



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: June 16, 2021

Purpose:  Presentation/Report  Recognition  Discussion/ Possible Action

Closed/Executive Session  Work Session  Discussion Only  Consent

From: Dr. Marc Puig, Superintendent

Item Title: Year Two Renewal for SWBC District Insurance Consultant

Description: The Board approved SWBC as the district insurance consultant on June 17, 2020. The agreement states for an initial term of two (2) years, with option to renew for one (1), two (2) year term if agreeable to both parties. This item is being brought to the Board for year two renewal as per procurement processes.

Historical Data: The District solicited responses to RFP 2020-06 Insurance Consulting Services.

Recommendation: Renew Year Two SWBC agreement.

District Goal/Strategy:

Strategy 1 We will engage all school community members through transparency and effective communication to promote a positive perception and create a strong brand.

Funding Budget Code and Amount:

APPROVED BY:

SIGNATURE

DATE

Chief Officer:

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CFO Funding Approval:

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Superintendent:

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## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is made this 2nd day of July, 2020, by and among South San Antonio Independent School District (hereinafter known as "Covered Entity") and SWBC Life Insurance Agency, Inc., a Texas corporation (hereinafter known as "Business Associate"). Covered Entity and Business Associate shall collectively be known herein as "the Parties."

### **RECITALS**

**WHEREAS**, Covered Entity is in the business of providing services involving the use and/or disclosure of Protected Health Information;

**WHEREAS**, Business Associate is in the business of providing human resources consulting services;

**WHEREAS**, Covered Entity wishes to commence a business relationship with Business Associate that shall be memorialized in a separate services agreement;

**WHEREAS**, the U.S. Department of Health and Human Services ("HHS") has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities, including health plans (the "HIPAA Privacy Rule");

**WHEREAS**, the HIPAA Privacy Rule requires that Covered Entity enter into this Agreement with Business Associate in order to protect the privacy of individually identifiable health information maintained by Covered Entity ("Protected Health Information" or "PHI");

**WHEREAS**, Business Associate and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their duties to Covered Entity;

**WHEREAS**, Covered Entity and Business Associate have or may have a prior business relationship under which the Business Associate performs or assists Covered Entity in the performance of a function or activity involving the use and/or disclosure of PHI ("Underlying Agreement");

**WHEREAS**, the nature of the prospective contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), including all pertinent regulations issued by the Department of Health and Human Services ("HHS");

**WHEREAS**, Covered Entity and Business Associate intend to protect the privacy and provide for the security of Protected Health Information disclosed to or by Covered Entity in compliance with HIPAA and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

**WHEREAS**, as part of the HIPAA Regulations, the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Parts 160 and 164 requires the parties to enter into a contract containing specific requirements prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained in this Agreement, the Parties agree as follows:

**ARTICLE I**  
**Definitions**

1. Breach. "Breach" has the same meaning as this term has in §13400 of the Health Information Technology for Economic and Clinical Health act of 2009 ("HITECH Act").
2. Business Associate. "Business Associate" shall mean a person or entity who, on behalf of a covered entity or an organized health care arrangement, performs or assists in the performance of one of the following:
  - a. A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management and repricing.
  - b. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services for such covered entity or organized health care arrangement.
3. Covered Entity. "Covered Entity" shall mean an employer for which each of the parties hereto provide or may provide services involving the use and/or disclosure of Protected Health Information.
4. Designated Record Set. "Designated Record Set" has the same meaning as this term has in 45 CFR §164.501, which includes , but not limited to, a group of records maintained by or for a Covered Entity that is: (i) medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
5. Individual. "Individual" has the same meaning as this term has in 45 CFR §164.501.
6. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information as described at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act.
7. Protected Health Information. "Protected Health Information" (or "PHI") has the same meaning as this term has in 45 CFR §160.103 (as amended by the HITECH Act), limited to the information created or received by Business Associate from or on behalf of Covered Entity.
8. Required by Law. "Required by Law" has the same meaning as this term has in 45 CFR §164.501.
9. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designate.
10. Security Standards. "Security Standards" means the security standards for protection of PHI promulgated by the Secretary in Title 45 of the Code of Federal Regulations.

11. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall mean Protected Health Information (PHI) that is not secured through the use of a technology or methodology specified by the Secretary in regulations or as otherwise defined in §13402(h) of the HITECH Act.
12. Any prospective amendment to the laws referenced in this definitional section prospectively amend this Agreement to incorporate said changes by Congressional act or by regulation of the Secretary.

**ARTICLE II**  
**Obligations and Activities of Business Associate**

1. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
2. Business Associate agrees to employ administrative, physical, and technical safeguards meeting required Security Standards for Business Associates as Required by Law to prevent disclosure or use of PHI other than as permitted by this Agreement.
3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI held by Business Associate in violation of the requirements of this Agreement.
4. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
5. If a breach of unsecured PHI occurs at or by Business Associate, the Business Associate must notify Covered Entity following the discovery of the breach without unreasonable delay and, in all cases, no later than 60 days from the discovery of the breach. To the extent possible, the Business Associate should provide the Covered Entity with identification of each individual affected by the breach as well as any information required to be provided by the Covered Entity in its notification to affected individuals. Business Associates shall comply with all regulations issued by IIHS and applicable state agencies regarding breach notification to Covered Entity.
6. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI 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 PHI.
7. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees pursuant to 45 CFR §164.524.
8. Business Associate agrees to make any amendment(s) to PHI 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, in a commercially reasonable manner.
9. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associated on behalf of Covered Entity available to Covered Entity or to the Secretary (including official representatives of the Secretary) in a commercially reasonable manner for purposes of determining Covered Entity's compliance with the Privacy Rule.

10. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
11. Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with 45 CFR §164.528.
12. Business Associate agrees to provide to Covered Entity or an Individual, in a commercially reasonable manner, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

**ARTICLE III**  
**Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI as follows:

1. On behalf of Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**ARTICLE IV**  
**Obligations of Covered Entity**

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 PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI.
4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Nothing in this paragraph shall restrict the ability of Business Associate to use or disclose PHI as set forth in paragraph III.2. herein.

**ARTICLE V**  
**Remedies in Event of Breach**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in Sections II or III of this Agreement. As such, in the event of breach of any of the covenants and assurances contained in II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or IV. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity shall be entitled to reimbursement and indemnification from Business Associate for the Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of the Business Associate's breach. The remedies contained in this paragraph shall be in addition to (and not supersede) any action for damages and/or any other remedy the Covered Entity may have for breach of any part of this Agreement.

**ARTICLE VI**  
**Term and Termination**

1. Term of Agreement. The term of this Agreement shall be effective as of the date given at the top of this Agreement and shall terminate when all of the PHI 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, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.
2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
  - c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
3. Effect of Termination.
  - a. Upon termination of this Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification to Covered Entity that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**ARTICLE VII**  
**Confidentiality**

1. Confidential Information. Either party hereto ("Owner") may disclose to the other party hereto ("Recipient") certain information pursuant to this Agreement that Owner deems to be proprietary, confidential or trade secret ("Confidential Information"). Recipient understands and acknowledges that Owner's Confidential Information is valuable and not generally known by Owner's competitors and includes, but is not limited to: the identity of parties involved in and the nature of business relationships (including the parties involved in this Agreement); business strategic, product or financial information; customer lists and activities; documentation; and any and all information concerning Owner's current, future or proposed products.

The obligation of confidentiality shall not apply to any part of the Confidential Information that is or was:

