

Identity Fraud, Inc.  
**Breach Expense Protection**

Breach Expense Protection benefits are subject to the terms of our customer agreement and this indemnity agreement (“agreement”) and collectively, in conjunction with the risk mitigation deliverables provided in **your IFI Product**. Please read the entire agreement to determine **your** rights and duties and what is and what is not provided for under this agreement. Words and phrases that appear in boldface are defined in Clause II. **DEFINITIONS**.

In consideration of **your** payment and in reliance upon **your** statements in **our** application and its attachments and the material incorporated in **our customer agreement** therein, and made a part hereof, we agree as follows:

**I. INDEMNITY AGREEMENT**

**A. Electronic Data Restoration Coverage**

We shall pay you for all **breach event expenses**, in excess of any applicable retention, resulting from a **breach event** first occurring during **your term** and reported to us within the **notice period**.

**B. Network Interruption Coverage**

We shall pay you for all **network interruption costs**, in excess of any applicable retention, resulting from a **material interruption** first occurring during **your term** and reported to us within the **notice period**.

**II. DEFINITIONS**

- A. Breach event** means a failure or violation of the security of a **Computer System** including, without limitation, that which results in or fails to mitigate any unauthorized access, unauthorized use, denial of service attack, receipt or transmission of malicious code, or the damage or destruction of **electronic data**. **Breach event** includes any such failure or violation resulting from the theft of a password or access code from a **customer’s** premises or **computer system** or from an officer, director or employee of a **customer** by non-electronic means.
- B. Breach Event Expenses** means the reasonable and necessary expenses and costs incurred by a **customer** within one year of a **breach event**, that we are obligated to pay to or on behalf of such **customer** pursuant to **our customer agreement**, to restore, recreate or recollect **electronic data** that is damaged, destroyed or unrecoverable as a result of a **breach event** and/or to determine whether such **electronic data** can be restored, recreated or recollected.
- C. Computer system** means any computer hardware, software or related components thereof that are under the ownership, operation and control of a **customer**, including hardware, software or components leased by a **customer**, and linked together through a network of two or more devices accessible through the Internet or **customer’s** network, or connected through data storage or other peripheral devices.
- D. Control group** means the senior executive officer, senior financial officer or employee, senior information technology officer or employee, senior risk manager and senior legal officer or employee of each **customer**, regardless of the title of such persons.
- E. Covered expenses** means **breach event expenses** and **network interruption costs**.
- F. Customer** means you or each person or entity purchasing an **IFI Product**.

- G. Customer agreement** means the agreement pursuant to which we provide our IFI Product to you for a specific term.
- H. Electronic data** means any software or electronic data stored on a customer's computer system, including without limitation personally identifiable information concerning such customer's employees and clients.
- I. IFI Product** means SB Core Protector<sup>®</sup>, Core Cyber<sup>®</sup>, BIZLock<sup>®</sup>, BIZLock-Pro, Liability Toolkit or any similarly-constructed product offered, directly or indirectly, by us.
- J. Information holder** means a third party that: (1) a customer has provided private information to; or (2) has received private information on behalf of a customer.
- K. Material interruption** means the actual and measurable interruption or suspension of a customer's business directly caused by a breach event.
- L. Network Interruption Cost** means the below listed costs incurred by a customer during, or within thirty (30) days after the end of, a material interruption (or thirty (30) days after the material interruption would have ended if the customer exercises due diligence and dispatch) but at least eight (8) hours after the material interruption began:
- (1) costs that would not have been incurred but for a material interruption; and
  - (2) the sum of all of the following, calculated on an hourly basis:
    - (a) Net Income (Net Profit or Loss before income taxes) that would have been earned; and
    - (b) continuing normal operating expenses incurred, including payroll.
- M. Notice period** means the following period of time that you shall have to notify us that a breach event or material interruption has occurred:
- (1) the sixty (60) day period beginning immediately upon any member of a customer's control group's first discovery of a breach event; or
  - (2) the ten (10) day period beginning immediately upon the commencement of a material interruption.
- N. Pollutants** means, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- O. Privacy policy** means any policy in any form regarding the collection, dissemination, storage, or treatment of information regarding customers, visitors to an Internet site, or other persons.
- P. Term** means the twelve (12) month period associated with your purchase or renewal of a monthly or annual IFI Product. Each term may be renewed for subsequent one-year terms subject to the terms and conditions of the applicable customer agreement.
- Q. We, us and our** means Identity Fraud, Inc. and/or our insurer, if applicable.
- R. You, your,** means the customer contracting with us per our customer agreement.

