

InfoSafe Shredding
Mobile Document Destruction
"Protecting Your Privacy"
402-891-2688



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Business Associate Agreement

This Business Associate Agreement ("Agreement"), effective _____, ("Effective Date"), is entered into by and between InfoSafe Shredding, Inc. (the "Business Associate") and _____, (the "Facility").

CITATIONS TO THE CODE OF FEDERAL REGULATIONS SHALL BE READ TO INCLUDE AND REQUIRE ALL SUBSEQUENT, UPDATED, AMENDED OR REVISED PROVISIONS.

DEFINITIONS

Health Care Operations. Health Care Operations shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

Privacy Officer. Privacy Officer shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised. Facility reserves the right to appoint a Privacy Officer of its choosing at any time. The parties acknowledge that the identity of the Privacy Officer may change from time to time both during and after the duration of this Agreement.

Protected Health Information. Protected Health Information (hereinafter "PHI") shall refer to individually identifiable information received from or on behalf of the Facility and relating to the past, present or future physical or mental health of condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Services. The parties acknowledge that Business Associate provides services described as [See appendix A] ("Services") for the Facility that involve the use and disclosure of Protected Health Information. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Business Associate Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only, (i) to its employees, subcontractors and agents, in accordance with Section 2.1(e), (ii) as directed by the Facility, or (iii) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 1.2(b) below.

1.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business

Associate may:

- a. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate, provided that such uses are permitted under applicable state and federal laws and are otherwise consistent with this Agreement.
- b. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Facility, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4), including assurances that the third party will notify the Business Associate of any breaches of the confidentiality of the PHI.

1.3 Additional Activities of Business Associate. In addition to using the PHI to perform the Services set forth in Section 1.1 of this Agreement, Business Associate may:

- a. Aggregate the PHI in its possession with the PHI of other covered entities that the Business Associate has in its possession through its capacity as a business associate to said other covered entities; *provided* that the purpose of such aggregation is to provide the Facility with data analyses relating to the Health Care Operations of the Facility. Under no circumstances may the Business Associate disclose PHI of the Facility to any other entity absent the explicit authorization of the Facility, except as otherwise permitted by this Agreement.
- b. De-identify any and all PHI, provided that the de-identification conforms fully to the requirements of 45 C.F.R. § 164.514(b), and further provided that the Facility maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a written assurance from the Business Associate.

2. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION**

2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- a. Use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise required by law.
- b. Report to the designated Privacy Officer of the Facility, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and to do so within 30 days of the Business Associate's discovery of such unauthorized use and/or disclosure.
- c. Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI that the Business Associate reports to the Facility.
- d. Establish and maintain appropriate safeguards to prevent any unauthorized use or

disclosure of PHI. The Business Associate shall use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI.

- e. Require all of its subcontractors and agents that receive or use, or have access to, PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate under this Agreement, and to inform Facility in advance of any subcontractors or agents receipt or use of PHI. The parties agree that Facility will be deemed a third party beneficiary with rights of enforcement in the event of any violations.
- f. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining the Facility's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
- g. Upon prior written request, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Facility within 30 days for purposes of enabling the Facility to determine the Business Associate's compliance with the terms of this Agreement.
- h. Within 30 days of receiving a written request from the Facility, provide to the Facility such information as is requested by the Facility to permit the Facility to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528.
- i. Subject to Section 5.5 below, return to the Facility or destroy, within 30 days of the termination of this Agreement, the PHI in its possession and retain no copies (which for purposes of this Agreement shall require the destruction of all backup tapes or other media containing PHI as well).
- j. Disclose to its subcontractors, agents or other third parties, and request from the Facility, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- k. Appropriately inform all of its employees, agents, representatives and members of its workforce (including any volunteers), whose services may be used to fulfill obligations under this Agreement, of the terms of this Agreement.

2.2 Responsibilities of the Facility. With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Facility hereby agrees:

- a. To provide the Business Associate with a copy of the Facility's Notice of Privacy Practices, And to inform the Business Associate of any changes in the form of that "Notice of Privacy Practices" (the "Notice") that the Facility provides to individuals pursuant to 45 C.F.R. § 164.520, and provide the Business Associate a copy of the Notice currently in use, if any such changes materially impact Business Associate's obligations under this Agreement.
- b. To inform the Business Associate of any opt-outs exercised by any individual from marketing and/or fundraising activities of the Facility pursuant to 45 C.F.R. § 164.514(e).

- c. To notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Facility under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522.

3. ADDITIONAL RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

3.1 Responsibilities of the Business Associate with Respect to Access and Amendment.

The Business Associate hereby agrees to do the following:

- a. At the request of, and in the time and manner designated by the Facility, provide access to the PHI to the Facility or the individual to whom such PHI relates or his or her authorized representative in order to meet a request by such individual under 45 C.F.R. § 164.524.
- b. At the request of, and in the time and manner designated by the Facility, make any amendment(s) to the Protected Health Information that the Facility directs pursuant to 45 C.F.R. § 164.526.

3.2 Responsibilities of the Facility with Respect to Access and Amendment.

The Facility hereby agrees to do the following:

- a. Notify the Business Associate, in writing, of any Protected Health Information in the possession of the Business Associate that Facility seeks to make available to an individual pursuant to 45 C.F.R. § 164.524 and the time, manner and form in which the Business Associate shall provide such access.
- b. Notify the Business Associate, in writing, of any amendment(s) to the Protected Health Information in the possession of the Business Associate that the Business Associate shall make and inform the Business Associate of the time, form and manner in which such amendment(s) shall be made.

4. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other party:

- a. that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed; that it has as the full power to enter into this Agreement and to perform its obligations hereunder; and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- b. that neither the execution of this Agreement, nor its performance hereunder, will directly or

indirectly violate or interfere with the terms of another agreement to which it is a party. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.

- c. that it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.
- d. that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

5. TERMS AND TERMINATION

5.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 5. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 8.3 herein.

5.2 Termination by the Facility. Facility may immediately terminate this Agreement and any related agreements if the Facility makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Facility may choose to: (i) provide the Business Associate with 30 days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within 30 days, Business Associate must cure said breach to the satisfaction of the Facility within 30 days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement.

5.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under the Business Associate Agreement or this Agreement, or that the Facility has breached a material term of this Agreement, Business Associate may provide thirty (30) days notice of its intention to terminate this Agreement. Business Associate agrees, however, to cooperate with Facility to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as the Business Associate Agreement is in effect.

5.4 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Business Associate Agreement dated _____ between the Parties.

5.5 Effect of Termination. Upon the event of termination pursuant to this Section 5, Business Associate agrees to return or destroy all PHI pursuant to the requirements of 45 C.F.R. § 164.504(e)(2)(I). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said Protected Health Information, the Business Associate will notify the Facility in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Facility and require the subcontractors and agents to

agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

6. **OWNERSHIP OF INFORMATION.**

The parties agree that the PHI and any related information created or received from or on behalf of the Facility is and shall remain the property of the Facility. Business Associate agrees that it acquires no title in or rights to the information, including any de-identified information.

7. **INDEMNIFICATION**

The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Regulation, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder. The Parties' obligation to indemnify any indemnified party shall survive the expiration or termination of this Agreement for any reason.

8. **MISCELLANEOUS**

8.1 **Facility.** For purposes of this Agreement, Facility shall include all entities covered by the joint notice of information practices (or privacy notice), which includes all their locations and business units.

8.2 **Survival.** The respective rights and obligations of Business Associate and Facility under the provisions of Sections 3, 5.5, 7.2, 8, and Section 2.1 (with respect to Protected Health Information Business Associate retains in accordance with Section 5.5 because it is not feasible to return or destroy such Protected Health Information), shall survive termination of this Agreement indefinitely.

8.3 **Amendments; Waiver.** This Agreement may not be modified nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

8.4 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.5 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Attention: _____
Fax: _____

If to Facility, to:

Attention:
Privacy Officer
Phone:
Fax:

8.8 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of _____, 2013

InfoSafe Shredding, Inc.

BUSINESS ASSOCIATE

By:

By:

Print Name:

Print Name:

Print Title:

Print Title:

Date:

Date:

Appendix "A"

Description of Business Associate service being performed:

