

RESOLUTION R-62-13

A RESOLUTION AUTHORIZING THE EXECUTION OF A SOFTWARE SERVICE AGREEMENT BETWEEN THE CITY OF WHEATON AND LEXIS/NEXIS CLAIMS SOLUTIONS, INC. FOR eCRASH (Electronic Police Record Portal Services)

WHEREAS, the City of Wheaton, Illinois (the "City") is an Illinois home-rule municipality pursuant to provisions of Article VII, Section 6 of the Illinois Constitution, 1970, and as such the City may exercise any power or perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

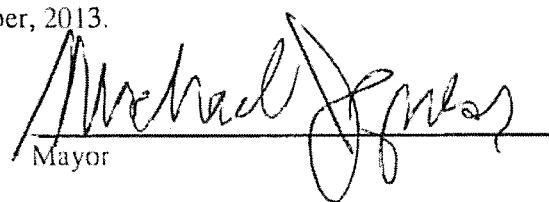
WHEREAS, the Police Department has been using mobile crash reporting software provided by the Illinois Department of Transportation and that support will be discontinued; and

WHEREAS, Police Department staff has identified a suitable, no-cost *Lexis/Nexis eCrash* software as a replacement; and

WHEREAS, the Police Department desires to continue to use mobile crash reporting software and has determined it to be in the best interests of the City and its residents to enter into an agreement with LEXISNEXIS CLAIMS SOLUTIONS, INC.

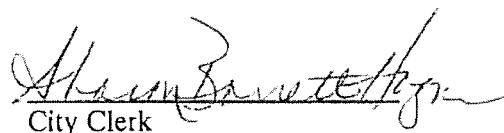
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign the Law Enforcement Agency Information Agreement between the City of Wheaton and LexisNexis Claims Solutions, Inc.

ADOPTED this 3rd day of September, 2013.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Suess
Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilwoman Pacino Sanguinetti
Councilman Scalzo

Nays:

Absent:

None

Councilman Saline

Motion Carried Unanimously

LAW ENFORCEMENT AGENCY INFORMATION AGREEMENT
LexisNexis® eCrash (Electronic Police Record Portal Services)

This LAW ENFORCEMENT AGENCY INFORMATION AGREEMENT ("Agreement") is dated September 3, 2013 ("Effective Date") by and between LexisNexis Claims Solutions Inc. with its principal place of business at 1000 Alderman Drive, Alpharetta, Georgia 30005 ("LexisNexis" or "LN"), and Wheaton Police Department, with an address for the purpose of this Agreement at 900 West Liberty Drive, Wheaton IL 60187 ("Agency"). LexisNexis and Agency may be referred to herein individually as a "Party" and collectively referred to as "Parties".

WITNESSETH

WHEREAS, agencies are police departments, or similar law enforcement entities with responsibility for the documentation, retention, and management of information and reporting related to vehicle accidents within its jurisdiction (each documented incident a "Crash Report" as used herein); and

WHEREAS, LexisNexis, as part of its business, has developed and makes available to police departments and similar law enforcement entities, a comprehensive solution to automate, maintain electronically, and disseminate as mutually agreed and in accordance with applicable laws and regulations, such Crash Reports;

NOW THEREFORE, in consideration of the promises made herein, the Parties agree as follows:

1. PURPOSE. This Agreement, including any incorporated addenda, attachments, and exhibits hereto, sets forth the terms and conditions under which LexisNexis shall provide to and/or on behalf of Agency, services as herein defined and as selected by Agency ("Services")

2. SERVICES. LexisNexis agrees to provide the following Services to Agency subject to the provisions of the below descriptions and this Agreement. Any change to the Services to be provided which occurs after the Effective Date must be made by amendment to this Agreement, signed by both Parties. LexisNexis will provide the following as Agency's functionality allows:

