication to Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) complete and correct instructions regarding the date(s) that ECD’s print vendor is requested to mail the Approved Communication to Individuals. Client agrees to pay ECD for each Approved Communication that Client may request ECD’s print vendor to prepare in accordance with the pricing delineated on the Order Form. Any pages in addition to the one-page (double sided) Approved Communication that Client may request ECD’s print vendor to prepare shall be priced separately (and in addition to the costs already referenced therein) in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

**Address Append Services.** Client is requesting address append services for use in locating or verifying Individual names and addresses when Client may have access to only an Individual’s social security number (SSN) and/or aged address data. *Client MUST certify via signature of a supplemental Rider to this agreement that the use of any of this data as delivered by ECD shall only be used by Client in compliance with Law.* Upon receipt of the Rider agreement from Client, the SSNs of all such Individuals will be provided by Client to ECD via secure FTP encryption file(s) or by another secure method agreed to in writing by the Parties. ECD shall forward such information to its Affiliate, Experian Information Solutions, Inc., in order to produce an address append deliverable. Reasonable commercial efforts will be used by Experian Information Solutions, Inc. to retrieve an Individual’s name and/or address. In some instances, multiple matches will be returned where Client is held solely responsible for identifying the best matched record to use. Client hereby acknowledges and agrees that it shall be solely responsible for (a) compliance with all Laws applicable to the utilization of File One data to notify Individuals, (b) timely delivery to ECD of the information regarding Individuals, and (c) properly formatted data file for optimal processing. Client agrees to pay ECD for each Individual record searched in accordance with the pricing delineated on the Order Form. Any subsequent record batches may be priced separately in accordance with the mutual written agreement of the parties (which may be evidenced via e-mail).

## final drafts - Exec Order and Maley letter

Schimsa, Rebecca

**Sent:** Thursday, October 25, 2012 6:31 PM

**To:** Stirling, Bryan; Pitts, Ted; Soura, Christian

**Cc:** Patel, Swati

**Attachments:** 2012-10 Reviewing IT Sec~1.docx (25 KB) ; Letter to Maley re EO 2012~1.doc (187 KB)

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All – Please see the final drafts of both the Executive Order and the corresponding letter to Maley. With tomorrow morning's press conference now being offsite, I am going to go ahead and have NH sign final versions of these tonight – just in case. Please let us know if you would like changes made.

Thanks.

Rebecca S. Schimsa  
Office of Governor Nikki R. Haley  
Staff Attorney & Commerce Liaison  
O: (803) 734-6068 | C: (803) 429-4561



# State of South Carolina

## Office of the Governor

NIKKI R. HALEY  
GOVERNOR

1205 PENDLETON STREET  
COLUMBIA 29201

October 29, 2012

The Honorable Patrick Maley  
State Inspector General  
110 Centerview Drive, Suite 201  
Columbia, South Carolina 29210

Dear Inspector General Maley,

On behalf of state agencies of South Carolina, I request your assistance in addressing a serious issue affecting state government information security.

Throughout state government, our information technology (IT) policy for security procedures and protocols has been largely uncoordinated and outdated exposing our state to greater risks of internal and external cyber-attacks.

I am committed to ensuring that state government minimize the risk of cyber-attacks and protect the personal information of our citizens kept by agencies. Accordingly, today, I signed Executive Order 2012-10 directing the IT officers in my Cabinet agencies to take immediate action to work with the Office of State Inspector General and review and strengthen IT security procedures and protocols.

Pursuant to your authority in Chapter 6 of Title 1 of the South Carolina Code of Laws, I ask that you make recommendations, on a comprehensive and holistic basis, to improve information security policies and procedures in our state agencies.

Sincerely,

Nikki R. Haley

**2012-xx**

**WHEREAS**, the State's information technology (IT) policy for governance of IT initiatives throughout state government, including security procedures and protocols, has been largely uncoordinated and outdated exposing the State to greater risks of cyber-attacks on IT infrastructure and records; and

**WHEREAS**, state government's fragmented approach to IT security makes South Carolina vulnerable to serious cyber and information breaches and requires immediate action to minimize cyber-attacks and protect personal information of our State's citizens; and

**WHEREAS**, Section 1-6-30 of the South Carolina Code of Laws authorizes the State Inspector General to "coordinate investigations" and "recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, ..." ; and

**WHEREAS**, Section 1-6-20(E) states "[u]pon request of the State Inspector General for information or assistance, all agencies are directed to fully cooperate with and furnish the State Inspector General with all documents, reports, answers, records, accounts, papers, and other necessary data and documentary information to perform the mission of the State Inspector General"; and

**WHEREAS**, the State Inspector General is authorized to recommend policies to address holistic mismanagement of state government's information security policies and procedures and state agencies are required to fully cooperate with the Inspector General to perform his mission.

