

# Confidential Document Destruction Agreement

This Confidential Document Destruction Agreement (the "Agreement") is entered into as of this 15<sup>th</sup> day of March, 2010 ("Effective Date") by and between Security Assured Mobile Document Destruction, Inc. having its principal place of business in Decatur, Texas ("Company") and Wise County, a governmental entity in the State of Texas. ("Customer").

## 1. SERVICES

### 1.1 Services to be Provided

Company will provide the services for the secure mobile destruction of confidential paper and plastic products including, but not limited to, correspondence, letters, medical records, interoffice memos, outer office memos, legal documents, blueprints, drawings, designs, financial/bank data and statements, checks, videotapes, R&D information, customer and personnel files, personnel and payroll records, marketing strategies, electronic media, CD diskettes, microfiche, microfilm, and pictures, at Customer's various location(s).

("Services") described on Exhibit A attached hereto and made a part thereof. Company will furnish a Certificate of Destruction to Customer, upon request by Customer, or Customer's representative, at each of Customer's locations. The Services may be performed as part of a regularly scheduled semi-monthly or monthly pickup, a semi-yearly or yearly "file purge", or pursuant to specific directions which Customer shall give Company, and Company shall accept, from time to time as either is designated on Exhibit A. Customer may also request Custom Services not set forth on Exhibit A, in which case Company will consult with Customer as to the terms and conditions including, without limitation, the applicable fees of the Services requested.

### 1.2 Services to Other Locations, Affiliates and Subsidiaries.

Customer's various locations may also obtain Services pursuant to this Agreement. Company shall invoice Customer directly for any Services rendered to each of Customer's locations, without specific prior written permission of Customer, unless otherwise agreed by the parties. For purposes of this Agreement, "Other Locations" shall refer to the various departmental offices and their locations directly related to Customer and Customer's operations.

## 2. RESPONSIBILITIES

### 2.1 Right to Rely on Instructions.

Company may act in reliance on any instruction, instrument, or signature reasonably believed by Company to be genuine and may assume that any of Customer's supervisory employees or any employee of Customer's locations giving any written notice, request, or instruction has the authority to do so.

## **2.2 Compliance with Contracts, Laws and Regulations.**

Customer shall be solely responsible for, and warrant compliance with, all contractual restrictions and all applicable laws, rules and regulations, including but not limited to environmental laws and contractual restrictions and laws governing the confidentiality, retention and disposition of information contained in any materials delivered to Company for destruction. Company shall comply with applicable laws, statutes, regulations and ordinances.

## **2.3 Cooperation and Assistance.**

Customer shall cooperate with Company with regard to the performance of the Services, subject to normal security requirements and in a manner that is not unnecessarily disruptive to Customer's business operations, by providing to Company such information, data, access to premises, management decisions and approvals as may be reasonable to permit Company to perform the Services hereunder.

## **2.4 Hazardous Substances.**

Customer shall not deliver to Company any substances, chemicals, materials or pollutants (whether solid, liquid or gaseous and including, without limitation, any oil, gasoline, petroleum or petroleum by-products) deemed to be toxic or hazardous or the manufacture, storage, transport or disposal of which is regulated, governed, restricted or prohibited by any environmental laws

## **2.5 Performance of Services.**

All Services will be performed in a professional manner in accordance with the policies and procedures described in Exhibit A as well as in compliance with applicable laws and regulations. To the extent that Company and Customer also enter into Business Services Agreement pursuant to HIPAA, a Gramm-Leach-Bliley Agreement or similar agreement and any terms of such agreement conflict with terms in this Agreement, the terms of this agreement shall prevail. Any such additional agreements shall be attached to this Agreement as Exhibit C.

## **2.6 Material Descriptions.**

Itemized lists or descriptions of contents of materials submitted by the Customer to the Company shall be generally considered for recordkeeping, reconciliation, and reference purposes only, and are not to be considered proof that said documents contained on such lists and descriptions are in fact contained in the materials accepted. Company may make provision at its discretion and with advance written notice for validation of such document contents in advance and under special terms and fees at the request of the Customer.

