

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is effective as of \_\_\_\_\_ (the “Agreement Effective Date”) by and between the Administrators of the Tulane Educational Fund acting on behalf of Tulane University Medical Group (“Covered Entity”) and \_\_\_\_\_ on behalf of itself and its Affiliates (“Business Associate”).

### **RECITALS**

WHEREAS, Covered Entity has engaged Business Associate to perform services or provide goods, or both;

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), and the HIPAA Security Regulations (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in the HIPAA Privacy Regulations and the HIPAA Security Regulations.

a. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

b. “*HIPAA Privacy Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E.

c. “*HIPAA Security Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C.

d. “*Covered Entity*” means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a

transaction covered by the HIPAA Privacy Regulations and HIPAA Security Regulations.

e. “*Business Associate*” means, with respect to a Covered Entity, a person who:

(1) on behalf of such Covered Entity or of an organized health care arrangement in which Covered Entity participates, but other than in the capacity of a member of the workforce of such Covered Entity or arrangement, performs, or assists in the performance of:

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; or

b) any other function or activity regulated by the HIPAA Privacy Regulations or HIPAA Security Regulations; or

(2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which Covered Entity participates, where the provision of the service involves the disclosure of Individually Identifiable Health Information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

f. “*Individually Identifiable Health Information*” means information that is a subset of health information, including demographic information collected from an individual, and;

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) 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; and

a) that identifies the individual; or

b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

g. “*Protected Health Information*” or “*PHI*” means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by

Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.

h. “*Data Aggregation*” means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the 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.

i. “*Electronic Protected Health Information*” or “*Electronic PHI*” means Protected Health Information that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.

2. **Status of Parties.** BA hereby acknowledges and agrees that CE is a Covered Entity and that BA is a Business Associate of CE.

3. **Permitted Uses and Disclosures.**

a. *Performance of Services.* Business Associate may use and disclose PHI in connection with the performance of the services if such use or disclosure of PHI would not violate HIPAA or the HIPAA Privacy Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b. or 3.c. of this Agreement.

b. *Proper Management and Administration.* Business Associate may use PHI for the proper management and administration of BA in connection with the performance of services described in Exhibit A attached to this Agreement and as permitted by this Agreement. Business Associate may disclose PHI for such proper management and administration of Business Associate only with the prior consent of Covered Entity. Any such disclosure of PHI shall only be made if Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

c. *Other Permitted Uses.* Unless otherwise limited herein, the Business Associate may also: (1) perform Data Aggregation for the Health Care Operations of Covered Entity; (ii) may use, analyze, and disclose the PHI in its possession for the public health activities and purposes set forth at C.F.R. § 164.512(b); and (iii) de-identify any and all PHI provided that Business Associate implements de-identification criteria in accord with 45 C.F.R. §164.514(b).

4. **Nondisclosure.**

a. *As Provided In Agreement.* Business Associate shall not use or further disclose PHI except as permitted or required by this Agreement.

b. *Disclosures Required By Law.* Business Associate shall not, without the prior written consent of CE, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 3.b. hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law.

c. *Additional Restrictions.* If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to HIPAA or the HIPAA Privacy Regulations, Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

5. **Safeguards, Reporting, Mitigation and Enforcement.**

a. *Safeguards.* Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided by 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 HIPAA Security Regulations after the compliance date of the HIPAA Security Regulations.

b. *Business Associate's Agents.* Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to be bound by the same restrictions and conditions that apply to Business Associate with respect to such PHI; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity.

c. *Reporting.* Business Associate shall report immediately to Covered Entity any use or disclosure of PHI in violation of this Agreement or applicable law of which it becomes aware. Business Associate further agrees to report immediately to Covered Entity any security incident (as defined by the HIPAA Security Regulations, as amended) on or after the compliance date of the HIPAA Security Regulations of which it becomes aware.

d. *Mitigation.* Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Agreement or applicable law.

e. *Sanctions.* Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses PHI in violation of this Agreement or applicable law.

f. *Covered Entity's Rights of Access and Inspection.* From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. The parties' respective rights and obligations under this Section 5.f. shall survive termination of the Agreement.

g. *United States Department of Health and Human Services.* Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, and the security of Electronic PHI, available to the Secretary of the United States Department of Health and Human Services ("HHS") for purposes of determining Covered Entity's compliance with the HIPAA Privacy Regulations and the HIPAA Security Regulations after the compliance dates, respectively, of these regulations; provided, however, that Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The parties' respective rights and obligations under this Section 5.g. shall survive termination of the Agreement.

6. **Obligation to Provide Access, Amendment and Accounting of PHI.**

a. *Access to PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Privacy Regulations.

b. *Amendment of PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Privacy Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate.

c. *Accounting of Disclosures of PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide an accounting of disclosures with respect to PHI in accordance with HIPAA and the HIPAA Privacy Regulations. Business Associate shall make this information available to Covered Entity upon Covered Entity's request.

d. *Forwarding Requests From Individual.* In the event that any individual requests access to, amendment of, or accounting of PHI directly from Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or Business Associate to violate HIPAA or the HIPAA Privacy Regulations, Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

7. **Material Breach, Enforcement and Termination.**

a. *Term.* This Agreement shall be effective as of the Agreement Effective Date, and shall continue until the Agreement is terminated in accordance with the provisions of Section 7.b.

b. *Termination.* Covered Entity may terminate this Agreement:

(1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Privacy Regulations or the HIPAA Security Regulations;

(2) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or

(3) pursuant to Sections 7.c. or 8.b. of this Agreement.

c. *Remedies.* If Covered Entity determines that Business Associate has breached or violated a material term of this Agreement, Covered Entities may, at its option, pursue any and all of the following remedies:

(1) exercise any of its rights of access and inspection under Section 5.f. of this Agreement;

(2) take any other reasonable steps that Covered Entity, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or

(3) terminate this Agreement immediately.

d. *Knowledge of Non-Compliance.* Any non-compliance by Business Associate with this Agreement or with HIPAA, the HIPAA Privacy Regulations or the HIPAA Security Regulations automatically will be considered a breach or violation of a material term of this Agreement if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

e. *Reporting to United States Department of Health and Human Services.* If Covered Entity's efforts to cure any breach or end any violation are unsuccessful, and if

termination of this Agreement is not feasible, CE shall report Business Associate's breach or violation to the Secretary of Health and Human Services, and Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s).

f. *Return or Destruction of Records.* Upon termination of this Agreement for any reason, Business Associate shall return or destroy, as specified by Covered Entity, all PHI that Business Associate still maintains in any form, and shall retain no copies of such PHI. If Covered Entity, in its sole discretion, requires that Business Associate destroy any or all PHI, Business Associate shall certify to Covered Entity that the PHI has been destroyed. If return or destruction is not feasible, Business Associate shall inform Covered Entity of the reason it is not feasible and shall continue to extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

g. *Injunctions.* Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 7.g. shall survive termination of the Agreement.

h. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement. The parties' respective rights and obligations under this Section 7.h. shall survive termination of the Agreement.

## 8. **Miscellaneous Terms.**

a. *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.

b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI. Covered Entity may terminate this Agreement upon written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between both parties.

c. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. *Ambiguities.* The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the HIPAA Privacy Regulations and the HIPAA Security Regulations.

e. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.

f. *Ownership of PHI.* As between Covered Entity and Business Associate, Covered Entity holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity, any right, title or interest in or to such PHI or any portion thereof. Except as specified in Section 3.c. above or as otherwise agreed to in writing by both parties, Business Associate shall have no right to compile and/or distribute any statistical analysis or report utilizing such PHI, any aggregate information derived from such PHI, or any other health and medical information obtained from Covered Entity.

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

TULANE UNIVERSITY MEDICAL GROUP:

CONTRACT ENTITY:

BY: \_\_\_\_\_  
Benjamin Sachs, M.D.  
Dean, Tulane University School of  
Medicine

BY: \_\_\_\_\_  
NAME:  
  
TITLE:

BY: \_\_\_\_\_  
Jerold V. Feddersen, CEO  
Tulane University Medical Group