



ISRI

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Scrap Recycling
Industries, Inc.

Voice of the Recycling Industry

**SUBMITTED STATEMENT FOR THE RECORD
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ASSISTANT GENERAL COUNSEL
INSTITUTE OF SCRAP RECYCLING INDUSTRIES
WASHINGTON, D.C.**

**BEFORE THE
STATE OF ILLINOIS RECYCLABLE METAL THEFT TASK FORCE
MAY 23, 2016
SPRINGFIELD, ILLINOIS**

Mr. Chairman and Members of the taskforce, my name is Danielle Waterfield and I am here representing the Institute of Scrap Recycling Industries (ISRI). ISRI is the trade association that represents more than 1,600 private, for-profit recycling companies that process, broker and industrially consume scrap commodities including metals, paper, plastics, glass, textiles, rubber and electronics.

Thank you for the opportunity today to share with you some of the industry's efforts to help law enforcement combat metals theft, and to bring to light the serious concerns the industry has with the concept of electronic reporting through the use of private sector for-profit third party enterprises.

First and foremost, I would like to reiterate what law enforcement groups around the country have recognized: with regards to metal theft, scrap recyclers are part of the solution NOT the problem. No legitimate scrap dealer intentionally purchases stolen property. ISRI member companies have gone above and beyond what most businesses would do to address criminal activity impacting them. ISRI is actively working to solve the problem of metal theft by providing member companies and community leaders with resources to face this issue. We're proud of our record on theft prevention, and point to numerous success stories where our theft alert system — the first of its kind — has been used by law enforcement and recyclers to stop criminals attempting to sell stolen goods.

The scrap recycling industry supports reasonable and practical uniform legislation that advances open collaborative communication with law enforcement and victims of metals theft combined with stiff penalties and aggressive prosecution of metal thieves. Without these principles, however, state legislation will be largely ineffective at combating metal theft. Collaborative efforts among all stakeholders coupled with ISRI's *ScrapTheftAlert.com* system have been very effective. ISRI strongly believes that legislation focused in this manner is the best approach towards curbing metals theft.

I. Vital to the Local and National Economy and Environment

Generating \$90 billion in sales annually, the scrap recycling industry is actually larger than the GDP of over 100 countries around the globe. Here at home, scrap recycling employs more than 141,000 employees in the U.S. and has been creating “green jobs” for decades. At a time when the U.S. economy is struggling, scrap recycling is creating secure, meaningful work for the citizens of Illinois. The scrap recycling industry is a positive solution in the state and U.S. manufacturing landscape, providing new jobs based on environmentally sensitive and sustainable business practices.

The vast majority of scrap recycling companies are family owned businesses, often built from “home-grown” operations dependent upon the trust and support of the local citizen population. These family operations contribute significantly to the local and state economy. They have stood with the same towns and cities in Illinois and throughout the country for the past century, creating the backbone of the recycling infrastructure you see in this country today. The scrap recycling industry has provided stable, good-paying jobs in this country during the boom years, the lean years, and in war time. Understandably, we are known as America’s “Original Recyclers” and ISRI proudly wears the badge of the Voice of the Recycling Industry.

As the original recyclers, for decades—and indeed, centuries—the scrap recycling industry has been purchasing, processing, and brokering old materials to be remade into new products, providing critical resources for America’s manufacturing industries. Now, with the growing focus on protecting our natural resources and reducing greenhouse gas emissions, the scrap recycling industry is being recognized as the world’s largest and oldest environmental industry, while playing a prominent role as an economic leader, job creator, major exporter, and environmental steward.

II. Vital Stakeholder in the Community-Wide Effort to Stop Metal Theft

There is no doubt that metal theft has become a problem that hurts both the community and our industry. ISRI and its member companies have been working aggressively over the past few years to help solve the problem of metals theft. Not only have scrap recyclers voluntarily opened their doors and cooperated with law enforcement, the industry has developed effective tools to assist recyclers identify and report suspicious property as it passes through the weigh scales.