### III. DUTIES UPON THE OCCURRENCE OF A BREACH EVENT OR MATERIAL INTERRUPTION

- A.** Before indemnity will apply under this agreement for a breach event or material interruption, you shall notify us in writing as soon as practicable within the notice period of such event. Notice must include:
- (1) A description of the breach event; and

(2) A copy of all notices and correspondence received by or sent from **you** concerning the **breach event** or **material interruption**.

B. Under all circumstances, **you** shall not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any **breach event** or **material interruption** without **our** prior written consent. If **you** do, it will be at **your** own expense. Further, **you** shall not take any action, or fail to take any action, without **our** prior written consent, which prejudices **our** rights under this agreement.

#### IV. EXCLUSIONS

This agreement shall not apply to:

A. any **breach event**, **material interruption** or **covered expenses** arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, if committed by a **customer's**:

(1) directors, officers, trustees, general or managing partners or principals, or senior leaders of a religious or non-profit organization (or equivalent positions), whether acting alone or in collusion with other persons; or

(2) employees (other than referenced in sub-paragraph (1) above), if any of those referenced in sub-paragraph (1) above participated in, approved of, acquiesced to, or knew or had reason to know prior to the act of such dishonest, fraudulent, criminal or malicious act, error or omission, or intentional or knowing violation of the law, that caused a direct loss to **you** or any other person.

B. any **covered expenses** arising out of or resulting from a suit, action or proceeding against **you** that is brought by or on behalf of any federal, state or local government agency;

C. any **covered expenses** arising out of or resulting, directly or indirectly, from (1) physical injury, sickness, disease, disability, shock or mental anguish sustained by any person, including without limitation, required care, loss of services or death at any time resulting therefrom; or (2) damage to, loss of use of or destruction of any tangible property (provided that, for purposes of this exclusion, tangible property does not include **electronic data**).

D. any **breach event** or **material interruption** arising out of or resulting, directly or indirectly, from any of the following:

(1) fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused;

(2) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; or

(3) electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; a failure of telephone lines, data transmission lines, satellites or other infrastructure comprising or supporting the Internet, unless such lines or infrastructure were under **your** operational control;

E. any **breach event** or **material interruption** arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** (including nuclear materials), or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**, or in any way respond to or assess the effects of **pollutants**;

F. any **breach event** or **material interruption** that was not properly reported to **us** during the **notice period**;

- G. any **breach event** or **material interruption** which began before the effective date of the **customer agreement** or after the termination of such **customer agreement**, or that relates to or is a continuation of a **breach event** beginning before the effective date of the **customer agreement**;
- H. any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities;
- I. any (1) gaining of a profit or advantage to which **you** are not legally entitled; or (2) any operating or internal expenses or charges, including employee compensation and benefits, overhead, over-charges or cost over-runs;
- J. any liability or obligation **you** have under any contract or agreement;
- K. any **breach event** arising out of or resulting, directly or indirectly, from the infringement of copyright, patent, trademark, trade secret or other intellectual property rights; or
- L. any **breach event** arising out of or resulting, directly or indirectly, from any seizure, confiscation, nationalization or destruction of a **computer system** or **electronic data** by order of any government or public authority.

#### V. COVERED EXPENSES LIMITS

- A. The most **we** shall pay for the total of all **covered expenses** arising out of all **breach events** and **material interruptions** affecting **you** during **your term** is the amount identified in **our** customer agreement for the IFI product **you** purchased, regardless of the number of **breach events** and/or **material interruptions** affecting **you** during **your term**.
- B. All **covered expenses** resulting from the same, continuous, related or repeated **breach event(s)** or **material interruption(s)** affecting **you** shall be subject to the terms, conditions, exclusions and indemnity **covered expenses** limits in effect for **you** at the time the first such **breach event** or **material interruption** occurred.

#### VI. OTHER PROVISIONS AFFECTING THIS AGREEMENT

##### A. Coverage Territory

Subject to its terms, conditions and exclusions, this agreement applies to **breach events** and **material interruptions** occurring, and **covered expenses** incurred, anywhere in the world.

##### B. Legal Action Against Us

No person or organization has a right under this agreement:

- (1) to join **us** as a party or otherwise bring **us** into a **suit** asking for damages from **you**; or
- (2) to sue **us** on this agreement unless all of its terms have been fully complied with.

A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against **you** obtained after an actual trial; but **we** will not be liable for amounts that are not payable under the terms of this agreement or that are in excess of the applicable **covered expenses** limits. An agreed settlement means a settlement and release of liability signed by **us** and the claimant or the claimant's legal representative.

##### C. Subrogation

In the event of any payment under this agreement, **we** shall be subrogated to the extent of such payment, to all of **your** rights of recovery arising out of a covered **breach event** or **material interruption**. Notwithstanding the above, **we** shall not exercise any right of recovery against **you** unless such **breach event** or **material interruption** arises out of or results from any dishonest, fraudulent, criminal or malicious act or any intentional or knowing violation of the law, committed

by **you** or unless **you** have recovered total **covered expenses** from **us** and any other source(s) in excess of the actual **covered expenses** incurred by **you**.