- a. in the public domain at the time of such disclosure or subsequently came into the public domain through no fault or action of Recipient or any party who received the Confidential Information from or through Recipient; or
  - b. rightfully known to Recipient or parties receiving such information prior to its receipt; or
  - c. lawfully received by Recipient as a matter of right, without a binder of confidentiality from a source other than Provider, which source has lawful possession thereof; or
  - d. independently developed by Recipient without reliance upon or use of Provider's Confidential Information.
2. Nondisclosure. The parties agree that the provision of Confidential Information to Recipient is not in any way intended by Owner, and shall not be deemed to be, a public disclosure, public use or otherwise a publication of that information. The Confidential Information will be used solely for the purpose of evaluating the feasibility of entering into a business relationship between the parties, and not in any way directly or indirectly detrimental to Owner. Recipient shall keep confidential the Confidential Information and prevent (a) the disclosure of any Confidential Information received from Owner; (b) the disclosure of documents that are prepared by Recipient based on confidential information received from Owner; and (c) the disclosure of information received orally from Owner that is designated proprietary and confidential by Owner; to any other person, firm or corporation, except as expressly permitted in Section 1 hereof, and shall use the same degree of care to avoid disclosure of such information as Recipient employs with respect to its own proprietary and confidential information of the highest level of importance, but in no event less than reasonable care.

In the event the Confidential Information is a customer list or other confidential customer information, Recipient also agrees that during the term of this Agreement it will not use such information to compete with Owner or use it for any other purpose other than the purposes contemplated by this Agreement without Owner's prior written consent. The Confidential Information shall be and remain the confidential, proprietary and trade secret property of Owner.

Nothing in this Article VII shall be construed to limit, in any manner whatsoever, Business Associate's obligations with respect to PHI as such obligations are set forth elsewhere in this Agreement.

**ARTICLE VIII**  
**Miscellaneous Terms**

1. Applicable Law. This Agreement shall be governed by the laws of the State of Texas without reference to the conflict of law provisions thereof.
2. Modification. This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. 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, as amended.
3. Notices. Any notice required under this Agreement shall be made in writing as follows:

Notice to Covered Entity:

South San Antonio Independent School District  
Attn: Jeff Baum, Deputy Superintendent for Business and Operations  
1450 Gillette Blvd  
San Antonio, TX 78224  
Phone (210) 977-7000

Notice to Business Associate:

SWBC Life Insurance Agency, Inc.  
Attn: General Counsel  
9300 San Pedro, Suite 600  
San Antonio, TX 78216  
Facsimile (210) 525-9938

4. Entire Agreement. This Agreement and any and all addenda, schedules, and exhibits attached hereto represent the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understanding of the parties in connection herewith. There are no representations, warranties, covenants, conditions, agreements, understandings, or arrangements, oral or written, between or among the parties relating to the subject matter hereof with or not fully expressed herein. No agent of any party is authorized to make any representation, promise or warranty not contained in this Agreement.
5. Severability. If any provision or term of this Agreement, not being of a fundamental nature, is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement will not be affected.
6. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and its signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.



## Consulting Services Agreement

This Consulting Services Agreement, dated effective 6/18/2020 (this "Agreement"), is made and entered into by and among **South San Antonio Independent School District (the "Client")** and **SWBC Life Insurance Agency, Inc. ("SWBC")**.

### ARTICLE 1 SCOPE OF WORK

**1.1 Services.** The Client has engaged SWBC as an employee benefit consultant. SWBC will provide consulting services which include the review, analysis, and recommendations for the Client and such other services as described below and in any Statement of Work (SOW), attached as Exhibit A (collectively, the "consulting services").

**1.2 Time and Availability.** SWBC will devote such time as required to perform the services for the Client as stated herein. SWBC estimates that the required time to perform the services will be hours, but that estimate may change based upon information and requests made by Client. SWBC shall have discretion in selecting the dates and times it performs such consulting services throughout the engagement giving due regard to the needs of the Client's business.

**1.3 Standard of Conduct.** In rendering consulting services under this Agreement, SWBC shall conform to high professional standards of work and business ethics. SWBC shall not use time, materials, or equipment of the Client without the prior written consent of the Client. In no event shall SWBC take any action or accept any assistance or engage in any activity that would result in any person, entity or organization acquiring any rights of any nature in the results of work performed by or for the Client.

**1.4 Subcontractors.** SWBC may cause another person or entity, as a subcontractor of SWBC, to provide some of the services required to be performed by SWBC hereunder

**1.5 Reports.** SWBC shall provide the Client with a final written report of its observations and conclusions regarding the consulting services. Upon the termination of this Agreement, SWBC shall, upon the request of Client, prepare a final report of SWBC's activities within 30 days.

