HIPAA BUSINESS ASSOCIATE AGREEMENT BETWEEN COVERED ENTITY AND ABRET ACCREDITATION BOARD

This HIPAA Business Associate Agreement ("BAA"), dated as of [MONTH DATE, YEAR] ("Effective Date"), is by and between ABRET Neurodiagnostic Credentialing and Accreditation ("Business Associate") and [NAME OF FACILITY/HOSPITAL], ("Covered Entity") (each a "party" and, collectively, the "parties"). To the extent that Covered Entity discloses Protected Health Information to Business Associate, or Business Associate handles Protected Health Information on Covered Entity's behalf, in connection with activities related to laboratory accreditation provided to Covered Entity, or as otherwise required by the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 U.S.C. § 1320d through d-9, as amended, ("HIPAA"), Covered Entity and Business Associate agree to the following terms and conditions, which are intended to comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and their implementing regulations. The privacy and security provisions of this BAA shall be applicable to Business Associate only in the event and to the extent Business Associate meets, with respect to Covered Entity, the definition of a Business Associate set forth at 45 C.F.R. §160.103, or applicable successor provisions. Now, therefore, in consideration of the foregoing and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Definitions – In addition to the definitions set forth in other provisions of this BAA, the following definitions apply:

   (a) "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. §160.103, and in reference to the party to this BAA, shall mean the party referenced as such above

   (b) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, Administrative, and Enforcement Rules at 45 C.F.R. Parts 160, 162, and 164, as amended from time to time.

   (c) "Covered Entity" shall mean the entity set forth above, which is a Covered Entity or business associate, as defined in the HIPAA Rules, including any contractor or subcontractor acting on behalf of such Covered Entity, that discloses Protected Health Information to Business Associate or on whose behalf Business Associate creates, receives, maintains or transmits Protected Health Information in connection with the Application agreement.

   (d) "Application agreement" shall mean the separate agreement(s) between the parties in which Business Associate performs functions or activities on behalf of Covered Entity.

   (e) Other Definitions: The following terms used in this BAA shall have the same meaning as those in the HIPAA Rules: Breach, Covered Entity Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Limited Data Set, Notice of Privacy Practices, Protected Health Information (to the extent such Protected Health Information is created, received, maintained or transmitted by Business Associate on behalf of Covered Entity), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other terms shall have the definitions set forth in this BAA.

2. Obligations and Activities of Business Associate

   (a) Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this BAA, as Required by Law, or as contemplated by the

Application agreement. Business Associate (i) acknowledges that in receiving, storing, processing, or otherwise dealing with any Protected Health Information subject to protection under the substance use disorder regulations under 42 C.F.R. Part 2 or comparable state laws ("Part 2 Regulations" and "Part 2 Records"), it is bound by the provisions of the Part 2 Regulations applicable to Business Associate as a recipient of Part 2 Records; and (ii) if necessary, agrees to resist in judicial proceedings any effort to obtain access to information pertaining to such patients otherwise than as expressly provided for in the Part 2 Regulations.

(b) Business Associate agrees to use appropriate safeguards, including compliance with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of the electronic Protected Health Information other than as permitted by this BAA.

(c) Business Associate agrees to report to Covered Entity's Privacy Official any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 C.F.R. §164.410, and any Security Incident of which it becomes aware. For reports of incidents constituting a Breach, the report shall include, to the extent available, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or Disclosed during such Breach. Business Associate hereby reports to Covered Entity, without any further reporting obligation, that incidents including, but not limited to, ping sweeps or other common network reconnaissance techniques, attempts to log on to a system with an invalid password or username, denial of service attacks that do not result in a server being taken off line, and similar minor unsuccessful Security Incidents and other incidents may occur from time to time; no additional notice of such unsuccessful Security Incidents is required. Security Incidents other than those described above that do not result in any unauthorized access, Use, Disclosure, modification, destruction of information or interference with system operations will be reported in the aggregate upon written request of Covered Entity in a manner and frequency mutually acceptable to the parties.

(d) In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information. The parties agree that the written terms of the Subcontractor agreements need not be identical to this BAA, provided that the restrictions and conditions applicable to Protected Health Information are the same as the applicable provisions of the HIPAA Rules.

(e) To the extent Business Associate has Protected Health Information in a Designated Record Set, and only to the extent required by HIPAA, Business Associate agrees to make available Protected Health Information in a Designated Record Set, to Covered Entity as necessary to satisfy a Covered Entity's access obligations under 45 C.F.R. §164.524. The parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests except as Required by Law.

(f) Business Associate agrees to make Protected Health Information available for purposes of any amendments to Protected Health Information in its possession contained in a

Designated Record Set as agreed to or directed by Covered Entity pursuant to 45 C.F.R. §164.526 or take other measures as necessary to satisfy a Covered Entity's obligations under 45 C.F.R. §164.526. The parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests. In the event that Covered Entity amends any Protected Health Information in its possession, a copy of which is also maintained by Business Associate, Covered Entity must promptly notify Business Associate in writing of such amendment. Covered Entity shall further notify Business Associate in writing of any changes in, or revocation of, any permission, authorization or consent by an individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

(g) Business Associate agrees to maintain and make available to Covered Entity the information required to provide an accounting of Disclosures by Business Associate as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528. The parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.

(h) To the extent, under the terms of the Application agreement, Business Associate is required to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 of the HIPAA Rules, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

(i) Business Associate agrees to make its internal practices, books, and records related to Business Associate's Use and Disclosure of Protected Health Information received from Covered Entity available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Data Use Agreement:

i. With respect to Limited Data Sets Used or Disclosed by Business Associate in a manner permitted by the HIPAA Rules, Business Associate will comply with the following provisions, which prevail over conflicting provisions of this BAA:

1. Not Use or further Disclose the Limited Data Set other than as provided for in this subsection (Data Use Agreement), which includes purposes consistent with the HIPAA Rules, including those related to research, public health or health care operations or as otherwise required by law;

2. Use appropriate safeguards to prevent Use or Disclosure of the Limited Data Set other than as provided for in this Data Use Agreement;

3. Report to Covered Entity any Use or Disclosure of the Limited Data Set not provided for by this Data Use Agreement of which it becomes aware;

4. Ensure that any agents to whom it provides the Limited Data Set agree to the same restrictions and conditions that apply to the Limited Data Set recipient with respect to such information; and

5. Not identify the individuals who are the subject of the Limited Data Set, or contact the individuals.

ii. This Data Use Agreement survives the termination or expiration of this BAA and the Application agreement.

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate

(a) Business Associate may Use and Disclose Protected Health Information as necessary to perform the services set forth in the Application agreement, as permitted in this BAA or the Application agreement, and as otherwise permitted by the HIPAA Rules, including for purposes related to treatment, payment, and health care operations and for public health purposes.

(b) Business Associate may Use or Disclose Protected Health Information as Required By Law or as permitted by 45 C.F.R. §164.512.

(c) Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with the requirements in the HIPAA Rules regarding minimum necessary Uses and Disclosures. Covered Entity represents and warrants that its policies and procedures regarding minimum necessary Uses and Disclosures and the provisions of applicable Notices of Privacy Practices are consistent with, and not more stringent than, the HIPAA Rules or, to the extent that an applicable Notice of Privacy Practices or policies and procedures regarding the HIPAA Rules with respect to minimum necessary Uses and Disclosures impose additional particular restrictions on Business Associate, Covered Entity agrees to provide such notice and policies to Business Associate in writing prior to requesting that Business Associate perform a particular function or activity on behalf of Covered Entity that would be affected by such policies and procedures.

(d) Business Associate may use Protected Health Information to provide Data Aggregation services. Business Associate may also use Protected Health Information to create, Use and Disclose a Limited Data Set consistent with the HIPAA Rules.

4. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any limitations in an the Notice of Privacy Practices under 45 C.F.R. §164.520, and its policies regarding the "minimum necessary" requirements in 45 C.F.R. §164.502(b), to the extent that such limitations may affect Business Associate's Use or Disclosure of Protected Health Information, and shall notify Business Associate in writing of any material changes thereof.

(b) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information and any restrictions on the Use and/or Disclosure of Protected Health Information to which Covered Entity has agreed or must follow, if such changes or restrictions may affect Business Associate's Use or Disclosure of Protected Health Information.

(c) Covered Entity shall comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Covered Entity agrees to obtain any patient, Individual, or other third party authorizations or consents that may be required under state or federal law or regulation, including 42 C.F.R. Part 2, or to ensure such authorizations or consents have been obtained, in order to transmit or make available Protected Health Information to Business Associate and to enable Business Associate and its Subcontractors, agents and assigns to Use and Disclose Protected Health Information as contemplated by this BAA and the Application agreement, including, but not limited to,

consents and authorizations relating to mental health, HIV, substance use disorders, DNA and genetic information, and other particularly sensitive conditions.

(d) Covered Entity may not ask Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under applicable laws and rules, including the HIPAA Rules, if done by Covered Entity, except that Business Associate may Use and Disclose Protected Health Information for its proper management and administration, data aggregation, de-identification, and other activities permitted by this BAA or the Application agreement.

5. Term and Termination

(a) Term

Except as otherwise provided herein, the term of this BAA shall coincide with the Application agreement, including any renewals, and shall be terminable in accordance with the termination provisions of the Application agreement, or the date either party terminates for cause, as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause

Upon a party's reasonable determination of a material breach of this BAA by the other party, the non-breaching party shall provide written notice to the breaching party and may terminate this BAA if the breaching party does not cure the breach or end the violation within 30 days of receipt of such notice.

(c) Effect of Termination

(i) Except as provided below in Subsection 5(c)(ii) of this BAA, upon termination of this BAA, for any reason, Business Associate shall return or destroy, at Covered Entity's expense, all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

(ii) In the event that Business Associate determines that it, or a subcontractor or agent, needs to retain Protected Health Information because return or destruction is infeasible, Business Associate, or the subcontractor or agent, may retain such Protected Health Information. Upon termination of this BAA for any reason, Business Associate, or the subcontractor or agent, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate, subcontractor or agent, on behalf of Covered Entity, shall:

1. Retain only that Protected Health Information for which return or destruction is infeasible;

2. Return or destroy the remaining Protected Health Information that Business Associate, subcontractor or agent, still maintains in any form;

3. Continue to use appropriate safeguards to comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as

provided for in this Section, for as long as Business Associate, subcontractor or agent, retains the Protected Health Information;

4. Not Use or Disclose the Protected Health Information retained by Business Associate, subcontractor or agent, other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in this BAA which applied prior to termination; and

5. Return to Covered Entity or destroy the Protected Health Information retained by Business Associate, subcontractor or agent, when it is no longer needed by Business Associate, subcontractor or agent, for its proper management and administration or to carry out its legal responsibilities.

(d) Business Associate's rights and obligations under this Section 5 shall survive the termination of this BAA and shall end when all of the Protected Health Information 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.

6. Interpretation and Amendment of this BAA

A regulatory reference in this BAA to a section of the HIPAA Rules means such section as in effect or as amended. Any ambiguity or inconsistency in this BAA shall be interpreted to permit compliance with the HIPAA Rules. This BAA supersedes any and all prior representations, understandings, or agreements, written or oral, concerning the subject matter herein, including conflicting provisions of the Application agreement. In the event of a conflict between this BAA and the Application agreement, the BAA shall control. The parties hereto agree to negotiate in good faith to amend this BAA from time to time as is necessary for compliance with the requirements of HIPAA or any other applicable law and for Business Associate to provide services to Covered Entity. However, no change, amendment, or modification of this BAA shall be valid unless it is set forth in writing and signed by both parties. When provisions of this BAA are different than those in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this BAA shall control. The parties acknowledge that each has participated in the negotiation and preparation of this BAA. Accordingly, this BAA shall be construed as if jointly drafted by the parties, and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any provision of this BAA.

7. No Third Party Rights/Independent Contractors

Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. The parties declare that they are independent contractors and not agents of each other.

8. Notices

Any notice required or permitted by this BAA to be given or delivered shall be in writing and shall be deemed given or delivered if delivered in person, or delivered by courier or expedited delivery service, or delivered by registered or certified mail, postage prepaid, return receipt requested to the address set forth below. Each party may change its address for purposes of this BAA by written notice to the other party. Notices shall be directed to the signatories to this BAA and pursuant to the Application agreement notice provisions.

9. Governing Law; Dispute Resolution

To the extent not preempted by federal law, the BAA shall be governed and construed in accordance with the state laws governing the Application agreement, without regard to conflicts of law provisions that would require application of the law of another state. Disputes shall be resolved as provided for in the Application agreement, to the extent applicable.

10. Binding Nature and Benefits

Either party may assign this BAA. This BAA binds and benefits the parties, and their respective successors, and their assigns.

11. Severability

Whenever possible, each provision of this BAA shall be interpreted so as to be effective and valid under applicable law. If any provision of this BAA should be prohibited or found invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this BAA; provided, however, that if any such invalid provision is material to an extent that a party would not have entered into the BAA absent such provision, then that party may terminate the BAA upon ninety (90) calendar days' prior written notice to the other party.

12. Limitation of Liability

(a) NOTWITHSTANDING ANY PROVISION IN THE APPLICATION AGREEMENT TO THE CONTRARY**,** IN NO EVENT WILL BUSINESS ASSOCIATE BE LIABLE OR RESPONSIBLE TO COVERED ENTITY FOR ANY TYPE OF INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, RELIANCE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, OR CIVIL OR CRIMINAL PENALTIES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY TO ANY CLAIM, INCLUDING WITHOUT LIMITATION CLAIMS BASED IN STATUTE, COMMON LAW, CONTRACT, WARRANTY, FIDUCIARY DUTY, NEGLIGENCE OR OTHER TORT, OR STRICT LIABILITY. THIS LIMITATION OF LIABILITY SHALL SURVIVE AND APPLY AFTER TERMINATION OR EXPIRATION OF THIS BAA AND THE APPLICATION AGREEMENT.

(b) NOTWITHSTANDING ANY PROVISION IN THE APPLICATION AGREEMENT TO THE CONTRARY**,** BUSINESS ASSOCIATE'S AGGREGATE LIABILITY UNDER THIS BAA SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID TO BUSINESS ASSOCIATE BY COVERED ENTITY IN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO THE LIABILITY, AND RETURN OF SUCH AMOUNTS PAID SHALL BE COVERED ENTITY'S EXCLUSIVE REMEDY FOR ANY DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY TO ANY CLAIM, INCLUDING WITHOUT LIMITATION CLAIMS BASED IN STATUTE, COMMON LAW, CONTRACT, WARRANTY, FIDUCIARY DUTY, NEGLIGENCE OR OTHER TORT, OR STRICT LIABILITY. THIS LIMITATION OF LIABILITY SHALL SURVIVE AND APPLY AFTER TERMINATION OR EXPIRATION OF THIS BAA AND THE APPLICATION AGREEMENT.

13. Information blocking

Nothing in this BAA shall be construed as imposing any responsibility upon Business Associate to ensure that Covered Entity conforms to laws and regulations prohibiting information blocking or requiring Covered Entity to maintain Protected Health Information for any length of time. Covered Entity is solely responsible for ensuring compliance with such laws and regulations. Unless specified in writing in the Application agreement, Business Associate has no obligation to store or maintain Protected Health Information after the termination or expiration of this BAA.

14. Legal privileges

Nothing in this BAA is intended to or shall be deemed to constitute or require any waiver of any privilege or other legal protection (such as the attorney-client privilege, the work product doctrine and the quality assurance privilege) applicable to, relating to or arising out of (i) the relationship between the Covered Entity and Business Associate, (ii) the Protected Health Information, or (iii) any summaries, analyses, reports and the like related thereto. The provisions of this section shall survive termination of this BAA.

15. Counterparts

This BAA may be executed in multiple counterparts, which shall constitute a single agreement, and by facsimile or pdf signatures, which shall be treated as originals.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have executed this BAA as of the Effective Date.

Covered Entity:

By: _____

Title:_____

Address:_____

_____

Date: _____

Business Associate:

By: _____

Title:_____

Address: 111 East University Drive, Ste. 105–355
Denton, TX 76209

Date: _____