**NOW, THEREFORE**, I hereby request the State Inspector General to make recommendations to improve information security policies and procedures in state agencies pursuant to his authority under Chapter 6 of Title 1 of the South Carolina Code of Laws with the following additional guidance:

1. Collaborate with the Division of State Information Technology of the Budget and Control Board to identify weaknesses in the current statewide cyber-security systems and develop a holistic strategy to improve security.
2. Consult with national cyber-security sources including, but not limited to, the Multi-State Information and Sharing Analysis Center.
3. Determine state agencies' current information security staffing and identify designated information security officers (ISOs) at each agency.
4. Improve and increase training of ISOs and all state government employees on information security measures to include cyber-security and records protection.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS \_\_ DAY OF  
OCTOBER 2012.**

\_\_\_\_\_  
**NIKKI R. HALEY**  
Governor

ATTEST:

\_\_\_\_\_  
**MARK HAMMOND**  
SECRETARY OF STATE

## 2012-xx Reviewing IT Security

Patel, Swati

**Sent:** Thursday, October 25, 2012 10:50 AM  
**To:** Pitts, Ted; Stirling, Bryan; Godfrey, Rob  
**Cc:** Soura, Christian  
**Attachments:** 2012-xx Reviewing IT Sec~1.docx (26 KB)

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Here is my final draft pending Christian's input.

2012-10

**WHEREAS**, the State's information technology (IT) policy for governance of IT initiatives throughout state government, including security procedures and protocols, has been largely uncoordinated and outdated exposing the State to greater risks of internal and external cyber-attacks on IT infrastructure and records; and

**WHEREAS**, state government's fragmented approach to IT security makes South Carolina vulnerable to serious cyber and information breaches and requires immediate action to minimize cyber-attacks and protect personal information of our State's citizens; and

**WHEREAS**, Section 1-6-30 of the South Carolina Code of Laws authorizes the State Inspector General to "coordinate investigations" and "recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement . . . "; and

**WHEREAS**, Section 1-6-20(E) states, "Upon request of the State Inspector General for information or assistance, all agencies are directed to fully cooperate with and furnish the State Inspector General with all documents, reports, answers, records, accounts, papers, and other necessary data and documentary information to perform the mission of the State Inspector General[;]" and

**WHEREAS**, the State Inspector General is authorized to recommend policies to address holistic mismanagement of state government's information security policies and procedures and state agencies are required to fully cooperate with the State Inspector General to perform his mission.

**NOW, THEREFORE**, I hereby direct all cabinet agencies to immediately designate an information technology officer to cooperate with the State Inspector General who is authorized to make recommendations to improve information security policies and procedures in state agencies, on a comprehensive and holistic basis,

pursuant to his authority under Chapter 6 of Title 1 of the South Carolina Code of Laws with the following additional guidance:

1. Collaborate with the Division of State Information Technology of the Budget and Control Board to identify weaknesses in current statewide cyber-security systems, to include vulnerabilities to internal and external cyber-attacks, and develop a holistic strategy to improve information security;
2. Consult with national cyber-security sources including, but not limited to, the Multi-State Information and Sharing Analysis Center;
3. Determine state agencies' current information security staffing and their specific duties, and work with agencies to identify designated information security officers (ISOs) and their duties at each agency where appropriate; and
4. Improve and increase training of ISOs and all state government employees on information security measures to include cyber-security and records protection.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 26<sup>th</sup> DAY OF  
OCTOBER 2012.**

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**NIKKI R. HALEY**  
Governor

ATTEST:

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**MARK HAMMOND**  
SECRETARY OF STATE



**FW: Status Update - Review of Information Security at the Cabinet Agencies**

Pitts, Ted

**Sent:** Wednesday, October 24, 2012 2:21 PM  
**To:** Godfrey, Rob; Stirling, Bryan  
**Attachments:** Summary Letter to Governo~1.docx (325 KB)

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**From:** Maley, Patrick  
**Sent:** Wednesday, October 24, 2012 1:37 PM  
**To:** Pitts, Ted  
**Subject:** FW: Status Update - Review of Information Security at the Cabinet Agencies

Attached letter is a status update of project, dated 9/18/12, which simply states methodology & results, which demonstrates due diligence by the Executive Branch in response to DHHS PII incident.