Additionally, ISRI encourages efforts to raise the bar evenly by requiring everyone to take their responsibility seriously. This must include the active involvement



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of the industry, law enforcement and victims of metals theft. Furthermore, ISRI supports effective legislative efforts that follow the good business practices recommended by our industry (e.g., requiring photo identification for every retail transaction). This is because recyclers have become the victims of theft from our businesses and attempts by criminals to sell stolen goods. ISRI applauds Co-Chairman Unes for his work to pass HB 5521 which would provide incentive for the prosecution of metals thieves by basing the penalty on the value of the damages left behind from a metals theft. If criminals know there is a likelihood of being prosecuted for a felony as opposed to a petty theft crime, many may stop viewing metal theft as an easy crime of opportunity with little repercussions.

Scrap recyclers have already worked in partnership with community coalitions to create real solutions. Together, we can create workable solutions to prevent theft.

III. Vital Resource for Law Enforcement

Laws that vary widely between differing jurisdictions within Illinois do not reduce metal theft in those individual communities. Such laws simply serve to drive thieves to take the materials to other jurisdictions where laws are less burdensome, making it less likely that the thieves or the materials can be easily identified, and far more difficult for local law enforcement agencies to locate the material. As such, ISRI recognizes the importance of this state task force and its work to find a statewide solution.

A realistic and more practical solution to this problem involves a collaborative effort between law enforcement and scrap recyclers. Scrap recyclers cannot legally take on police duties, but if police alert recyclers to stolen material which they should be on the lookout for, they certainly can work with police to identify the material and the thief trying to sell it. This flow of information is proven to work when scrap recyclers are on alert for particular stolen or suspicious materials, and law enforcement is ready to investigate, arrest *and* prosecute the thief.

A. National Automated Alert System

ISRI proposes that this task force look at directing state and local law enforcement to consider an option that is already operational in the state of Illinois and is available at absolutely NO cost to the state treasury or taxpayers. This system has already been mandated by law in six states by name and in another four states by reference to a system modeled after it. The ISRI *ScrapTheftAlert.com* system is a proven mechanism already being used by some law enforcement entities in the state of Illinois,

and nationwide, to promptly distribute reports of stolen property within a 100 mile radius of the theft. This automated online reporting mechanism is designed to stop metal thieves in their tracks by alerting scrap recyclers of stolen material for which they can be on the lookout and report to police if it comes through their doors.

The ISRI *ScrapTheftAlert.com* system is available to each and every law enforcement agency in the country and to any scrap recycler and public citizen interested in receiving notification of stolen metal. The cost for development and daily operation of this system is completely funded by ISRI and its member companies because we take our responsibility as a stakeholder in the metal theft problem seriously.

The *ScrapTheftAlert.com* system does not involve reporting unnecessary and unrelated personal transactional data but still allows police to gather useful information they might regard as “tips” directly from alert scrap recyclers. The system is designed so that scrap recyclers may also issue “reverse alerts” notifying their local jurisdictions that they might have received suspicious or stolen property. The *ScrapTheftAlert.com* system simplifies and encourages the distribution of information of these occurrences to all stakeholders. These efforts have been praised by local enforcement agencies for assisting in the arrest of numerous suspects.

B. National Outreach and Training Programs

The scrap recycling industry takes its role as part of the solution seriously and launched a comprehensive metals theft law enforcement outreach program several years ago which is directed by a national law enforcement advisory council. The council is comprised of representatives from the International Association of Chiefs of Police, the National Sheriffs Association, prosecutors, state attorneys generals, and the top security officers at some of the most impacted industry stakeholders such as railroads, telecommunications companies, and public utilities. The purpose of the council is to oversee development of tools to combat metals theft for use by law enforcement that are designed by law enforcement.

Combating metals theft requires much more than reviewing transactions on a computer screen. Electronic recordkeeping is state law in Illinois and can prove helpful in investigations, but scrap metal recycling operations do not translate on a computer screen as many pawn shop transactions. One simply cannot look up a person or record in a database and identify a specific stolen item as can be done in the pawn business. An inherent understanding of the business operations of scrap recycling yards is essential along with a collaborative open line of communication between local law enforcement



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and scrap recycling operations. Facilitating this working relationship and understanding is the purpose behind the ISRI law enforcement training program.

In recognition that law enforcement personnel assigned to metals theft crimes in some instances turns over frequently, under the advisement of the law enforcement advisory council, ISRI embarked on designing a training program specifically to assist investigators. This is comprehensive training that is tailored for each locality and incorporates collaborative instruction with local law enforcement, scrap recyclers, and ISRI training personnel. The curriculum includes overview of state and local law, metals identification, operations of a typical scrap recycling yard, and tips on identifying illegitimate operations – sometimes referred to as either rogue or “pop-up” yards – that are not complying with the law.