- Establish a communication protocol to electronically or manually transfer Crash Reports in a timely manner from Agency to LexisNexis for processing;
- Store and update, or otherwise maintain as appropriate, both the electronic image of the Crash Reports and the standardized data produced from each Crash Report;
- Process each on-line request from agency-authorized personnel on behalf of Agency or other authorized law-enforcement entity (each an "Agency Requestor"), and return an electronic image of the requested Crash Report at no charge to Agency Requestor, subject to availability of the requested Crash Report in the LexisNexis database repository of reports;
- Upon request and validation of a non-agency/non-law enforcement individual's permissible purpose for its request of a Crash Report from LexisNexis (an "Authorized Requestor"), provide an electronic version of the Crash Report and/or specific data extracted from the Crash Report, subject to the fee structure set forth herein, and subject to the availability of the requested Crash Report in the LexisNexis database repository of reports;
- Install on Agency's mobile data terminals, laptops, or other application-compatible mobile computing devices, the LexisNexis eCrash Application ("eCrash" as herein defined) with the following features:
 - Integrated Diagramming
 - Auto-populate Crash Reports from NCIC
 - Text Speech Voice Response
 - Interface to On-line Report Distribution Portal
 - Other Services
 - Automated distribution of Crash Reports to all devices
 - Web/Browser-based Document Management System
 - Export Interface to State's Centralized Database

3. **DISTRIBUTION**. Except as prohibited by this Agreement or by law, LexisNexis may distribute the Crash Reports and/or data contained therein to any individual or legal entity with proper permissible purpose (including distribution to certain recipients for use in their respective vehicle history reports)

4. **FEES:**

- a. There will be no cost or fee to Agency for LexisNexis to implement the Services as set forth above and selected by Agency, or to provide to an Agency Requestor, copies of Agency's contributed Crash Reports.
- b. Except for electronic versions of Crash Reports requested directly by an "Agency Requestor", which are furnished to the Agency Requestor free of charge, LexisNexis will collect on behalf of Agency and remit to Agency using the process as herein defined, an "Agency Fee" in the amount of \$5.00 for each Crash Report provided by LexisNexis to an Authorized Requestor. On a monthly basis, LexisNexis will electronically transfer to Agency's designated account, the total amount of the applicable Agency Fees collected by LexisNexis during the previous month. In addition, LexisNexis will provide a monthly report to Agency of the number of Crash Reports provided on its behalf.
- c. Where permitted by law, LexisNexis will charge in addition to the applicable Agency Fee for each Crash Report provided to an Authorized Requestor that is not an Agency Requestor, a "Convenience Fee", which shall be retained by LexisNexis. The amount of the Convenience Fee shall be established by LexisNexis at its discretion, but in no event shall exceed the amount a provider may legally charge to an Authorized Requestor.

5. **TERMS AND CONDITIONS**

5.1 **Term.** This Agreement shall commence on the Effective Date and shall continue in force for thirty-six (36) months ("Initial Term") unless earlier terminated as provided herein. Thereafter, the Agreement shall automatically renew for subsequent twelve (12) month periods (each such 12-month period being a "Renewal Term," and the Initial Term and any Renewal Terms together constituting the "Term" of this Agreement), provided however, either Party may elect to terminate this Agreement by providing written notice to the other of such intent, at least sixty (60) days prior to the end of the Initial Term or the applicable Renewal Term.

5.2 **Termination**. Either Party may terminate this Agreement for cause if the other Party breaches a material obligation under the terms of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching party, provided, however, that if such material breach is of a nature that it cannot be cured, immediate termination shall be allowed.

5.3. **Effect of Termination.** Upon termination or expiration of this Agreement, each Party shall be liable for payment to the other Party of all amounts due and payable for Services provided through the effective date of such termination. Upon receipt of Agency's written request after termination, LexisNexis shall provide to Agency, access to those Crash Reports provided to LexisNexis by Agency and Agency may download and/or copy such Crash Reports. LexisNexis shall not be obligated to delete from its databases (or from other storage media) and/or return to Agency, Crash Reports already provided to LexisNexis by Agency, and shall be permitted to continue to maintain and distribute the Crash Reports already in its possession to Authorized Requestors in compliance with applicable laws and regulations.

5.4. **Agency's Limited Usage Rights/Restrictions.** LexisNexis hereby grants to Agency, limited rights to use the Services as herein defined solely for Agency's performance of its legal and permitted obligations. Agency represents and warrants that all of Agency's use of the Services shall be for only its legitimate legal and permitted obligations. Agency further warrants and represents that it will comply with all applicable state, federal, and international laws, statutes, ordinances and regulations regarding Agency's use of the Services, including: (i) compliance with state-specific restrictions in regard to its access and use of Crash Reports and/or police records; and (ii) compliance with permitted rights to obtain and use any information contained in the Services that is "personal information," as defined in the Drivers Privacy Protection Act, (18 U.S.C. § 2721 et seq.) and related state laws (collectively the "DPPA"), and is regulated by the DPPA ("DPPA Data"). Agency acknowledges and agrees that it may be required to certify its permissible use of DPPA Data at the time it requests information in connection with certain Services and will recertify upon request by LexisNexis. Social Security Numbers may be available hereunder as part of Crash Reports and/or related data provided from certain states (five (5) such states as of this writing include Social Security Numbers as part of their data). However, Agency acknowledges that under the Agreement LexisNexis will not provide Social Security Numbers to Agency and, should Agency require Social

Security Numbers in connection with its legal and permitted use of the Services hereunder, Agency should contact **LexisNexis Agency Service at 1-866-215-2771** for assistance. The Services provided pursuant to the Agreement are not provided by "consumer reporting agencies," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) ("FCRA") and do not constitute "consumer reports" as that term is defined in the FCRA. Agency certifies that it will not use any of the information it receives through the Services in connection with any purpose for which a consumer report may be used under the FCRA or any similar state statute, or for commercial solicitation purposes (which use is strictly prohibited).

In addition, Agency shall not: (i) use the Services for marketing purposes or resell or broker the Services to any third party; (ii) use the Services for personal (non-business) purposes; (iii) use the Services to provide data processing services to third parties or evaluate data of or for third parties; (iv) use the Services to create a competing product; (v) create a direct link from another web site to the LexisNexis web site through which the Services are accessed (the "Site"); (vi) harvest, post, transmit, copy, modify, create derivative works from, or distribute anything obtained or downloaded by Agency from the Site; (vii) upload or transmit through the Site any computer viruses, Trojan horses, worms or anything else designed to interfere with, interrupt or disrupt the normal operating procedures of the Site or its end-users; (viii) use any "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process to access, acquire, copy, scrape, or monitor any portion of the Site, or in any way reproduce or circumvent the navigational structure or presentation of the Site, to obtain or attempt to obtain any materials or information through any means not purposefully made available through the Site; (ix) use any device, application, or routine to interfere or attempt to interfere with the proper working of the Site or any transaction being conducted on the Site, or with any person's authorized use of this Site; (x) attempt to gain unauthorized access to any portions of this Site, other accounts, computer systems or networks connected to any of LexisNexis's equipment and/or servers through hacking, password mining or other means; (xi) access the Services from Internet Protocol addresses located outside of the United States and its territories without LexisNexis's prior written approval; or (xii) obtain or attempt to obtain, materials or information through any means not intentionally made available through the Site (collectively, "Agency's Use Restrictions"). Agency's unauthorized modification, tampering or change of any information, or any interference with the availability of or access to the Site is strictly prohibited and LexisNexis may immediately terminate this Agreement in the event such modification, tampering, change or interference occurs.

LexisNexis may, at any time, impose restrictions and/or prohibitions on the Agency's use of the Services or certain data that may be the result of a modification in LexisNexis policy, a modification of third-party agreements, a modification in industry standards, a Security Event or a change in law or regulation, or the interpretation thereof. Upon written notification by LexisNexis of such restrictions, Agency agrees to comply with such restrictions or, in the event that Agency is unable to comply, it shall notify LexisNexis in writing of its inability to comply within ten (10) days after receipt of LN's written notification. In that event, either Party may immediately terminate this Agreement by providing written notice thereof to the other Party without such termination constituting a breach of contract.