**1.6 No Practice of Law.** SWBC will not be obligated to perform and the Client will not request performance of any services which may constitute unauthorized practice of law. The Client will be solely responsible for obtaining any legal advice, review or opinion as may be necessary regarding applicable State and Federal laws and regulations, including, but not limited to, ERISA, the Internal Revenue Code, State and Federal securities laws and implementing regulations and, to the extent that the Client has foreign operations, any applicable foreign laws and regulations.

**1.7 Not a Fiduciary.** By reason of this Agreement, SWBC is NOT a Fiduciary under the Employee Retirement Income Security Act, as amended (ERISA). To the extent that one or more of the Client's employee benefit plans are subject to ERISA, and in spite of any other provision of this Agreement to the contrary, the parties agree and acknowledge that:

1.7.1 SWBC's services under this Agreement are not intended in any way to impose on SWBC or any of its affiliates a fiduciary status under ERISA); and

1.7.2 This Agreement does not provide SWBC, and the Client will not cause or permit SWBC to assume without prior written consent of SWBC, any:

1.7.2 a Discretionary authority or discretionary control respecting management of any "employee benefit plan" within the meaning of Section 3(3) of ERISA (an "ERISA Plan");

1.7.2.b Authority or control respecting management or disposition of the assets of any ERISA plan; or

1.7.2.c Discretionary authority or discretionary responsibility in the administration of any ERISA Plan.

## ARTICLE 2 INDEPENDENT CONTRACTOR

**2.1 Independent Contractor.** SWBC is an independent contractor and is not an employee, partner, or co-venturer of, or in any other service relationship with, the Client. The manner in which SWBC's services are rendered shall be within SWBC's sole control and discretion. SWBC is not authorized to speak for, represent, or obligate the Client in any manner without the prior express written authorization from an officer of the Client.

**2.2 Taxes.** SWBC shall be responsible for all taxes arising from compensation and other amounts paid under this Agreement, and shall be responsible for all payroll taxes and fringe benefits of SWBC's employees. Neither federal, nor state, nor local income tax, nor payroll tax of any kind, shall be withheld or paid by the Client on behalf of SWBC or his/her employees. SWBC understands that he/she is responsible to pay, according to law, SWBC's taxes and SWBC shall, when requested by the Client, properly document to the Client that any and all federal and state taxes have been paid.

**2.3 Benefits.** SWBC and SWBC's employees will not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan of the Client. No workers' compensation insurance shall be obtained by Client covering SWBC or SWBC's employees.

## ARTICLE 3 COMPENSATION FOR CONSULTING SERVICES

**3.1** These fees are noted in Exhibit B (Compensation Disclosure Statement).

**3.2** In the event an insurance company cancels or refuses to renew an insurance coverage that had been placed by SWBC on behalf of the Client, SWBC will use its best efforts to obtain appropriate replacement coverage from another insurance company.

## ARTICLE 4 TERM AND TERMINATION

**4.1 Term.** The Effective Date of this Agreement is June 18, 2020. The term of SWBC's engagement under this Agreement (the: "Consulting Period") began as of the Effective Date and will remain in effect for one (2) year from the Effective Date. The Consulting Period will be automatically extended for one (1) additional year on each anniversary of the Effective Date.

**4.2 Termination.** Either party may terminate this Agreement by giving written notice of termination to the other party at least sixty (60) days prior to the anniversary of the Effective Date. Either party may terminate this Agreement for "Cause," after giving the other party written notice of the reason and opportunity to cure. Cause means a material breach of this Agreement, and the breach continues for 30 days following receipt of a notice of breach. Termination of this Agreement shall terminate all outstanding SOWs or Orders between SWBC and Client unless otherwise agreed. Termination shall not affect Clients obligations to pay for Services rendered prior to the effective date of any such termination.