## **3. FEES AND PAYMENTS**

All standard charges for Services under this Agreement shall be as specified on Exhibit A. The prices set forth in Exhibit A shall remain in effect for the first twelve (12) months of this Agreement. Thereafter, price adjustments may be made by Company only after thirty (30) days' prior written notice. For any

service requested by Customer that is not listed on Exhibit A, the charges will be as agreed to in writing by Customer and Company prior to the rendering of such Service. Invoices shall be due and payable within thirty (30) days of the applicable invoice date.

#### **4. TERM AND TERMINATION**

##### **4.1 Term.**

This Agreement shall commence on the Effective Date set forth above and, unless otherwise terminated in accordance with Section 5.2, shall continue in effect for one year. At the end of the initial term, if the parties agree, they may then renew the agreement annually for up to four (4) one (1) year terms with a thirty day (30) notice of the intent to renew.

##### **4.2 Non Appropriations Clause**

If, for any fiscal year, the County fails to appropriate funds in amounts sufficient to perform its obligations under this Agreement, the County shall promptly give notice of the nonappropriation of funds. The County shall make a reasonable effort to ensure that funds are appropriated to fully carry out its obligations as set forth in this Agreement. The County shall endeavor to provide thirty (30) days notice of its intent not to appropriate the necessary funds for its performance of obligations under this Agreement.

##### **4.3 Termination.**

Either party may terminate this Agreement if the other is in material or repeated breach of any of its obligations hereunder and the breaching party has not cured the breach within thirty (30) days after written notice from the non-breaching party.

Either party may terminate this Agreement without cause, providing written notice is given by the terminating party to the other party with 60 (Sixty) days advance notice.

In the event of any such termination, all amounts due for Services rendered up to the effective date of termination shall immediately become due and payable. Upon termination, Customer shall return (or permit Company to retrieve) all Company bins and consoles and other property kept at Customer's site, and Company shall have no obligation to provide further Services to Customer.

#### **5. LIABILITY AND WARRANTY**

##### **5.1 Limitation of Liability.**

Company shall not be responsible or liable in any manner whatsoever for the release or loss of any materials deposited in bins or otherwise delivered to it for secure destruction unless the release or loss is due to Company's gross negligence or willful misconduct. Company's maximum liability for any and all claims arising with respect to the Services provided under this Agreement shall not exceed the aggregate amounts paid by Customer with respect to the Services provided at the particular Customer location during the six (6) months preceding the event which gives rise to a claim. In no event shall

Company be liable for any consequential, incidental, special or punitive damages, regardless of whether the action is brought in tort, contract or any other theory.

## **5.2 Ownership Warranty.**

Customer warrants that it is the owner, legal custodian or otherwise has the right to deliver for confidential destruction any and all materials Customer provides Company hereunder.

## **6. MISCELLANEOUS**

### **6.1 Notices.**

All notices hereunder shall be in writing and addressed to either party at its principal place of business or to such other address as either party may specify by notice given in accordance with this Section. Notices to Company shall be sent to the attention of James G. Popp, Jr., Post Office Box 1864, Decatur, Texas 76234. Notice to the Customer shall be sent attention of County Judge, Post Office Box 393, Decatur, Texas 76234.

### **6.2 Binding Nature and Assignment.**

This Agreement shall be binding on the parties and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

### **6.3 Force Majeure.**

Company shall be excused from any delay or failure in performance under this Agreement for any period if and to the extent that such delay or failure is caused by acts of God, governmental actions, labor unrest, riots, unusual traffic delays or other causes beyond its control.

### **6.4 Relationship of Parties.**

Company is acting as an independent contractor hereunder and has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by Company under this Agreement.

### **6.5 Entire Agreement.**

This Agreement constitutes the entire agreement between Company and Customer with respect to the subject matter of this Agreement. No change, waiver, or discharge of this Agreement shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. Except as provided in Section 3, this Agreement may be amended only by an amendment in writing signed by Customer and Company.

**6.6 Invalidity.**

If any provision of this Agreement is declared invalid by any tribunal of competent jurisdiction, then such provision shall automatically be adjusted to the minimum extent necessary to the requirements for validity as declared at such time and as so adjusted shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though such provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in effect.

**6.7 Exclusivity.**

Customer agrees to retain Company on an exclusive basis at all locations covered by this Agreement for the term of this Agreement.