5.5. No Intent to Grant a Change in Ownership Other than as provided under this Agreement, neither Party grants to the other Party any additional rights hereunder. Nothing herein shall operate to grant any change or transfer in ownership rights related to a Party's property, data or Intellectual Property. LexisNexis shall be Agency's designated preferred provider of such Services as are mutually agreed to and defined hereunder, related to the handling of Agency's Crash Reports.

5.6. LexisNexis Ownership LexisNexis retains ownership and all Intellectual Property rights in its eCrash application, including but not necessarily limited to: the systems, applications, data schemas, coding processes, data transfer routines, and aggregation routines used to obtain, key, store, reduce to template format, reproduce, make available via web access, and provide to requestors, Agency's Crash Reports and data keyed therefrom (collectively "LexisNexis" eCrash", or "eCrash") Further, LexisNexis retains ownership and all rights in the software and documentation related to the foregoing, as well as the architecture, processes, methods the data contributed by LexisNexis and/or its suppliers for eCrash, and any residuals (technical information, ideas, concepts, and techniques or know-how in an intangible form retained by LexisNexis personnel who develop, install or implement eCrash), ownership of which shall vest exclusively in LexisNexis.

5.7. Confidential Information Confidential information includes all information relating to the disclosing party's business, including, without limitation, technical, business, financial, customer and product information, product development plans, forecasts, strategies and related information, computer programs, source code, technical drawings, algorithms, know-how, processes, ideas, inventions (whether patentable or not), schematics and other information (whether written or oral), to the extent disclosed to the receiving party ("Confidential Information"). "Confidential Information" does not include Crash Reports. Each Party and its Agents shall protect the security, integrity and confidentiality of Confidential Information and shall not permit unauthorized access to, or

unauthorized use, disclosure, publication or dissemination of such Confidential Information. Each Party agrees to hold the Confidential Information of the other Party in strict confidence and to take all reasonable precautions to protect such Confidential Information to the same degree it uses such precautions to protect its own Confidential Information. The obligations of this Agreement with regard to Confidential Information that is not a trade secret under applicable law or personal information shall continue in effect for the Term and for a period of three (3) years after the expiration or termination of the Agreement. The obligations of this Agreement with regard to Confidential Information that is a trade secret under applicable law shall continue in effect for so long as such information constitutes a trade secret under applicable law.

5.8. Security. Agency acknowledges that the information available through the Services may include personally identifiable information, including but not limited to, social security numbers, driver's license numbers or dates of birth ("PII"), and Agency will keep all such PII confidential and secure. Accordingly, Agency shall (a) restrict access to the Services and reports obtained pursuant thereto to those employees who have a need to know as part of their official duties; (b) ensure that none of its employees shall obtain and/or use any information from the Services for personal reasons, or transfer any information received through the Services to any party except as permitted by law and pursuant to the Agreement; (c) keep all user identification numbers, and related passwords, or other security measures (collectively, "User IDs") confidential and prohibit the sharing of User IDs; (d) immediately deactivate the User ID of any employee who no longer has a need to know, or for terminated employees on or prior to the date of termination; (e) take all commercially reasonable measures to prevent unauthorized access to, or use of, the Services or data received therefrom, whether the same is in electronic form or hard copy, by any person or entity; (f) be capable of receiving the Services where the same are provided utilizing "secure socket layer," or such other means of secure transmission as is deemed reasonable by LexisNexis; (g) not access and/or use the Services via mechanical, programmatic, robotic, scripted or other automated search means, other than through batch or machine-to-machine applications approved by LexisNexis; and (h) take all steps to protect their networks and computer environments or those used to access the Services, from compromise.