**4.3 Survival.** The provisions of Articles 5, 6, 7, and 8 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

## ARTICLE 5 CONFIDENTIAL INFORMATION

**5.1 Obligation of Confidentiality.** In performing consulting services under this Agreement, either party ("Disclosing Party" may be disclose to the other party hereto ("Receiving Party") certain information pursuant to this Agreement that the Disclosing Party deems to be proprietary, confidential, or trade secret ("Confidential Information"). Receiving Party agrees that it will not and its employees, agents, or representatives will not use or disclose, directly or indirectly, Confidential Information for the benefit of any person, entity, or organization other than the Disclosing Party, without the written authorization of the Disclosing Party, either during or after the term of this Agreement, for as long as such information remains Confidential Information.

**5.2 Definition.** "Confidential Information" means information not generally known and proprietary to the Disclosing Party or to a third party for whom the Disclosing Party is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, pricing, research and development, proprietary software, analysis, techniques, materials, or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the Disclosing Party, any vendor names, customer and supplier lists, databases, management systems and sales and marketing plans of the Disclosing Party, any confidential secret development or research work of the Disclosing Party, or any other confidential information or proprietary aspects of the business of the Disclosing Party. All information which Receiving Party acquires or becomes acquainted with during the period of this Agreement, whether developed by Disclosing Party or by others, which Receiving Party has a reasonable basis to believe to be

Confidential Information, or which is treated by the Disclosing Party as being Confidential Information, shall be presumed to be Confidential Information.

**5.3 Property of the Client.** The parties agree that all plans, manuals, and specific materials developed by SWBC on behalf of the Client in connection with services rendered under this Agreement, are and shall remain the exclusive property of the Client. Promptly upon the expiration or termination of this Agreement, or upon the request of the Client, SWBC shall return to the Client all documents and tangible items, including samples, provided to SWBC or created by SWBC for use in connection with services to be rendered hereunder, including, without limitation, all of Client's Confidential Information, together with all copies and abstracts thereof.

**5.4 Business Associate Agreement.** Where the parties determine that a Business Associate Agreement as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the HITECH Act of 2009, the parties will enter into a separate Business Associate Agreement.

## **ARTICLE 6 INDEMNIFICATION RIGHTS AND LIMITATION OF LIABILITY**

**6.1 Indemnification.** Each party ("Indemnifying Party") will promptly defend, indemnify and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses or damages which the Indemnified Party may incur as a result of any violation by the indemnifying party or any law, or any loss or expenses to the Indemnified Party caused by misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this Agreement.

**6.2 Limitation of Liability.** In no event shall either party's aggregate liability arising out of or related to this agreement, whether in contract, tort or under any other theory of liability, exceed an amount equal to the amount paid by customer hereunder in the 12 months immediately preceding the incident. Notwithstanding the foregoing, the limitations set forth in this section shall not apply to claims arising out of a breach of Articles 3 or 5.

## **ARTICLE 7 NON-SOLICITATION**

The parties covenant and agree that during the term of this Agreement, neither party will, directly or indirectly, through an existing corporation, unincorporated business, affiliated party, successor employer, or otherwise, solicit, hire for employment or work with, on a part-time, consulting, advising, or any other basis, any employee or independent contractor employed by the other party during the term of this Agreement or for one (1) year following termination of this Agreement.

## **ARTICLE 8 RIGHT TO INJUNCTIVE RELIEF**

The parties acknowledge that the terms of Articles 5 and 6 of this Agreement are reasonably necessary to protect the legitimate interests of the parties, are reasonable in scope and duration, and

are not unduly restrictive. The parties further acknowledge that a breach of any of the terms of Articles 5 or 6 of this Agreement will render irreparable harm to the other party, and that a remedy at law for breach of the Agreement is inadequate, and that the aggrieved party shall therefore be entitled to seek any and all equitable relief, including, but not limited to, injunctive relief, and to any other remedy that may be available under any applicable law or agreement between the parties. The parties acknowledge that an award of damages to the aggrieved party does not preclude a court from ordering injunctive relief. Both damages and injunctive relief shall be proper modes of relief and are not to be considered as alternative remedies.

