

Business Associate Agreement

This Business Associate Agreement ("Agreement"), effective as of April 14, 2003 (the "Effective Date"), is entered into by and between the Administrators of the Tulane Educational Fund doing business as Tulane University Medical Group ("Covered Entity") and _____ ("Business Associate").

WHEREAS, Covered Entity and Business Associate have or are entering into agreements or other documented arrangements (collectively, "Business Arrangements") pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access health information that is protected by state and/or federal law;

WHEREAS, Business Associate and Covered Entity desire that Business Associate obtain access to such information in accordance with the terms specified herein;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. Business Associate Relationship. Under the terms of an agreement, contract, purchase order or other document ("Business Arrangement") Covered Entity has engaged Business Associate to (1) perform or assist in the performing of certain functions or activities on behalf of Covered Entity involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration; or, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or any other function or activity regulated by the regulations at 45 C.F.R. Parts 160 and 164 (Subpart A and Subpart E) (the "Privacy Standards") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); or (2) provide, other than in the capacity of a member of the Workforce of Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for Covered Entity. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards.

2. Business Associate Obligations. Business Associate may receive from Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information ("PHI"). Business Associate agrees to not use or further disclose PHI other than as expressly permitted or required by this Agreement or as required by law. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate further agrees to use appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of any electronic PHI in accordance with the regulations at 45 C.F.R. Parts 160 and 164 (Subpart A and Subpart C) (the "Security Standards") at all times as of the compliance date of the Security Standards.

3. Use of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, if such use of PHI would not violate HIPAA or the Privacy Standards if done by Covered Entity. Covered Entity shall retain all rights in the PHI not granted herein. Business Associate may use de-identified health information (as defined at 45 C.F.R. § 164.502(d)(2)) for its own business operations only with the prior written permission of Covered Entity.

4. Disclosure of PHI. Except as otherwise limited in this Agreement, Business Associate may disclose PHI as necessary to perform its obligations under Business Arrangements, if such disclosure of PHI would not violate HIPAA or the Privacy Standards if done by Covered Entity.

5. Proper Management and Administration. Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to meet its legal responsibilities; provided, however, that such PHI may be disclosed for such purposes only if the disclosures are Required By Law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that: (i) the information will remain confidential; (ii) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and (iii) the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

6. Minimum Necessary. Business Associate may only use, disclose, and request the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request, to the extent that the “minimum necessary standard” (as provided at 45 C.F.R. 164.502(b) and 45 C.F.R. 164.514(d)) would apply if the activities performed by Business Associate pursuant to this Agreement were performed by Covered Entity.

7. Mitigation. 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 by Business Associate in violation of the requirements of this Agreement.

8. Reporting. Business Associate agrees to report immediately to Covered Entity any use or disclosure of PHI in violation of this Agreement of which it becomes aware. Business Associate further agrees to report immediately to Covered Entity any security incident occurring on or after the compliance date of the Security Standards of which it becomes aware.

9. Access by Individuals. When requested by Covered Entity, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity or to an Individual in order to comply with the requirements under 45 C.F.R. § 164.524. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity.

10. Amendment. When requested by Covered Entity or an Individual, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526. Such amendments shall be made by Business Associate in the time and manner designated by Covered Entity.

11. Accounting of Disclosures. Business Associate shall make available to Covered Entity in response to a request from an Individual, information required for an accounting of disclosures of PHI with respect to the Individual, in accordance with 45 CFR § 164.528, incorporating exceptions to such accounting designated under the Privacy Standards. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to April 14, 2003. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of an Individual's or Covered Entity's request to Business Associate, whichever is earlier. Such accounting must be provided without cost to the Individual or to Covered Entity if it is the first accounting requested by an Individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs Covered Entity and Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI.

12. Withdrawal of Consent or Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific consent or authorization for the use of his or her PHI, and (i) the Individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such Individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

13. Records and Audit. Business Associate shall make available to Covered Entity and to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Privacy Standards and/or the Security Standards, in a time and manner designated by Covered Entity or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

14. Subcontractors and Agents. Business Associate shall ensure that any agents, including any subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity shall agree to the same restrictions and conditions that apply to through this Agreement to Business Associate with respect to the PHI. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures,

or omissions of such agents as if they were the Business Associate's own acts, failures, or omissions.

15. Term and Termination. This Agreement shall commence on the Effective Date and shall terminate when Covered Entity no longer utilizes Business Associate to provide services. Covered Entity may terminate its relationship with Business Associate immediately if it determines that Business Associate has violated a material term of this Agreement. The rights and responsibilities of Business Associate under sections 16 and 17 of this Agreement shall survive termination.

16. Indemnification. Business Associate will indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to any third-party claim based upon any breach of this Agreement by Business Associate or similar breach by any agents or subcontractors of Business Associate ("Claim"). If Business Associate assumes the defense of a Claim, Covered Entity shall have the right, at its expense, to participate in the defense of such Claim, and Business Associate shall not take any final action with respect to such Claim without the prior written consent of Covered Entity.

17. Return or Destruction of Information. Upon termination of its relationship with Covered Entity, Business Associate shall, if feasible, return or destroy all of the PHI that Business Associate or its agents or subcontractors still maintain in any form and shall retain no copies of such information. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the PHI and shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

18. Ineligible Persons. Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

19. Amendment. The parties shall modify this Business Associate Agreement to bring it into compliance with any changes to HIPAA or the Privacy Standards or Security Standards that are made after the date of execution of the Business Associate Agreement.

20. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior

written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

21. Interpretation. Any ambiguity in this Agreement or between it and the Business Arrangement between the parties shall be resolved in a manner that brings the Business Agreement and this Agreement into compliance and permits Covered Entity to comply, with the then most current version of HIPAA, the Privacy Standards, and the Security Standards

22. State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an Individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

[When applicable, insert: Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Data aggregation services involve the combining by the Business Associate of (a) PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity with (b) PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

TULANE UNIVERSITY
MEDICAL GROUP:

[BUSINESS ASSOCIATE]

BY: _____ BY: _____
Paul K. Whelton, M.D.
Senior Vice President for Health Sciences

Date: _____