The training program was developed because ISRI believes it is essential that all stakeholders understand each other’s positions and make honest good faith efforts to respect and cooperate with each other. What seems like a reasonable request to one stakeholder may not be practical to the other. The scrap recycling industry can and should collect and provide data as requested to assist law enforcement with investigations, while not being asked to cross the line into sworn duty activities themselves. Law enforcement needs to understand the nature of the scrap recycling industry and vigorously go after and prosecute the thieves once apprehended. And, while victims cannot be expected to catch the thief who makes off with their property, they can be encouraged to work proactively to safeguard their property.

ISRI extends an invitation to Illinois public officials interested in working with the industry to develop an Illinois-specific training program. This invitation comes with whatever informational tools and resources we have that might assist with preventing metal theft in the state of Illinois. I invite you to review all the resources we have made available to fight metals theft at our website: <http://www.StopMetalsTheft.org>.

IV. Concerns with State Data Collection and Reporting

ISRI recognizes the reporting of scrap metal sales transactions has been considered by some jurisdictions as a useful means to help law enforcement track metal thieves and combat metal theft. However, ISRI and its members are concerned about universal reporting of scrap metal transactions because reporting can be intrusive and subjects the confidential business and personal information of recyclers and their customers to the risk of misuse through a data breach, transfer, sale, or disclosure of the

data. As such, in April 2016, the ISRI Board of Directors adopted a position statement on the subject in order to provide some clarity on these concerns. (see attached)

It is our understanding that this task force is considering pursuing electronic reporting of scrap metal transactions, and as such, I am here today to outline for you the adequate protections that ISRI believes can only be provided if the enacting law specifically addresses them in the statute. Of particular concern to the industry is the government's use of private sector third-party database companies to collect and store the industry's data. There is at least one ISRI member company here today that will present the reality and severity of this matter. It is not my intent or purpose to identify, endorse, or disparage any particular third-party database company. In fact, the ISRI position adopted in April does not support electronic reporting using any vendor for some of the reasons I outline below. But, in recognition that some jurisdictions including the state of Illinois are exploring this idea, my hope is to offer this taskforce some insight on the basis for these concerns and how some other jurisdictions have dealt with the issues.

A. Legal Protections Covering Data Use and Ownership

The aforementioned ISRI position was adopted in direct response to an increasing use of private sector companies to collect and store proprietary and confidential data on behalf of law enforcement. The practice itself is not uncommon in government, but there is an alarming component to this practice when compliance with the law is impeded by additional terms outside the scope of the law independently imposed on the regulated industry by the database company acting as the government's agent. When compliance with a reporting law is made contingent upon the use of any one specific private company acting on behalf of the government, there must be increased scrutiny of that database company's practices.

The problem is that local and state governments nationwide are inadvertently imposing significant contractual obligations onto private citizens under the auspices of electronic reporting laws. Some private database companies acting as agents of government for collection and management of electronic data are taking advantage of their government agent status and reserving unrestricted rights to use the collected data for their own private benefit and forcing indemnification from all liability. They are getting around confidentiality and data ownership laws by requiring regulated businesses to "check a box" before allowing that business to register to report as required by law.

State attorneys general have expressed concern about this matter as well. In November 2015, Mississippi Attorney General Jim Hood published a cybersecurity manual for state attorneys general which included addressing concerns with using third-



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party vendors for data collection. Attorney General Hood is the immediate past president of the National Association of Attorneys General and chairman of the association's cybersecurity committee. Furthermore, Attorney General Hood backed legislation introduced in the state House of Representatives in February 2016 that would have codified the guidance he included in the cybersecurity manual. ISRI can share that language with this task force upon request.

Any electronic reporting law must ensure that any private sector vendor acting as a government agent does not impose additional terms or conditions before providing a means for compliance. In instances where the recycling industry is required to electronically report, the data transmitted is intended only for law enforcement purposes to fight metals theft. The government's agent cannot be allowed to make compliance with the law impossible unless the regulated entity concedes under a proverbial "gun to the head" to enter into a separate contractual relationship with the government's agent – one completely outside the scope of the law. This is exactly what checking "the box" agreeing to a website terms and conditions establishes.