We have DDS and SLED still hanging. Closing loop with DDS is in near term because they should be nearing completion of their survey instrument. SLED just hired an IT Director and I extended their survey completion until after their IT Director can assess their IT system and accurately complete our survey.

I have had media inquiry from Tim Smith, Greenville on this project. I am generally aware of DOR issue. DOR was the only agency we looked that met expectations for having sound information security practices in all nine categories. Further, DOR has to pass requirements & testing to meet Federal IRS standards due to tax data in its custody.

Having sound IT security practices is not a guarantee of not being hacked—it is due diligence to manage the risk.

Call if you need further.

Thanks

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**From:** Maley, Patrick  
**Sent:** Tuesday, September 18, 2012 3:52 PM  
**To:** Pitts, Ted  
**Subject:** Status Update - Review of Information Security at the Cabinet Agencies

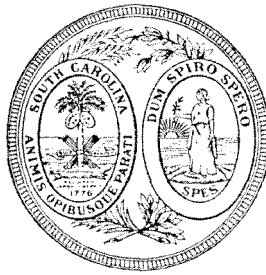
Ted, attached is a letter I will be sending to the Governor through your office. It is a 2 page, light read, summary of the information security review to date, with expected completion in early October 2012. I am sending this because I sense an upcoming cabinet meeting, and this is a corporate issue impacting the entire cabinet with a very positive, but room to improve, outcome.

I have met about half of the cabinet Agency Directors, and they all have been very gracious and helpful. If you could work me in for a minute or two at the next cabinet meeting, I would like to meet them all as a group and brief them on our course change and continue to seek input before I finalize the OIG tangible objectives.

I will have my final draft objectives in a couple of weeks, and will be circulating for input & you will be on the list.

My new cell is 429-4946.

thanks



## State of South Carolina Office of the Inspector General

September 18, 2012

Honorable Nikki R. Haley  
Governor of South Carolina  
1205 Pendleton Street  
Columbia, SC 29201

Re: Status Update - Review of Information Security at the Cabinet Agencies

Dear Governor Haley,

The Office of the Inspector General (OIG) has reviewed the information security practices at 12 of the 16 Cabinet Agencies. The Department of Health & Human Services (DHHS) was not included in the review inasmuch as a consultant has been retained to perform a similar, if not more extensive, evaluation. The OIG will complete its review by early October, 2012.

Of the 12 agencies evaluated, three were found either not to retain any Personally Identifiable Information (PII) other than a minimal amount constituting a minimal risk, or information retained is considered a public record under the State's public record statutes. The remaining nine agencies reviewed to date are in substantial compliance with sound information security practices. It was clear from the review, information security awareness has been heightened throughout the Cabinet Agencies since the April, 2012 DHHS data breach, and agency leadership is proactively engaged in ensuring an adequate information security posture.

Based on recommended security guidelines and best practices in government and the private sector, a questionnaire was developed to test nine major information security categories in each agency against best practices. The questionnaire was completed for each agency and interviews were conducted with employees at different levels within each agency. In some cases, the OIG viewed facilities and observed business processes. These nine categories were:

- Information Security Policy and Other IT Policies
- Inventory/Discovery of PII
- Inventory and Monitoring of Network Devices and Activity
- Password Management
- Workstation, Laptop and Other IT Devices – Setup & Security
- Database Permissions, User Management and Application Security

September 18, 2012  
Governor Nikki R. Haley

- Employee Information Security Awareness Training
- Data Loss Protection Tools and Monitoring of Network Activity
- Data Loss Response Plan

Despite all nine agencies being in substantial compliance, the OIG identified three areas with a pattern of non-compliance where information security could be improved. Those areas are as follows:

1. Lack of adequate security for the paper records containing confidential information (4 of the 9 agencies could improve).
2. Lack of a process to periodically conduct an agency-wide discovery process to assure that the locations of all confidential information are known and authorized (8 of the 9 agencies could improve). Most, if not all, agencies expressed confidence that all locations of confidential information were known and authorized, yet these agencies had not undertaken such a process, or at least, had not done so periodically. Periodically conducting an agency-wide discovery process is a major industry recommended best practice.
3. Lack of a data response plan along with a standing committee to execute it should such an information loss occur (7 of the 9 agencies could improve). This is also a major industry recommended best practice.

Agency Directors and their personnel demonstrated commitment to address these areas to improve. Each agency will receive a separate report on its information security, along with corresponding findings and recommendations. Each agency was accommodating and helpful to the OIG in conducting this review, and it was a pleasure working with them. If you or your staff needs any additional information or clarification, please do not hesitate to call me at (803) 896-4721.

Sincerely,

Patrick J. Maley  
Inspector General

PM/pw