## **ARTICLE 9 NOTICES**

Any notices, request and other communication pursuant to this Agreement will be in writing and will be deemed to have been duly given, if delivered in person or by courier or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Client:           South San Antonio Independent School District  
  Attention: Superintendent  
  5622 Ray Ellison Blvd.  
  San Antonio, Texas 78242

If to SWBC:                 SWBC Life Insurance Agency, Inc.  
  Attention: Andrew Grove, SVP  
  9311 San Pedro Avenue, Suite 600  
  San Antonio, Texas 78216

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

## **ARTICLE 10 GENERAL PROVISIONS**

**10.1 Severability.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

**10.2 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of Texas.

**10.3 Complete Agreement.** This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.

**10.4 Dispute Resolution.** If there is any dispute or controversy between the parties arising out of or relating to this Agreement, the parties agree that such dispute or controversy will be arbitrated in accordance with proceedings under Commercial Arbitration Rules promulgated by the American Arbitration Association (“AAA”), and such arbitration will be the exclusive dispute resolution method under this Agreement. It is not required that the arbitration take place before AAA if the parties agree otherwise. The decision and award determined by such arbitration will be final and binding upon both parties. All costs and expenses, including reasonable attorney’s fees and expert’s fees, of all parties incurred in any dispute that is determined and/or settled by arbitration pursuant to this Agreement will be borne by the party determined to be liable in respect of such dispute; provided, however, that if complete liability is not assessed against only one party, the parties will share the total costs in proportion to their respective amounts of liability so determined. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement until the dispute is resolved.

**10.5 Modification.** No modification, termination, or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

**10.6 Waiver of Breach.** The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.

**10.7 Successors and Assigns.** This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that the Agreement shall be assignable without consent in the event the either SWBC or Client is acquired by or merged into another corporation or business entity. The benefits and obligations of this Agreement shall be binding upon and inure to the parties hereto, their successors and assigns.

**10.8 No Conflict.** SWBC warrants that SWBC has not previously assumed any obligations inconsistent with those undertaken by SWBC under this Agreement.

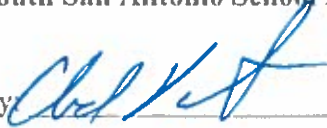
**10.9 Survival of Provisions.** Sections will survive termination of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

South San Antonio School District

SWBC Life Insurance Agency, Inc.

By:



By:



Its:

*Director of Purchases*

Its:

*Senior V.P. of Sales & Market Development*





# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made this 17 day of July, 2020, by and among **South San Antonio Independent School District** (hereinafter known as “Covered Entity”) and **SWBC Life Insurance Agency, Inc.**, a Texas corporation (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as “the Parties.”

## RECITALS

**WHEREAS**, Covered Entity is in the business of providing services involving the use and/or disclosure of Protected Health Information;

**WHEREAS**, Business Associate is in the business of providing human resources consulting services;

**WHEREAS**, Covered Entity wishes to commence a business relationship with Business Associate that shall be memorialized in a separate services agreement;

**WHEREAS**, the U.S. Department of Health and Human Services (“HHS”) has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities, including health plans (the “HIPAA Privacy Rule”);

**WHEREAS**, the HIPAA Privacy Rule requires that Covered Entity enter into this Agreement with Business Associate in order to protect the privacy of individually identifiable health information maintained by Covered Entity (“Protected Health Information” or “PHI”);

**WHEREAS**, Business Associate and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their duties to Covered Entity;

**WHEREAS**, Covered Entity and Business Associate have or may have a prior business relationship under which the Business Associate performs or assists Covered Entity in the performance of a function or activity involving the use and/or disclosure of PHI (“Underlying Agreement”);

**WHEREAS**, the nature of the prospective contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”), including all pertinent regulations issued by the Department of Health and Human Services (“HHS”);

**WHEREAS**, Covered Entity and Business Associate intend to protect the privacy and provide for the security of Protected Health Information disclosed to or by Covered Entity in compliance with HIPAA and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws; and

**WHEREAS**, as part of the HIPAA Regulations, the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Parts 160 and 164 requires the parties to enter into a contract containing specific requirements prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained in this Agreement, the Parties agree as follows:

## ARTICLE I Definitions

1. Breach. “Breach” has the same meaning as this term has in §13400 of the Health Information Technology for Economic and Clinical Health act of 2009 (“HITECH Act”).
2. Business Associate. “Business Associate” shall mean a person or entity who, on behalf of a covered entity or an organized health care arrangement, performs or assists in the performance of one of the following:
  - a. A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management and repricing.
  - b. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services for such covered entity or organized health care arrangement.
3. Covered Entity. “Covered Entity” shall mean an employer for which each of the parties hereto provide or may provide services involving the use and/or disclosure of Protected Health Information.
4. Designated Record Set. “Designated Record Set” has the same meaning as this term has in 45 CFR §164.501, which includes , but not limited to, a group of records maintained by or for a Covered Entity that is: (i) medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
5. Individual. “Individual” has the same meaning as this term has in 45 CFR §164.501.
6. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information as described at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act.
7. Protected Health Information. “Protected Health Information” (or “PHI”) has the same meaning as this term has in 45 CFR §160.103 (as amended by the HITECH Act), limited to the information created or received by Business Associate from or on behalf of Covered Entity.
8. Required by Law. “Required by Law” has the same meaning as this term has in 45 CFR §164.501.
9. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designate.
10. Security Standards. “Security Standards” means the security standards for protection of PHI promulgated by the Secretary in Title 45 of the Code of Federal Regulations.

11. Unsecured Protected Health Information. “Unsecured Protected Health Information” shall mean Protected Health Information (PHI) that is not secured through the use of a technology or methodology specified by the Secretary in regulations or as otherwise defined in §13402(h) of the HITECH Act.
12. Any prospective amendment to the laws referenced in this definitional section prospectively amend this Agreement to incorporate said changes by Congressional act or by regulation of the Secretary.

**ARTICLE II**  
**Obligations and Activities of Business Associate**

1. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
2. Business Associate agrees to employ administrative, physical, and technical safeguards meeting required Security Standards for Business Associates as Required by Law to prevent disclosure or use of PHI other than as permitted by this Agreement.
3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI held by Business Associate in violation of the requirements of this Agreement.
4. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
5. If a breach of unsecured PHI occurs at or by Business Associate, the Business Associate must notify Covered Entity following the discovery of the breach without unreasonable delay and, in all cases, no later than 60 days from the discovery of the breach. To the extent possible, the Business Associate should provide the Covered Entity with identification of each individual affected by the breach as well as any information required to be provided by the Covered Entity in its notification to affected individuals. Business Associates shall comply with all regulations issued by HHS and applicable state agencies regarding breach notification to Covered Entity.
6. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI 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 PHI.
7. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees pursuant to 45 CFR §164.524.
8. Business Associate agrees to make any amendment(s) to PHI 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, in a commercially reasonable manner.
9. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associated on behalf of Covered Entity available to Covered Entity or to the Secretary (including official representatives of the Secretary) in a commercially reasonable manner for purposes of determining Covered Entity’s compliance with the Privacy Rule.

10. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
11. Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with 45 CFR §164.528.
12. Business Associate agrees to provide to Covered Entity or an Individual, in a commercially reasonable manner, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

**ARTICLE III  
Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI as follows:

1. On behalf of Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**ARTICLE IV  
Obligations of Covered Entity**

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 PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI.
4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Nothing in this paragraph shall restrict the ability of Business Associate to use or disclose PHI as set forth in paragraph III.2. herein.

**ARTICLE V**  
**Remedies in Event of Breach**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in Sections II or III of this Agreement. As such, in the event of breach of any of the covenants and assurances contained in II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or IV. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity shall be entitled to reimbursement and indemnification from Business Associate for the Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of the Business Associate's breach. The remedies contained in this paragraph shall be in addition to (and not supersede) any action for damages and/or any other remedy the Covered Entity may have for breach of any part of this Agreement.