B. Methods to Address the Industry's Concerns

As part of the solution to metals theft, ISRI and its member companies have embarked on several attempts to seek a resolution to this "checkbox" issue that would serve to meet the needs and concerns of both law enforcement and the recycling industry.

Direct reporting to the law enforcement agency or government is the most obvious and easiest solution to address the privacy and data ownership concerns of recyclers. There are several local jurisdictions and states that either own and operate their own databases or have permitted recyclers to transmit electronic records via email or FTP upload directly to the law enforcement agency. In these instances, the data bypasses any third party vendor completely. For example, the chief of police in Louisville, KY is currently accepting data direct from recyclers who have determined they cannot or will not enter into a separate contract with the government agent. The states of Ohio and Alabama operate their own database for recycling transactions, as does the state of New Mexico which has chosen to implement a simple spreadsheet upload process direct into the Department of Regulations systems. This simple method goes to show that a state need not expand significant funds to receive reported data directly thus avoiding expensive third-party database vendor annual contracts.

The recycling industry recognizes that in some jurisdictions there is no desire or ability to operate a database and so we have looked for other alternatives to address our legal concerns. Efforts have included negotiations, legislation, regulatory oversight, and

even the threat of legal action. There are some notable instances in which an acceptable path to resolution has emerged, though the resolution was subjected to significant resistance from third-party vendors acting as the agent for law enforcement.

Initially, ISRI and its member companies sought out separate discussion and negotiations with private sector database companies that are currently servicing both the pawn shop and scrap recycling industries. Unfortunately, when a law provides no alternative but to utilize the government's agent for compliance, the agent holds all the leverage thus eliminating any room for a reasonable negotiation. In fact, the CEO of one database company specifically told ISRI representatives that his lawyers advised that he need not change anything in the company's website terms and conditions.

Not to be deterred, recyclers in the state of Georgia resolved to come up with a solution no matter how long it took to implement. The solution that presented itself this year followed major misinterpretations of the law and its intent, which demonstrates the importance of having specific protections included and specifically described within the statute itself.

In this instance, the Georgia Bureau of Investigations eventually required its selected vendor/agent to remove any requirement for users of the agent's reporting website to agree to website terms and conditions. Unfortunately, it took the enactment of two separate laws over four years, significant political pressure by the governor, legislative leaders, and the head of the agency to make the government's agent to abandon its practice of forcing recyclers into an undesired separate binding legal relationship with the vendor that grants an exclusive, irrevocable, royalty-free, perpetual license to use the data as it wanted. Ultimately, though, this example shows how the governing jurisdiction does have sufficient negotiation strength and position to resolve the issue if it does so explicitly in terms of the statute and/or its contract with the database vendor.

C. Automatic Reporting Creates Additional Problems

Make no mistake, ISRI member companies have absolutely no objection to providing open access for law enforcement to business records upon the showing of probable cause. To go further, ISRI members welcome law enforcement to join them at their yards to monitor daily transactions should law enforcement deem that to be helpful for a specific investigation. But a request for recyclers to electronically report an expansive number of transactional details daily, involving confidential business information and personally identifiable information is not only unreasonable, but likely



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unconstitutional particularly if it could force the company to release control of the use of the data outside the scope of the law.

Dictating daily data dumps on local law enforcement agencies that are not yet prepared to handle, sort or process the data received from scrap dealers may also actually stymie efforts to catch thieves who are skilled at finding the path of least resistance. While searching electronic records may save time over having to search paper copies, electronic data dumps create their own problems. As Detective Chad Batterham of the Peoria Police Department stated at the March 21, 2016 meeting of this task force, even instant access to information can be “daunting to view 80 copper related transactions when ... searching for a specific stolen item.” (See draft minutes from March 21, 2016 task force meeting)

ISRI questions why Illinois law enforcement would choose to seek the proverbial needle in a haystack when scrap recyclers in the state are ready and willing to identify suspicious material and notify the police. And for those yards that do not cooperate, ISRI encourages greater scrutiny of those operations. Despite the recent rash of theft, stolen material makes up an incredibly small percentage of the material that comes to scrap yards each day. Legislation mandating a daily mass data dump of irrelevant data makes little sense, wastefully misdirects scarce law enforcement resources, and certainly does little or nothing to stop metal theft.

