



# BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into by and between \_\_\_\_\_ (“Covered Entity”) and KARD Shredding (“Business Associate”) to set forth the terms and conditions under which protected health information (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Regulations enacted hereunder (HIPAA); the Health Information Technology for Economic and Clinical Health (HITECH) Act, Public Law 111-5, Division A, Title XIII, Subpart D, Regulations enacted hereunder; and as defined in 42 CFR Pt. 2 alcohol and chemical dependency, if applicable, created or received by Business Associate on behalf of Covered Entity may be used or disclosed.

## Definitions

### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules as amended: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Business Associate].
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Covered Entity].
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
4. HITECH Act. “HITECH Act” shall mean Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of the American Recovery and Reinvestment Act of 2009.

This Agreement shall commence on the later of the dates shown in the signatures below and the obligations herein shall continue in effect so long as Business Associate uses, discloses, creates, or otherwise possesses any PHI created or received on behalf of Covered Entity and until all PHI created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity pursuant to Paragraph 21 herein.

Business Associate agrees to maintain the security of Covered Entity’s PHI according to the policies and procedures described herein. However, if it is determined that Business Associate is not a Business Associate pursuant to 45 CFR Part 160 and Part 164, Business Associate shall not have strict liability for civil penalties or monetary settlements pursuant to 45 CFR Part 160

1. Covered Entity and Business Associate hereby agree that Business Associate shall be permitted to use and/or disclose PHI created or received on behalf of Covered Entity for the following purpose(s):
  - A. **Confidential and secure destruction of Covered Entity’s business records, including printed or stored electronically.**
2. Business Associate acknowledges Business Associate is required by law to comply with the HIPAA Security Rule (45 CFR Part 164, Subpart C), the use and disclosure provisions of the HIPAA Privacy Rule (45 CFR §§ 164.502,



# BUSINESS ASSOCIATE AGREEMENT

- 164.504), and the Breach Notification Rule (45 CFR Part 164, Subpart D).
3. Business Associate shall, in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
  4. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with the minimum necessary provisions of the HIPAA Privacy Rule, 45 CFR § 164.502(b).
  5. Business Associate fully understands Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
  6. Business Associate may use and disclose PHI created or received by Business Associate on behalf of Covered Entity, if necessary, for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that any disclosure is:
    - A. Required by law; or
    - B. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  7. Business Associate fully understands Business Associate is required to maintain the security and privacy of all PHI in a manner consistent with state and federal laws and regulations, including HIPAA, the HITECH Act, (42 CFR Pt. 2) *{if applicable}* and all other applicable law.
  8. Business Associate fully understands Business Associate cannot use or disclose PHI except as expressly permitted by this Agreement, applicable law, or for the purpose of managing Business Associate's own internal business processes consistent with Paragraph 2 herein.
  9. Business Associate shall not disclose PHI to any member of its workforce unless Business Associate has advised such person of Business Associate's privacy and security obligations under this Agreement, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violations of this Agreement and applicable law pursuant to Business Associate's sanctions policy.
  10. Business Associate fully understands Business Associate is prohibited from disclosing PHI created or received by Business Associate on behalf of Covered Entity to a person, including any agent or subcontractor of Business Associate but not including a member of Business Associate's own workforce, until such person agrees in writing to be bound by the provisions of this Agreement and applicable state or federal law.
  11. Business Associate agrees to use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of electronic or non-electronic PHI not permitted by this Agreement or applicable law.
  12. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information as prohibited by 45 CFR § 164.502(a)(5)(ii).
  13. Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 45 CFR §§ 164.501 and 164.508(a)(3).



# BUSINESS ASSOCIATE AGREEMENT

14. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited 45 CFR § 164.514(f).
15. Business Associate will report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any security incident of which it becomes aware and involving Covered Entity PHI used and disclosed by business associate within five (5) days from the date the it becomes aware of the breach or, having exercised due care, would have become aware.
16. In the event of a breach of PHI, Business Associate shall provide Covered Entity a report consistent with 45 CFR Part 164, Subpart D. Pursuant to 45 CFR Part 164, Subpart D, the report shall include individual(s) name, contact information, nature/cause of the breach, PHI breached, date or period during which the breach occurred, steps taken to mitigate any potential harm, and controls that will be implemented to reasonably prevent similar breaches of PHI. Business Associate understands that such a report must be provided to Covered Entity within five (5) business days from the date of discovery of the breach or, having exercised due care, the date on which the breach would have been known to have occurred. Business Associate shall be responsible for all expenses associated with a breach of unsecure PHI.
17. Business Associate agrees to maintain a record of its disclosures of PHI, including disclosures not made for the purposes of this Agreement consistent with 45 CFR § 164.504(e). Such record shall include the date of the disclosure, the name and, if known, the address of the recipient of the PHI, the name of the individual who is the subject of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to Covered Entity within thirty (30) days of a request and shall include disclosures made on or after the date which is six (6) years prior to the request as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528.
18. Within thirty (30) days of a written request by Covered Entity, Business Associate shall allow an individual who is the subject of PHI, such individual's legal representative, or Covered Entity to view and to copy such individual's designated record set maintained by Business Associate pursuant to 45 CFR § 164.504(e) as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.524. Business Associate shall provide PHI in the format requested by such person, legal representative, or Covered Entity unless it is not readily producible in such format, in which case it shall be produced in standard hard copy format or .pdf format if the PHI is stored electronically.
19. Business Associate shall make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR §§ 164.504(e) and 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526.
20. Business Associate shall take all necessary steps, at the request of Covered Entity, to comply with requests by Individuals not to send Protected Health Information to a Health Plan in accordance with 45 CFR § 164.522(a).
21. Business Associate shall maintain and make available the information required to provide an accounting of disclosures to individual as necessary to satisfy covered entity's obligations under 45 CFR 164.528.
22. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E of 45 C.F.R. Part 164 that apply to the Covered Entity in the performance of such obligation(s).
23. Business Associates agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity,



# BUSINESS ASSOCIATE AGREEMENT

available to the Secretary of the United States Department of Health and Human Services, for purposes of determining compliance with HIPAA and the HITECH Act.

24. The Term of this Agreement shall be effective as of the date of later signing below and shall terminate on the same date as any Contract, Service Agreement, or Memorandum of Understanding with Covered Entity terminates or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
25. Covered Entity may immediately terminate this Agreement and related contracts if Covered Entity determines that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to: (i) provide Business Associate with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Covered Entity within ten (10) days. Business Associate's failure to cure shall be grounds for immediate termination of this Agreement. Covered Entity's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
26. If circumstances exist that prevent immediate contract termination with Business Associate, Covered Entity shall require Business Associate adopt practice that would result in limiting similar risks in the future and report the violation to the Secretary of the US Department of Health and Human Services.
27. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
  - A. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - B. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;
  - C. Continue to use appropriate safeguards and comply with CFR Part 160 and 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Agreement, for as long as Business Associate retains the protected health information;
28. Each Party shall immediately notify the Other Party (the "Indemnifying Party") of any third-party claim against itself, its officers, directors, employees and agents (each an "Indemnified Party") allegedly resulting from any unauthorized use or disclosure of PHI by the Indemnifying Party or its employees', or agents' acts or omissions in violation of applicable law or this Agreement (each a "PHI Breach Claim"). The selection of counsel, the conduct of the defense of any lawsuit and any settlement shall be within the sole control of the Indemnifying Party. The Indemnifying Party shall, at its sole cost and expense: (i) defend the Indemnified Parties from and against such PHI Breach Claim, and (ii) indemnify and hold the Indemnified Parties harmless from any damages or expenses (including attorney's fees) actually and finally awarded against an Indemnified Party for a PHI Breach Claim, or any settlement of a PHI Breach Claim made in lieu of further litigation. This provision shall survive the expiration or termination of this Agreement for any reason.
29. This Agreement may be amended or modified only in a writing signed by authorized representatives of both Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.



# BUSINESS ASSOCIATE AGREEMENT

- 30. This Agreement shall be governed by the laws of the State of Wisconsin. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. The Parties agree that, if any documentation of the arrangement pursuant to which Business Associate provides Services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate’s use and disclosure of Protected Health Information. This Agreement, together with the Services Agreement, constitutes the entire agreement of the Parties relating to Business Associate’s use or disclosure of Protected Health Information
  
- 31. The terms of this Agreement to the extent they are unclear, shall be construed to allow for compliance by Covered Entity with the HIPAA Rules. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event Covered Entity believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Rules, Covered Entity shall notify Business Associate in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the requirements of the HIPAA Rules, then Covered Entity has the right to terminate upon written notice to the Business Associate.
  
- 32. If a provision of this Agreement is or becomes illegal, invalid, or unenforceable in any jurisdiction, that shall not affect:
  - A. The validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - B. The validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

For and by

_____	—	<b>KARD Shredding “BUSINESS ASSOCIATE”</b>
“COVERED ENTITY”		
_____		_____
_____		_____
_____		_____
Date		Date