**6.8 Governing Law/Venue.**

This Agreement shall be construed according to the laws of the State of Texas. Further, the parties agree that the exclusive venue for any action against Company shall be the court of competent jurisdiction, Wise County, Texas.

IN WITNESS WHEREOF, each of the parties have caused this Agreement to be executed by its duly authorized representative as of the Effective Date first set forth above.

**CUSTOMER –Wise County**

By: *Eric McWhaney*  
Title: County Judge Date: 03/15/10

**COMPANY- Security Assured Mobile Document Destruction, Inc.**

By: *James B. [Signature]*  
Title: President Date: 03-15-10

## **Confidential Document Destruction Agreement, Exhibit "A"**

### **Pursuant to Section 1 of the Confidential Document Destruction Agreement, Company will**

- a- Come to Customer's business location(s) with the mobile document destruction equipment and with Customer's employee observing, shred and destroy at Customer's various location(s), all documents and other paperwork provided to Company at that time by Customer or Customer's representative. Company will never leave Customer's location before all documents provided to Company by Customer or Customer's representative each time have been completely shredded.
- b- Company will adhere to an agreed upon schedule for Customer's confidential document destruction, as per Customer's requirements and requests from Customer's various locations. This Confidential Document Destruction for Customer will be completed by Company by what is generally known as a "file purge" on a semi-yearly or yearly basis, with a time and date for each location that will be established in advance between Company and each individual Customer location.
- c- Company will also adhere to an agreed upon schedule, when requested, for monthly or semi-monthly pickup and destruction of confidential documents at certain locations of Customer, with those locations advising Company that they desire this type of service in advance.
- d- At locations of Customer where semi-monthly or monthly pickup by Company is requested for document destruction, Company will furnish to those locations a locked service bin or console, at no cost to Customer or Customer's location, to deposit confidential documents in, in between Company's semi-monthly or monthly service calls to those locations of Customer. Only one representative of Customer at each location of Customer desiring this type of service will be given a key to these locked service bins or consoles. Company, or Company representative, will retain the second key for use in servicing Customer's document destruction needs at these locations, per the prearranged schedule for pickup and document destruction.
- e- Company will retain sole ownership of any and all service bins and consoles furnished to Customer, at any of Customer's locations, and have the right to remove all of these service bins or consoles from Customer's locations upon termination of the "Agreement", as stated in Section 5.2 of the "Agreement".
- f- Company will charge Customer for "File Purges" at any of Customer's locations, based on the following pricing criteria. There will be a basic service charge of \$79.00 (Seventy Nine Dollars) for each file purge, at each of Customer's locations, plus a charge of \$4.00 (Four Dollars) per letter file box of files or paperwork to be destroyed. Legal size boxes of documents to be destroyed will be at the rate of \$5.00 (Five Dollars) per box. When the total number of either size of box, or the combined number of total boxes, reaches 21 (Twenty One) boxes, in any one file purge operation, or any one location, the price will then drop to \$2.50 ( Two Dollars and Fifty Cents) per box for letter size boxes and \$3.50 ( Three Dollars and Fifty Cents) for legal size boxes, and those reduced prices will then apply to all boxes of documents shredded in that particular "File Purge" at that location of Customer.
- g- Company will charge Customer locations for semi-monthly, or monthly, scheduled service calls based on the following criteria. Company will charge Customer's location \$45.00 (Forty-Five

Dollars) for the first service bin or console at a particular location and \$15.00 (Fifteen Dollars) for the second bin or console at any one location, up to ten consoles or bins at one particular location. If there are over ten service bins or consoles at any one particular location of Customer, the price for each service bin or console then drops to \$15.00 (Fifteen Dollars) per service bin or console for ALL service bins or consoles at that location and the initial \$45.00 service bin or console charge is then eliminated.

- h- A charge of 4% (Four Percent) of Customer's total service invoice for each location serviced will be added to all service invoices for semi-monthly or monthly service as a fuel surcharge.
- i- All applicable Sales Taxes will also be added to each service invoice submitted to Customer.

Customer Representative Initials *DMC* Date *03/15/10*  
Company Representative Initials *JGJ* Date *3-15-10*

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective March 15, 2010 by and between WISE COUNTY ("Covered Entity") and its "Business Associates".