While there is no question that the 21st Century is becoming an electronic age offering convenience and efficiency as we move away from paper toward gigabytes, ISRI urges this taskforce to carefully consider the safety of any data required to be reported to police in an electronic manner. Admittedly, the paper file cabinet is soon to be a way of the past. However, there has always been a degree of comfort knowing that personal and confidential information reported to police was safely locked away at police headquarters or other secured official location.

The desired improved efficiency from electronic reporting can only be achieved if individuals and businesses are convinced that the sensitive data they provide is not only protected, but that they have recourse if it is misused. The ISRI policy on electronic reporting adopted in April 2016 (see attached) outlines the safeguards and conditions in which the industry believes are necessary to ensure confidence that the data will not be misappropriated by private database companies or others seeking access to it.

Conclusion

The scrap recycling industry has been and remains committed to working with law enforcement, community leaders, and affected businesses to help effectively combat metal theft. In order for metals theft legislation to achieve its goal, ISRI believes the legislation must first include preventative measures that provide the necessary deterrence and prosecution of the criminal thieves. The industry is eager to participate with law enforcement and urges Illinois law enforcement to use the *ScrapTheftAlert.com* system to alert scrap recyclers of stolen metal. Furthermore, ISRI encourages scrap recyclers as a recommended practice and procedure to provide police with the data they need to investigate, arrest and prosecute metal thieves if the data is adequately safeguarded and protected from misuse or public disclosure.

In the event this task force determines to recommend electronic reporting to the state legislature, ISRI urges that the recommendation also include statutory language that covers the concerns and provisions outlined today in my remarks as presented in the attached ISRI position on electronic reporting.

Thank you again for this opportunity to share my remarks before this task force. ISRI looks forward to working with you and all the stakeholders on this issue.

ISRI Policy on Electronic Reporting

As adopted by the ISRI Board of Directors on April 4, 2016

The Institute of Scrap Recycling Industries (ISRI) recognizes that metals theft is a large problem and works diligently to combat it with a variety of efforts. Reporting of scrap metal sales transactions has been considered by some jurisdictions as a useful means to help law enforcement track metal thieves and combat metal theft. However, ISRI and its members are concerned about universal reporting of scrap metal transactions because reporting can be intrusive and subjects the confidential business and personal information of recyclers and their customers to the risk of misuse through a data breach, transfer, sale, or disclosure of the data.

In the event that a state or local government or other official governing body is contemplating electronic reporting of scrap metal transactions, ISRI believes that adequate protection can only be provided if the law or ordinance adopting the reporting requirements specifically states that -

- Strict confidentiality will be maintained with regard to any data submitted to the data reporting system.
- The recycler cannot be compelled to waive any legal rights or proprietary interests in and to the data as a condition of access to and use of the designated reporting system.
- The data should not be subject to disclosure under applicable state public disclosure laws.
- Any user agreement imposed by the reporting system operator shall:
 - Have strict security, confidentiality and liability provisions for the protection of data providers and their customers that are equal to or greater than those the data contractor agrees to provide in its contract with the government,
 - Indemnify data providers in the case of a data breach, backed by appropriate data protection insurance provided by the data contractor,
 - Ensure that the data provider retains ownership of its data, so that the data contractor may not take ownership of or require data providers to grant the data contractor a license of any kind (except to provide such data to law enforcement or other authorized parties prescribed in the law), and
 - Require that the data contractor give data providers notice if there is a breach or if a subpoena has been issued for the data given by a specific data provider.

Example of a Third-Party Private Sector Database Company's Website Terms & Conditions "Checkbox" Language

** The following is the legally binding contract that the data owner must agree to with the vendor. This checkbox contract releases control of the data to the vendor.

** This is a SEPARATE and DISTINCT contract to which the government is NOT involved, so it does not matter what the vendor tells the government as to how it treats the data.

** A recycling business can NOT complete its registration to electronically report to law enforcement using this vendor without checking the "I AGREE" box on its website.

** When the government specifies in law that data must be reported using this vendor as the government's agent, in order to comply with the law, checking this box is NOT VOLUNTARY.

Business Participation Agreement

In order to utilize Leads' System, You, in your official capacity as an authorized representative of a Reporting Business, must agree to the terms and conditions set forth herein. Please review this Agreement carefully and click "I Agree" at the bottom of this page, so indicating your acceptance and approval of the terms of this Business Participation Agreement ("Agreement").

Scope of Agreement

LeadsOnline and LeadsOnlabs (collectively "Leads") operate and maintain an electronic reporting and criminal investigation system for receiving Data for the use of Law Enforcement Officials in their official duties. Leads acts in the capacity of an agent for such Law Enforcement Agencies for the purpose of collecting, maintaining and disseminating Data.

You own or are the authorized representative of a Reporting Business, and are registering to use Leads System to submit Data for access by Law Enforcement Officials. By completing this Agreement and using Leads' System in any manner, you represent that you are duly authorized by Your Reporting Business to do so.

Subject to the terms of this Agreement and in consideration of the mutual covenants stated below, You and Leads agree as follows:

1. Definitions

1.1 "Data" means all information provided by Reporting Business and Law Enforcement Agencies about transactions, including (but not limited to) the transaction number, item number, product UPC code, quantity and ingredients, make, model, property description, serial number, name, address, identification number, telephone number, date of birth and any images recorded during the course of a transaction according to official request, statutory requirement or otherwise.

1.2 "GLBA" means the Gramm-Leach-Bliley Act of 1999, together with the Privacy Rule and Safeguards Rule promulgated by the U.S. Federal financial institution regulators and the Federal Trade Commission.

1.3 "Law Enforcement Agency" means any agency duly authorized by municipal, state county or federal government to enforce laws or investigate crimes.

1.4 "Law Enforcement Official" means a person employed full time and authorized by a Law Enforcement Agency to, in their official duties, access Data and/or submit Data for official use by Law Enforcement Agencies.

1.5 "Leads' System" is Leads' electronic reporting and criminal investigation system for receiving Data for access by Law Enforcement Officials.

1.6 "Reporting Business" shall mean any entity that records Data regarding (a) the receipt or sale of products regulated by law, including but not limited to the Combat Methamphetamine Act of 2005 and (b) the receipt or other disposition of merchandise or materials, and reports such Data for access by Law Enforcement Officials according to official request, statutory requirement or otherwise.

1.7 "You" and "Your" shall mean you in your official capacity as a duly authorized representative of the Reporting Business associated with your Leads account.

2. Responsibilities of Reporting Businesses

2.1 You agree that the protection of usernames and passwords used to access Leads services and any Data You access or receive via Leads is Your sole responsibility. You agree to maintain such information in a secure manner and to not provide your login credentials to any other person.

2.2 Reporting Business agrees, at a minimum, to follow reasonable instructions and procedures established by law.

3. Responsibilities of Leads

3.1 Leads agrees to operate and maintain Leads' System for the purpose of receiving Data for access only by Law Enforcement Officials.

3.2 Leads agrees to secure Data using administrative, technical and physical safeguards as set forth in applicable law, including GLBA.

3.3 In the event of a security breach of personal information as defined by applicable state and federal law for which Leads is responsible, Leads will notify the individuals affected in compliance with such law(s).

4. Conditions for use of Leads' System

4.1 Leads' System and website, including but not limited to written materials, text, graphics, logos, software, functionality, icons and images are

the exclusive proprietary property of Leads and are protected under the United States Copyright Act (17 U.S.C.), as well as by all applicable state and international copyright laws, and by the Lanham Act (15 U.S.C. §§1051-1141n). You agree to abide by any additional copyright notices, trademarks, information, or restrictions contained in any content on Leads' System and website. Leads' System and website may be used solely for the purposes expressly provided for herein, and no aspect of the Leads' System or website may be used for any other purpose whatsoever. Any other use is unauthorized and will constitute an infringement upon the proprietary rights of Leads. No authority to use any content on Leads' System, website, or any other intellectual or other property of Leads not expressly granted by this Agreement shall be implied.

4.2 You agree to not decompile or otherwise copy or use content on the Leads' System or website or other proprietary information of Leads for purposes of reverse-engineering or reconstruction, and to not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices from any materials you obtain from Leads' System or website.

4.3 You warrant and represent to Leads that: (a) the information you provide to Leads in Your Reporting Business Registration is true and accurate; and (b) that You have the requisite binding authority to enter into this Agreement on behalf of Your Reporting Business.

4.4 Reporting Business is responsible for using devices and browsers equipped with modern cryptography capable of connecting via a secure internet connection.