**You** shall do whatever is necessary, including signing documents, to help **us** obtain any recovery **we** may seek. To the extent **we** make a payment under this agreement and, prior or subsequent to such payment, **you** receive any amount from any other person or entity in connection with or arising out of an event with respect to which **we** made such payment, **you** shall immediately remit such amount to **us** up to the amount of **our** payment.

#### **D. Other Insurance/Indemnity**

This agreement shall be primary with respect to any other valid and collectible insurance and/or indemnity available to **you**, unless such other valid and collectible insurance is also stated to be primary. In that case, **we** will share with all other insurance by the method described below.

- (1) If all of the other insurance permits contribution by equal shares, **we** will follow this method also. Under this approach, each party shall contribute equal amounts in excess of the applicable Retention until it has paid its applicable limit of insurance/**covered expenses** or none of the loss remains, whichever comes first.
- (2) If any of the other insurance does not permit contribution by equal shares, **we** will contribute by limits. Under this method, each party's share shall be based on the ratio of its applicable limit of insurance to the total applicable limits of coverage of all parties.

#### **E. Assignment**

This agreement and any rights provided by this agreement are not assignable without **our** written consent.

#### **F. Changes**

Changes to the provisions of this agreement shall be made only by written addendum issued by **us** and made a part of this agreement.

#### **G. Reimbursement**

Payments made under this agreement to or on behalf of **you** shall be repaid to **us** by **you** in the event and to the extent that **you** shall not be entitled to such payment.

#### **H. Alternative Dispute Resolution**

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this agreement, whether arising before or after termination of this agreement, including any determination of the amount of **covered expenses**, must first be submitted to the non-binding mediation process as set forth in this clause.

The non-binding mediation will be administered by any mediation facility to which **you** and **we** mutually agree, in which **you** and **we** shall try in good faith to settle the dispute by mediation in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator. The mediator shall have knowledge of the legal, corporate management, insurance or indemnity issues relevant to the matters in dispute. The mediator shall also give due consideration to the general principles of the law of the state where **you** are incorporated in the construction or interpretation of the provisions of this agreement. In the event that such non-binding mediation does not result in a settlement of the subject dispute or difference:

- (1) either party shall have the right to commence a judicial proceeding; or
- (2) either party shall have the right, with all other parties consent, to commence an arbitration proceeding with the AAA that will be submitted to an arbitration panel of three (3) arbitrators as

follows: (a) **you** shall select one (1) arbitrator; (b) **we** shall select one (1) arbitrator; and (c) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the AAA's then prevailing Commercial Arbitration Rules. provided, however, that no such judicial or arbitration proceeding shall be commenced until at least ninety (90) days after the date the non-binding mediation shall be deemed concluded or terminated. Each party shall share equally the expenses of the non-binding mediation.

The non-binding mediation may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or Walnut Creek, California.

#### I. Title of Paragraphs

The titles of the various clauses and paragraphs of this agreement are inserted solely for convenience or reference and are not to be deemed in any way to limit or expand the provisions to which they relate, and are not part of this agreement.

#### J. Cancellation and Non-renewal

There shall be no coverage for any **breach event** or **material interruption** or **security threat** first reported by **you** after the effective date and time of the expiration, cancellation or non-renewal of **your term**.

This agreement may not be canceled by **you** except as otherwise provided in **our customer agreement**.

#### K. Organizational Changes

If during your term:

- (1) **You** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire securities or voting rights which result in ownership or voting control by other entities or persons of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of **your directors**;

(any of such events being a "**transaction**"), then this agreement shall continue in full force and effect as to a **breach event** or **material interruption** occurring on or after the beginning of **your term** and prior to the effective time of the **transaction**; provided that such **breach event** or **material interruption** is first discovered prior to the effective time of the **transaction** and otherwise reported to us during the **notice period** and in accordance with the terms and conditions of this agreement. There shall be no coverage afforded by any provision of this agreement for any **breach event** or **material interruption** that is first discovered, or that occurs, on or after the effective time of the **transaction**, unless (i) within thirty (30) days of such **transaction**, **we** have been provided with full particulars of the **transaction**, the related entities and any other information requested by **us**, and (ii) **you** or **your** successor, has agreed to any additional fees and amendments to this agreement required by **us**.

Post-**transaction** coverage as described above is conditioned upon **you** or **your** its successor paying when due any additional fee required by **us**. This agreement may not be canceled after the effective time of a **transaction** and the entire fee for **our customer agreement** shall be deemed earned as of such time.

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