**ARTICLE VI**  
**Term and Termination**

1. Term of Agreement. The term of this Agreement shall be effective as of the date given at the top of this Agreement and shall terminate when all of the PHI 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, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.
2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
  - c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
3. Effect of Termination.
  - a. Upon termination of this Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification to Covered Entity that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## ARTICLE VII Confidentiality

1. Confidential Information. Either party hereto ("Owner") may disclose to the other party hereto ("Recipient") certain information pursuant to this Agreement that Owner deems to be proprietary, confidential or trade secret ("Confidential Information"). Recipient understands and acknowledges that Owner's Confidential Information is valuable and not generally known by Owner's competitors and includes, but is not limited to: the identity of parties involved in and the nature of business relationships (including the parties involved in this Agreement); business strategic, product or financial information; customer lists and activities; documentation; and any and all information concerning Owner's current, future or proposed products.

The obligation of confidentiality shall not apply to any part of the Confidential Information that is or was:

- a. in the public domain at the time of such disclosure or subsequently came into the public domain through no fault or action of Recipient or any party who received the Confidential Information from or through Recipient; or
  - b. rightfully known to Recipient or parties receiving such information prior to its receipt; or
  - c. lawfully received by Recipient as a matter of right, without a binder of confidentiality from a source other than Provider, which source has lawful possession thereof; or
  - d. independently developed by Recipient without reliance upon or use of Provider's Confidential Information.
2. Nondisclosure. The parties agree that the provision of Confidential Information to Recipient is not in any way intended by Owner, and shall not be deemed to be, a public disclosure, public use or otherwise a publication of that information. The Confidential Information will be used solely for the purpose of evaluating the feasibility of entering into a business relationship between the parties, and not in any way directly or indirectly detrimental to Owner. Recipient shall keep confidential the Confidential Information and prevent (a) the disclosure of any Confidential Information received from Owner; (b) the disclosure of documents that are prepared by Recipient based on confidential information received from Owner; and (c) the disclosure of information received orally from Owner that is designated proprietary and confidential by Owner; to any other person, firm or corporation, except as expressly permitted in Section 1 hereof, and shall use the same degree of care to avoid disclosure of such information as Recipient employs with respect to its own proprietary and confidential information of the highest level of importance, but in no event less than reasonable care.

In the event the Confidential Information is a customer list or other confidential customer information, Recipient also agrees that during the term of this Agreement it will not use such information to compete with Owner or use it for any other purpose other than the purposes contemplated by this Agreement without Owner's prior written consent. The Confidential Information shall be and remain the confidential, proprietary and trade secret property of Owner.

Nothing in this Article VII shall be construed to limit, in any manner whatsoever, Business Associate's obligations with respect to PHI as such obligations are set forth elsewhere in this Agreement.

**ARTICLE VIII**  
**Miscellaneous Terms**

1. Applicable Law. This Agreement shall be governed by the laws of the State of Texas without reference to the conflict of law provisions thereof.
2. Modification. This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. 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, as amended.
3. Notices. Any notice required under this Agreement shall be made in writing as follows:

Notice to Covered Entity:

Notice to Business Associate:

SWBC Life Insurance Agency, Inc.  
Attn: General Counsel  
9300 San Pedro, Suite 600  
San Antonio, TX 78216  
Facsimile (210) 525-9938

4. Entire Agreement. This Agreement and any and all addenda, schedules, and exhibits attached hereto represent the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understanding of the parties in connection herewith. There are no representations, warranties, covenants, conditions, agreements, understandings, or arrangements, oral or written, between or among the parties relating to the subject matter hereof with or not fully expressed herein. No agent of any party is authorized to make any representation, promise or warranty not contained in this Agreement.
5. Severability. If any provision or term of this Agreement, not being of a fundamental nature, is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement will not be affected.
6. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and its signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**“Business Associate”**  
SWBC Life Insurance Agency, Inc.

**“Covered Entity”**  
CLIENT NAME *Southern Auto's ESD*

By: \_\_\_\_\_

Name: Gary Dudley

Title: Vice President

By:  \_\_\_\_\_

Name: *Chad Proulx*

Title: *Director of Purchasing*