5.9. Security Event. Agency will implement policies and procedures to prevent unauthorized use of User IDs and the Services and will immediately notify LexisNexis, in writing to: *LexisNexis Privacy, Security and Compliance Organization at 1000 Alderman Drive, Alpharetta, Georgia 30005* and by email to security.investigations@lexisnexis.com, and by phone at (1-888-872-5375), if Agency suspects, has reason to believe or confirms that a User ID or the Services (or data derived directly or indirectly therefrom) is or has been lost, stolen, compromised, misused or used, accessed or acquired in an unauthorized manner or by any unauthorized person, or for any purpose other than Agency's legitimate legal and permitted obligations. Agency shall be solely liable for all costs associated with Agency's failure to prevent such impermissible use or access of User IDs and/or the Services, and any actions required as a result thereof. Furthermore, in the event that the Services provided to the Agency include PII as herein defined, the following shall apply: Agency acknowledges that, upon unauthorized acquisition or access of or to LN-provided PII while under Agency's control, including but not limited to that which is due to use by an unauthorized person or due to unauthorized use (a "Security Event"), Agency shall, in compliance with law and at its own expense, notify the individuals whose information was potentially accessed or acquired that a Security Event has occurred, and shall also notify any other parties (including but not limited to regulatory entities and credit reporting agencies) as may be required in LexisNexis's reasonable discretion. Agency agrees that such notification shall not reference LexisNexis or the product through which the data was provided, nor shall LexisNexis be otherwise identified or referenced in connection with the Security Event, without LexisNexis's express written consent. Agency shall be solely responsible for any other legal or regulatory obligations which may arise under applicable law in connection with such a Security Event and shall bear all costs associated with complying with legal and regulatory obligations in connection therewith. Agency shall remain solely liable for claims that may arise from a Security Event, including, but not limited to, costs for litigation (including attorneys fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Security Event, and to the extent allowable under applicable law, shall indemnify LexisNexis from such claims brought against LexisNexis. Agency shall provide samples of all proposed materials to notify consumers and any third-parties, including regulatory entities, to LexisNexis for review and approval prior to distribution.

5.10. LexisNexis Options. Agency agrees that, if LexisNexis determines or reasonably suspects that: (i) Agency is violating any of Agency's Use Restrictions or other material provision of the Agreement; (ii) Agency is violating any laws or regulations applicable to this Agreement; or (iii) Agency has experienced a Security Event (as herein defined), LexisNexis may, at its sole option, take immediate action up to and including, without limitation and without further obligation or liability of any kind, terminating Agency's account and/or the delivery of, and the license to use, the Services. Further, LexisNexis may at any time cease to provide Agency access to

any Services or portions thereof which LexisNexis may deem, in LexisNexis's sole discretion, to be sensitive or restricted information

5.11. Audit. Agency understands and agrees that, in order to ensure Agency's compliance with the Agreement, as well as with applicable laws, regulations and rules, LexisNexis's obligations under its contracts with its data providers and LexisNexis's internal policies, LexisNexis may conduct periodic reviews of Agency's use of the Services and may, upon reasonable notice, audit Agency's records, processes and procedures related to Agency's use, storage and disposal of the Services and information received therefrom. Agency agrees to cooperate fully with any and all audits and to respond to any such audit inquiry within ten (10) business days, unless an expedited response is required. Violations discovered in any review and/or audit by LexisNexis will be subject to immediate action including, but not limited to, suspension or termination of the license to use the Services, legal action, and/or referral to federal or state regulatory agencies.

5.12. Representations and Warranties. Agency represents and warrants to LexisNexis that (i) Agency is legally authorized and fully empowered to enter into this Agreement and to bind Agency to all obligations and responsibilities hereunder, and (ii) Agency is fully authorized to disclose Agency Crash Reports and related data to LexisNexis in accordance with this Agreement and grant LexisNexis the rights to provide the Services as described herein. In performing their respective obligations under this Agreement, each Party agrees to use any data and provide any services, in strict conformance with applicable laws and regulations, and further, to comply with all applicable binding orders of any court or regulatory entity. Each person signing this Agreement represents and warrants that he or she has the necessary authority to bind the Party named therein to this Agreement (including any Exhibits hereto).

5.13. Limitation of Warranty/Liability. Due to the nature of public record information, the public records and commercially available data sources used in the Services may contain errors and are generally not free from defect, nor are they a comprehensive compilation of the data. FOR PURPOSES OF THIS SECTION, "LEXISNEXIS" INCLUDES LEXISNEXIS AND ITS AFFILIATED, SUBSIDIARY, AND PARENT COMPANIES EXCEPT AS OTHERWISE SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PROVIDED BY APPLICABLE LAW, LEXISNEXIS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE LEXISNEXIS SOLUTIONS AND SERVICES PROVIDED HEREUNDER AND HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

The parties will not incur any liability to each other or to any other party on account of any loss or damage resulting from any delay or failure to perform all or any part of their obligations hereunder (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of the Parties. This Agreement applies to any and all delivery methods used by LexisNexis to provide the Services, including but not limited to: online, batch, XML, assisted searching, machine-to-machine searches, and any other means which may become available and which LexisNexis may utilize in performance of its obligations hereunder.

IN NO EVENT SHALL LEXISNEXIS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LEXISNEXIS ENTIRE LIABILITY SHALL NOT EXCEED \$100.00 (ONE-HUNDRED DOLLARS).

5.14. Indemnification. Solely to the extent permitted under applicable law, each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, and their officers, directors, employees, and Agents (the "Indemnified Parties") against and from any and all losses, liabilities, damages, actions, claims, demands, settlements, judgments, and any other expenses (including reasonable attorneys' fees), which are asserted against the Indemnified Parties by a third party, but only to the extent caused by i) violation of law in the performance of its obligations under this Agreement by the indemnifying party, its Affiliates, or the officers, Agents or employees of such party (the "Indemnifying Parties"); or ii) the gross negligence or willful misconduct of the Indemnifying Parties during the term of this Agreement, provided that the Indemnified Parties notifies the Indemnifying Parties promptly of any claims or suits.

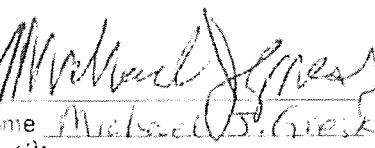
5.15. Miscellaneous. A Party may not assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, LexisNexis may assign its rights and obligations hereunder to a subsidiary Affiliate of LexisNexis, a subcontractor, or to a successor who acquires the business and assets of LexisNexis, provided that entity

agrees to be bound by the terms and conditions of this Agreement. Neither Party will be deemed, by the lapse of time or otherwise, and without giving written notice to the other, to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement. All notices and demands required or permitted under this Agreement shall be in writing and shall be given (i) by actual delivery of the notice into the hands of the Party entitled to receive it, (ii) by mailing such notice by registered or certified mail, return receipt requested, in which case the notice shall be deemed to be given upon signed receipt, (iii) by depositing such notice with any nationally recognized overnight carrier, in which case the notice shall be deemed to be given on the business day after it is so deposited, or (iv) by facsimile with confirmation of transmission and with a copy also sent by first class mail, in which case such notice shall be deemed to be given on the date of the facsimile confirmation. Either Party may change the address or fax number at which it will receive notices by providing written notice to the other party. All notices to a Party shall be addressed to the other party at the address set forth on the first page of this Agreement. If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of this Agreement, legal and enforceable. Notwithstanding, if applicable, any choice of laws provisions, this Agreement shall be deemed to have been executed in and governed by the laws of the State of Illinois.

LexisNexis Claims Solutions Inc.

Signature: 
Printed Name **William S. Madison**
Title: **CEO Insurance Data Solutions**
Date 09/10/2013

Agency:

Signature: 
Printed Name **Michael J. Green**
Title: **Manager**
Date September 3, 2013