

SETTLEMENT AGREEMENT

PARTIES

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States General Services Administration ("GSA") (collectively the "United States"); Shred-it USA, Inc. ("Shred-it"); and Douglas Knisely ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

PREAMBLE

A. Shred-it is a Delaware corporation. Commencing in 2001, Shred-it has provided Document Destruction services ("Destruction Services") to agencies of the United States under Multiple Award Schedule Contract No. GS-25F-0011M with the GSA.

B. On March 18, 2010, Relator filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned *United States ex rel. Knisely v. Shred-it et al.*, No. 10-CV-1193, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3729, et seq. (the "Civil Action"). On March 12, 2012, the United States filed its Notice of Election to Decline Intervention in the Civil Action. Relator, on his behalf and on behalf of the United States, elected to proceed with the Civil Action, pursuant to the provisions of the False Claims Act, 31 U.S.C. § 3730(e)(3).

C. Relator contends that from October 2001 until December 2011, Shred-it failed to shred government documents to the size specified by Special Item Number 51-507 (Destruction Services), as required by Contract No. GS-25F-0011M. Relator further contends that Shred-it submitted invoices to the United States that were false because the invoices claimed payment for shredding documents that were not shredded to the shred size specified by Special Item Number 51-

507 (Destruction Services), as required by Contract No. GS-25F-0011M. Relator further contends that Shred-it submitted to the United States inaccurate Certificates of Destruction certifying that Shred-it had shredded government documents to the shred size specified by Special Item Number 51-507 (Destruction Services), as required by Contract No. GS-25F-0011M. This conduct is hereafter referred to as the "Covered Conduct."

D. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

E. Shred-It expressly denies the claims in the Civil Action, and expressly denies that Shred-It engaged in any wrongdoing or fault in connection with the Civil Action and/or Covered Conduct. Nothing in this Agreement, any obligation herein, or the fact of this settlement shall constitute, be construed to be, or be understood as an admission that Shred-It violated or breached any law, regulation, obligation or contract, or has engaged in any wrongdoing, nor as an admission that Relator's claims are not well-founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows.

TERMS AND CONDITIONS

1. Shred-it shall pay to the United States Three Hundred Thousand Dollars (\$300,000) (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania no later than ten (10) calendar days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from Shred-it and as soon as feasible after receipt, the United States shall pay \$78,750 to Relator as his share of the Settlement Amount, pursuant to 31 U.S.C. § 3730(d), by electronic funds transfer pursuant to written instructions provided to the government by Relator's counsel. Shred-it and Relator have reached a separate agreement regarding: (1) Relator's reasonable attorneys' fees, expenses and costs as provided for by 31 U.S.C. § 3730(d) and (2) claims the Relator may have against Shred-it under the Lanham Act.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Shred-it's full payment of the Settlement Amount, the United States releases Shred-it together with its predecessors, successors, assigns, subsidiaries, affiliates, divisions, parent or sister companies, and current and former directors, officers, and owners from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-09; or the common law theories of payment by mistake, breach of contract, unjust enrichment, misrepresentation, disgorgement, and fraud.

4. In consideration of the obligations undertaken by Defendants in this Agreement and conditioned upon Shred-it's full payment of the Settlement Amount to the United States, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Shred-it and any of its predecessors, successors, assigns, subsidiaries, affiliates, divisions, parent or sister companies, agents, and current and former directors, officers, and owners from any and all claims he has or may have under the *qui tam* provisions of the False Claims Act for the Covered

Conduct, including the claims asserted on behalf of the United States in the Civil Action, or pertaining to the filing thereof.

5. Notwithstanding the releases given in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Except as explicitly stated in this Agreement, any liability of individuals; and,
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement, but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the

Civil Action or under 31 U.S.C. § 3730, and from any claim to a share of the proceeds of this Agreement and/or the Civil Action.

7. Shred-it waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Shred-it, and its successors, agents, and assigns, fully and finally release the United States, its agencies, officers, employees, servants, and agents, as well as Relator, his agents, assigns and counsel, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Shred-it, or its successors, agents, and assigns, have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants, and agents, and/or Relator, his agents, assigns and counsel, related to the Covered Conduct and the United States' and/or Relator's investigation and prosecution thereof.

9. This Agreement is intended to be for the benefit of the Parties only.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Shred-it, and its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Shred-it's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Shred-it makes to the United States pursuant to this Agreement and any payments that Shred-it may make to Relator, including any costs and attorney's fees.

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Shred-it, and Shred-it shall not charge Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Shred-it shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Shred-it or any of its subsidiaries or affiliates from the United States. Shred-it agrees that the United States, at a minimum, shall be entitled to recoup from Shred-it any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States,

including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Shred-it's books and records and to disagree with any calculations submitted by Shred-it or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Shred-it, or the effect of any such Unallowable Costs on the amount of such payments.

11. Shred-it warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(1), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Shred-it, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Shred-it was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. Upon receipt of the payments described in Paragraph 1, above, the Parties shall, within five (5) days, sign and file in the Civil Action a Joint Stipulation of Dismissal pursuant to Rule 41(a)(1) with prejudice to the Relator, with prejudice to the United States as to claims for the Covered Conduct, and without prejudice to the United States as to any other claims.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as may be

provided by the separate agreement between Relator and Shred-it that is referenced in Paragraph 2.

14. Each Party and signatory to this Agreement represents that it is freely and voluntarily entered into without any degree of duress or compulsion.

15. Relator represents that prior to his execution of this Agreement, he has consulted with his attorneys and that he is satisfied with their advice and representation in this matter.

16. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

17. This Agreement constitutes the complete agreement between the Parties as pertaining to the matters described herein. This Agreement may not be amended except by written consent of the Parties.

18. The individuals signing this Agreement on behalf of Shred-it and Relator represent and warrant that they are authorized by Shred-it and Relator, respectively, to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Such counterparts may be electronic copies of physical documents, including but not limited to facsimiles, pdf images, .tiff images, and other, similar electronic formats.

20. This Agreement is binding on Shred-it's successors, transferees, heirs, and assigns

21. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

22. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date").

(Continued on next page)

THE UNITED STATES OF AMERICA

DATED: 4-11-13 BY: 
ZANE DAVID MEMINGER
United States Attorney

DATED: 4-10-13 BY: 
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division


DATED: 4-10-13 BY: 
THOMAS JOHNSON
Assistant United States Attorney

DATED: 4-11-13 BY: 
GREGORY PEARSOZ
Trial Attorney
Civil Division, U.S. Department of Justice

SHRED-IT USA, INC.

DATED: *April 4, 2013*

SHRED-IT USA, INC.



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DATED: *April 8, 2013*



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Counsel for Shred-it USA, Inc.

DOUGLAS KNISELY, RELATOR

DATED: 9/6/13



DOUGLAS KNISELY
Relator

DATED: 9/11/13


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DATED: 9/16/13


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