

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

1. INTRODUCTION

- 1.1 Parties.** This Business Associate Agreement (“Agreement”) is entered into as of January 1, 2019 by and between **T.E.B. Benefits Group Inc., the administrator of Employee Navigator Benefits Administration and Enrollment System** (“Business Associate”) and **the County of El Paso** (“Covered Entity”).
- 1.2 Underlying Agreement.** Business Associate and Covered Entity are parties to the Benefits Administration and Enrollment End User License and Services Agreement (“Underlying Agreement”) pursuant to which Business Associate provides certain administrative services to Covered Entity.
- 1.3 HIPAA.** In relation to the performance of administrative services, Business Associate may receive protected health information from Covered Entity or otherwise have access to protected health information that must be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder, as may be amended from time to time. Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the Underlying Agreement, Business Associate and Covered Entity, agree to the terms and conditions set forth in this Agreement.

2. DEFINITIONS

- 2.1 “Administrative Services”** has the same meaning as in the Benefits Administration and Enrollment End User License and Services Agreement.
- 2.2 “Business Associate”** shall mean T.E.B. Benefits Group Inc., the administrator of Employee Navigator Benefits Administration and Enrollment System.
- 2.3 “Catch-all definition”** shall mean that terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.
- 2.4 “Covered Entity”** shall mean El Paso County.
- 2.5 “Disclosure”** shall mean the release, transfer, provision of access to, or divulging in any other manner, of Protected Health Information, outside Business Associate’s organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI or EPHI.
- 2.6 “Individual”** shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
- 2.7 “Individually Identifiable Health Information”** means information collected from an individual that is created by or received by Covered Entity and relates to a past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual or the past, present or future payment for health care, and which identifies the individual and with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 2.8 “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.

2.9 **“Protected Health Information” or “PHI”** means information that is or has been electronically transmitted by or maintained in electronic media or any other form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information can be used to identify the individual; and (c) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. PHI shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. **“E PHI”** means Electronic Protected Health Information.

“Required by Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103

2.10“Secretary” shall mean the Secretary of the Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

2.11“Security Rule” shall mean the standards for the security of electronic protected health information at 45 CFR Parts 160,162, and 164.

2.12 **“Use”** (whether capitalized or not and including the other forms of the word) means, with respect to Protected Health Information, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Business Associate’s organization.

3. CONFIDENTIALITY OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Privacy, Security, and Confidentiality. Business Associate shall maintain the privacy, security, and confidentiality of all PHI or EPHI, in accordance with HIPAA and this Agreement.

3.2 Use of PHI or EPHI. Business Associate is authorized to use and disclose PHI or EPHI only in accordance with the provisions of this Agreement, and only to the extent reasonably necessary (a) to provide the Administrative Services; (b) for the proper management and administration of Business Associate; and (c) to carry out the legal responsibilities of Business Associates.

3.3 Notice of Breach or Violation. Business Associate acknowledges that, under HIPAA, Covered Entity could be deemed to be in violation of HIPAA if Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate’s obligations under this Agreement to maintain privacy, security, and confidentiality of PHI or EPHI, unless Covered Entity takes reasonable steps to cure the breach or end the violation; and, if such steps are unsuccessful, terminates the Underlying Agreement or reports the problem to the Secretary. Accordingly, Business Associate shall promptly notify Covered Entity of any pattern of activity or practice of Business Associate that constitutes any such material breach or violation.

3.4 Additional Obligations. Business Associate shall:

3.4.1 Not use or disclose PHI or EPHI other than as permitted or required by the Underlying Agreement, this Agreement or as required by law.

3.4.2 Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of the Covered Entity. 45 C.F.R. section 164.314(a)(2)(i)(A)

3.4.3 Shall report to Covered Entity within 10 business days any “security incident” of which it becomes aware, as such term is defined in the HIPAA Security Rule. The report to Covered Entity shall identify:

the date of the security incident, the scope of the security incident, the Business Associate's response to the security incident and the identification of the party responsible for causing the security incident, if known. Thereafter, Business Associate shall provide periodic updates regarding the security incident, at Covered Entity's written request. 45 C.F.R. section 164.314(a)(2)(i)(C).

- 3.4.4** Business Associate shall ensure that any agent, including a subcontractor, to whom it provides EPHI agrees in writing to implement reasonable and appropriate safeguards to protect EPHI. 45 C.F.R. section 164.314(a)(2)(i)(B).
- 3.4.5** Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or EPHI by Business Associate in violation of the Underlying Agreement or this Agreement.
- 3.4.6** Promptly report to Covered Entity any use or disclosure of PHI or EPHI not provided for by the Underlying Agreement or this Agreement of which Business Associate becomes aware.
- 3.4.7** Ensure that any agent or subcontractor, to whom it provides PHI or EPHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions, in writing, that apply through the Underlying Agreement or this Agreement to Business Associate with respect to such information.
- 3.4.8** In accordance with the Privacy Rule, specifically 45 CFR §164.524, Business Associate agrees to provide access, at the request of Covered Entity, and in reasonable time and manner, to PHI or EPHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual to whom the particular PHI or EPHI pertains for the purposes of inspecting and obtaining a copy of such PHI or EPHI.
- 3.4.9** In accordance with the Privacy Rule, specifically 45 CFR §164.526, Business Associate agrees to make any amendment(s) to PHI or EPHI in a Designated Record Set as instructed by Covered Entity.
- 3.4.10** Business Associate agrees to make its internal practices, books, records (including policies and procedures, PHI or EPHI and the pertinent provisions of this Agreement and the Underlying Agreement), relating to the use and disclosure of PHI or EPHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or the Secretary, in a time and manner designated by the Secretary, for the purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule (in all events, Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request, and shall provide Covered Entity with copies of any such materials).
- 3.4.11** In accordance with the Privacy Rule, specifically 45 CFR §164.528, Business Associate agrees to document such disclosures of PHI or EPHI 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 or EPHI.
- 3.4.12** In accordance with the Privacy Rule, specifically 45 CFR §164.528, Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with the Underlying Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI or EPHI.
- 3.4.13** Business Associate agrees to return or destroy all PHI or EPHI received from Covered Entity that Business Associate still maintains in any form and Business Associate agrees to retain no copies of such information upon termination of the Underlying Agreement.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI or EPHI to perform functions, activities, or administrative services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 4.2 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502 (j) (1).

5. OBLIGATIONS OF COVERED ENTITY

- 5.1 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 or EPHI.
- 5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI or EPHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI or EPHI.
- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI or EPHI 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 or EPHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

- 6.1 Covered Entity shall not request Business Associate to use or disclose of PHI or EPHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7. TERM AND TERMINATION

- 7.1 **Term.** The Term of this Agreement shall be effective as of January 1, 2019 and shall terminate when all of the PHI or EPHI 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, it is infeasible to return or destroy PHI or EPHI, protections are extended to such information, in accordance with the termination provisions of this section.
- 7.2 **Termination for Cause.** Without limiting the rights and remedies of Covered Entity elsewhere set forth in this Agreement or available under applicable law, Covered Entity may terminate this Agreement without penalty or recourse to Business Associate if Covered Entity determines that Business Associate has violated a material term of the provisions of this Agreement or Underlying Agreement, or such violation is imminent and material. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- 7.2.1 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 with the time specified by Covered Entity.
- 7.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- 7.2.3 If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- 7.3 **Default.** A breach under this Agreement shall be deemed to be a material default under the Underlying Agreement.

7.4 Effect of Termination. Except as provided in paragraph (7.4.1) of this section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all PHI OR EPHI received from Covered Entity. This provision shall apply to PHI or EPHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI or EPHI.

7.4.1 In the event that Business Associate determines that returning or destroying the PHI or EPHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement that return or destruction of PHI or EPHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI or EPHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI or EPHI.

8. MISCELLANEOUS

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

8.2 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.

8.3 Survival. The respective rights and obligations of Business Associate under Section 4 of this Agreement shall survive the termination of this Agreement.

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

8.5 Inconsistencies. To the extent there are any inconsistencies between this Agreement, and the terms of the Underlying Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

EL PASO COUNTY

By: _____ Date: _____

Ricardo A. Samaniego
EL PASO COUNTY JUDGE

REVIEWED AS TO FORM

Assistant County Attorney Date: _____

T.E.B. BENEFITS GROUP INC.

By: _____ Date: _____

MARC HERNANDEZ
PRESIDENT