4.5 Reporting Business is responsible for promptly notifying Leads when a user is no longer employed by Reporting Business or is otherwise no longer authorized to access Leads' System.

4.6 You agree to promptly notify Leads of any conditions that you believe may represent or result from a security incident or vulnerability, including the possible compromise of a user's password. Please send any notifications to privacy@leadsonline.com.

4.7 Leads may modify or upgrade any aspect of Leads' System at any time without notice. Leads will make commercially reasonable efforts to perform such actions in a manner that is not disruptive to Reporting Business.

4.8 Leads uses a number of checks to identify inaccurate or incomplete Data, but cannot and does not make any representations or warranties regarding the accuracy or reliability of Data or other information submitted by Reporting Business and Law Enforcement Agencies.

4.9 Subject to the terms of this Agreement, Reporting Business hereby grants to Leads a perpetual, irrevocable, unrestricted, non-exclusive, royalty free license to use, copy, distribute, display, reproduce, transmit, modify, and otherwise use such Data in accordance with and to the extent allowed by the terms of this Agreement. Also subject to the terms of this Agreement, Reporting Business hereby waives all rights to any claim against Leads for any alleged or actual infringements of any proprietary rights, rights of privacy and publicity, moral rights, ownership rights and rights of attribution in connection with such Data.

4.10 No fiduciary, partnership, joint venture or other extra-contractual relationship is created between Reporting Business and Leads by way of this Agreement.

4.11 Nothing in this Agreement limits or restricts a Law Enforcement Agency from utilizing other means to procure Data or other information from Reporting Business.

5. Disclaimer

5.1 EXCEPT FOR THE REPRESENTATIONS SET FORTH IN SECTION III OF THIS AGREEMENT, LEADS SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS, AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, CUSTOM, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND/OR ANY AND ALL OTHER IMPLIED WARRANTIES AND EXPRESS WARRANTIES (OTHER THAN THOSE SET FORTH HEREIN, IF ANY) WITH RESPECT TO LEADS' SYSTEM. LEADS' SYSTEM, INCLUDING ALL DATA, CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH LEADS' WEBSITE IS PROVIDED, AND ACCEPTED AND/OR USED, "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND.

5.2 IN NO EVENT SHALL LEADS BE LIABLE FOR OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DOWNTIME COSTS, LABOR COST, OVERHEAD COSTS OR CLAIMS OF THE REPORTING BUSINESS, ITS AFFILIATES OR ANY OTHER THIRD PARTY, EVEN IF LEADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AT AN ABSOLUTE MAXIMUM, LEADS LIABILITY SHALL BE LIMITED TO THE AMOUNT OF MONEY IT IS PAID BY YOUR LAW ENFORCEMENT AGENCY.

6. Miscellaneous

6.1 This Agreement will become effective when agreed by You and remain in effect until terminated. This Agreement may be terminated by either You or Leads at any time upon notice to the other party.

6.2 Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, including any act that would be considered force majeure.

6.3 If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other

provisions of this Agreement which can be given effect without the invalid provision, and to this end, such provision is declared to be severable.

6.4 Leads reserves the right to disclose any information in response to an official government request or duly authorized subpoena.

6.5 Any waiver by Leads of a breach of any provision of this Agreement or delay in enforcing any rights shall not be construed as a waiver of any other or future breach.

6.6 Leads reserves the right, at its sole discretion, to change, modify, add or delete any portion of this Agreement, in whole or in part, at any time, if required by local, state or federal law, rule or regulation after reasonable notice.

6.7 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. There are no third-party beneficiaries to this Agreement. The only persons who may enforce or benefit from this Agreement and any rights under this Agreement are You and Leads.

6.8 This Agreement shall be governed by and construed in accordance with the laws of Texas, without regard to conflicts of laws provisions. Sole and exclusive jurisdiction and venue for any action or proceeding arising out of or related to this Agreement shall be an appropriate state or federal court located either in Dallas County or Collin County, Texas.

6.9 Leads may assign all or part of Leads' rights or duties under this Agreement upon 30 days' notice. This Agreement shall be binding upon and inure to the benefit of such assigns or successors.

6.10 This Agreement constitutes the entire agreement between the parties, and shall supersede all prior agreements and understandings, if any, between the parties respecting the subject matter hereof.

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