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## RECITALS

WHEREAS, Wise County has an employee health plan ("Plan") for the benefit of its officials, employees, and their dependents, and handles Protected Health Information for Emergency medical, indigent and veterans services, and

WHEREAS, Wise County is a Covered Entity for the purpose of the privacy provisions of Health Insurance Portability and Accountability Act of 1996 ("HIPPA") and the Privacy Rule promulgated by the United States Department of Health and Human Services; and

WHEREAS, Business Associate and Wise County have entered into an agreement ("the Service Agreement"), pursuant to which Business Associate performs functions that assist Wise County in the destruction of documents and

WHEREAS, the Privacy Rule requires that there be an agreement between covered entities and business associates that governs the use and disclosure of Protected Health Information;

NOW THEREFORE, in consideration of the beneficial relationship enjoyed by the parties pursuant to the Service Agreement, the parties agree as follows:

## BUSINESS ASSOCIATE AGREEMENT

### Part I

#### Definitions

Terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the Privacy Rule.

Examples of specific definitions:

1.1 Business Associate. "Business Associate" shall mean Security-Assured Mobile Document Destruction Inc.

1.2 Covered Entity. "Covered Entity" Shall mean **Wise County**.

1.3 Individual. "Individual" shall have the same meaning as the term "individual" in 4 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.4 Designated Record Set. Shall mean the set of records used to make decisions about an individual that relate to : 1) medical information or billing records provided by a health care provider; or 2) the enrollment, payment, claims, adjudication, and case or medical management

maintained by or for a health plan. This includes the group of records used or maintained by a health care clearinghouse.

**1.4 Privacy Rule.** "Privacy Rule" shall mean the standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

**1.5 Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

**1.6 Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

**1.7 Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

## **Part II**

### **Obligations and Activities of Business Associate**

**2.1** Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

**2.2** Business Associate Agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

**2.3** Business Associate agrees to mitigate, to the extent practicable, and harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

**2.4** Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

**2.5** Business Associate agrees to ensure that any agent, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

**2.6** Business Associate agrees to provide and individual prompt and reasonable access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set in its possession or control, except Protected Health Information excluded from disclosure by 45 CFR § 164.524 (a)(1)(i),(ii),(iii), to Covered Entity or , as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR § 164.524.

**2.7** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and Further agrees to do so within 30 days.

**2.8** Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purpose of the Secretary determining Covered Entity's compliance the Privacy Rule.

**2.9** Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 § CFR 164.528.

**2.10** Business Associate agrees to provide, within 30 days, to Covered Entity or an Individual, as directed by Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit

Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.11 Business Associate agrees to take such other feasible actions as are necessary to allow Covered Entity to comply with the Privacy Rule as it pertains to the operation governed by the Service Agreement.

### **Part III**

#### **Obligations of Covered Entity**

3.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

3.2 Covered Entity shall notify Business Associate of any Changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such change may affect Business Associate's use or disclosure of Protected Health Information.

3.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

### **Part IV**

#### **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

### **Part V**

#### **Terms and Termination**

5.1 Term. The Term of this Agreement shall be effective as of March 15, 2010. This agreement shall terminate when the Service Agreement with the Business Associate expires or the below provision (5.2 Termination for Cause) is necessary and all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

5.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either: 1) Provide an opportunity for Business Associate to cure the breach and terminate this Agreement and the Service Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; 2) immediately terminate this agreement if Business Associate has Breached a material term of this Agreement and cure is not possible; or 3) if neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

5.3 Effect of Termination. Except as provided below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of

subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If covered Entity agrees that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

### **Part VI**

#### **Miscellaneous Provisions**

6.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

6.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. However, any amendments must be in writing and signed by both Parties.

6.3 Survival. The respective rights and obligations of Business Associate under Section 5.3 of the Agreement shall survive the termination of this Agreement.

6.4 Interpretation. Any ambiguity in this agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.


IN WITNESS WHEREOF, the parties have executed this Agreement to take effect on the Effective date.

**COUNTY**

By: 

Date: 03/15/10

**BUSINESS ASSOCIATE**

By: 

Date: 3-15-10