

## Business Associate Agreement

This Business Associate Agreement is dated \_\_\_\_\_, 20\_\_\_\_, and is between the **American Board of Registration of Electroencephalographic and Evoked Potential Technologists, Inc.** (“ABRET” or “Business Associate”) and

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(**Name of Laboratory or Candidate Employer**) (“Covered Entity”). If the Covered Entity is the employer or supervisor of a candidate applying for ABRET certification, the name of the Candidate is: \_\_\_\_\_ . This Business Associate Agreement is made in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, and the final omnibus rule published in January 2013. The parties agree as follows.

### **1. Permitted Uses & Disclosures:**

**A. Provisions applicable to laboratories seeking ABRET accreditation.** If the Covered Entity is a laboratory applying for ABRET accreditation, it agrees to the provisions of this Section 1.A. In order for the qualifications of the Covered Entity to be evaluated for accreditation, Covered Entity agrees to disclose certain limited Protected Health Information (“PHI”) to ABRET. In the course of receiving such PHI, by this Agreement and as a Business Associate, ABRET may do any of the following:

- i.** Use and disclose PHI as necessary to perform its accreditation review of Covered Entity’s operations.
- ii.** Use or disclose PHI as required by law.
- iii.** It is the policy of ABRET to limit its requests for PHI to the minimum amount reasonably necessary to achieve the purpose of its accreditation review. ABRET shall use and disclose the minimum PHI necessary for a permitted purpose.
- iv.** ABRET may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth above.
- v.** Use or disclose PHI for proper management and administration of ABRET or to carry out its legal responsibilities.
- vi.** De-identify PHI.

**B. Provisions applicable to employers or supervisors of candidates seeking ABRET certification.** If the Covered Entity is the employer or supervisor of a candidate applying for ABRET certification, it agrees to the provisions of this Section 1.B. In order for the qualifications of the candidate to be evaluated for certification, Covered Entity agrees to disclose certain limited Protected Health Information (“PHI”) to ABRET. In the course of receiving such PHI, by this Agreement and as a Business Associate, ABRET may do any of the following:

- i.** Use and disclose PHI as necessary to perform its review and evaluation of the candidate’s qualifications for certification.
- ii.** Use or disclose PHI as required by law.

- iii. It is the policy of ABRET to limit its requests for PHI to the minimum amount reasonably necessary to achieve the purpose of its review. ABRET shall use and disclose the minimum PHI necessary for a permitted purpose.
- iv. ABRET may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth above.
- v. Use or disclose PHI for proper management and administration of ABRET or to carry out its legal responsibilities.
- vi. De-identify PHI.

**2. Duties & Obligations:** Business Associate agrees to do the following:

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Business Associate Agreement or as required by law.
- B. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
- C. Report to Covered Entity any use or disclosure of the health information not provided for by this Business Associate Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.
- D. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- E. Make available PHI in a designated record set to Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524.
- F. Make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- G. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- H. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- I. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

**3. Covered Entity Obligations:**

- A. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

**B.** Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

**C.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**D.** Prior to disclosing the records to Business Associate, Covered Entity shall make reasonable efforts to remove PHI to the extent that the PHI is not needed by Business Associate for the performance of its obligations under this Business Associate Agreement.

**4. Term:** The Term of this Business Associate Agreement shall be effective as of [insert effective date], and shall terminate on [insert termination date] or on the date Covered Entity terminates the Business Associate Agreement as described in Section 5 below, whichever is sooner.

**5. Termination:**

**A.** Covered Entity may terminate the Business Associate Agreement by written notice to Business Associate if Business Associate violates this Business Associate Agreement. Covered Entity shall not terminate the Business Associate Agreement pursuant to this section unless:

- i.** Covered Entity has given Business Associate written notice identifying the violation, and
- ii.** Business Associate has failed to correct the violation within fourteen (14) calendar days after the receipt of the notice, or in the event of a violation that is not capable of cure, if Business Associate has not made reasonable provisions within fourteen (14) calendar days to avoid a similar future breach.

**B.** Upon Termination:

- i.** Business Associate shall retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.
- ii.** Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that Business Associate still maintains in any form.
- iii.** Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI.
- iv.** Business Associate shall not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in the section entitled "Permitted Uses & Disclosures" which applied prior to termination.

v. Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

C. The obligations of Business Associate under this Section entitled “Termination” will survive beyond the termination of the Business Associate Agreement.

**6. Indemnification:** Business Associate shall indemnify Covered Entity for fines, damages, and expenses related to any third party claim against Covered Entity to the extent that the fine, damage, or expense arises out of an actual violation of this Business Associate Agreement by Business Associate.

**7. Interpretation:** Any ambiguity in this Business Associate Agreement shall be interpreted to permit compliance with the HIPAA Rules.

**8. Regulatory Changes:** The parties agree to amend this Business Associate Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement by their duly authorized representatives effective as of the date of signature by ABRET.

<b>American Board of Registration of Electroencephalographic and Evoked Potential Technologists, Inc.</b>	    <b>(Covered Entity’s Full Legal Name)</b>
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

**[\*\*FOR USE ONLY WHEN USING BUSINESS ASSOCIATE AGREEMENT  
PREPARED BY COVERED ENTITY \*\*]**

**ADDENDUM TO BUSINESS ASSOCIATE AGREEMENT**

The American Board of Registration of Electroencephalographic and Evoked Potential Technologists, Inc. (“ABRET” or “Business Associate”) and

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(Name of Laboratory or Candidate Employer) (“Covered Entity”) agree to amend the terms of the Business Associate Agreement as follows:

1. **Permitted Uses.** Business Associate is permitted to use and disclose PHI as necessary to: perform its accreditation review of Covered Entity’s operations or its review and evaluation of a candidate’s qualifications for certification; for proper management and administration of Business Associate; and to carry out its legal responsibilities. Business Associate may de-identify PHI.
2. **Accounting of Disclosures.** If Covered Entity desires an accounting of uses and disclosures, then Covered Entity shall give written notice to Business Associate and Business Associate will have ten (10) business days after receipt of the notice to make available the accounting to Covered Entity.
3. **Notice of Unauthorized Disclosures.** If Business Associate discovers an unauthorized use or disclosure of PHI, then Business Associate will have ten (10) business days from the date of discovery within which to inform Covered Entity in writing.
4. **Termination.** Following termination, Business Associate may retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities. Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 for as long as Business Associate retains this PHI.
5. **Confidential Information.** Business Associate is not required to disclose the identity of its application reviewers, any work product prepared by application reviewers or site visit representatives, or any other confidential or proprietary information regarding Business Associate’s accreditation or certification review process.
6. **Indemnification.** The indemnification obligations of the Business Associate extend only to third party claims and only to the extent that the claim arises out of an actual breach of this Business Associate Agreement by the Business Associate.
7. **Red Flags Rules.** Business Associate is not required to implement an identity theft protection program. The Red Flag Rules set forth at 16 CFR §681.2 et seq. are not applicable to Business Associate by virtue of this transaction because Business Associate will not provide

services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered.

**8. Conflict.** Except as modified by this Addendum, the provisions of the Business Associate Agreement remain in full force and effect. If a provision of this Addendum conflicts with a provision in the Business Associate Agreement, the provision of this Addendum will control.

IN WITNESS WHEREOF, the parties have executed this Addendum to the Business Associate Agreement by their duly authorized representatives effective as of the date of signature by ABRET.

<b>American Board of Registration of Electroencephalographic and Evoked Potential Technologists, Inc.</b>	<hr/> <hr/> <hr/> <b>(Covered Entity's Full Legal Name)</b>
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: