

**BUSINESS ASSOCIATE AGREEMENT BETWEEN COVERED  
ENTITY AND LAB**

This Agreement has been made and entered into effective \_\_\_\_\_,  
200\_\_ by and between \_\_\_\_\_ (herein after “Covered  
Entity”) and \_\_\_\_\_ [name of Lab].

WHEREAS, the United States Congress anticipated and provided that Personal Health Information (herein after referred to as “PHI”) would be used in reviewing the competence or qualifications of health care professionals for the purpose of accreditation (codified at 45 CFR part 164.501).

WHEREAS, Covered Entity is seeking accreditation from the American Board of Electroencephalographic and Evoked Potential Technologists, Inc. (hereinafter referred to as “ABRET”); and

WHEREAS, the Lab intends to remove as much individually identifiable information as possible from the records being used; however, in some circumstances it is impossible to remove all personally identifiable information, and so it becomes necessary to enter into a Business Associate Agreement.

NOW THEREFORE, in consideration of the terms herein contained, the parties hereto agree as follows:

The Covered Entity agrees to disclose certain patient records and information to the Lab to be examined for accreditation in Electroencephalographic Technology.

- I. BACKGROUND AND PURPOSE:** In order for the qualifications of the Lab to be evaluated for accreditation, Covered Entity agrees to disclose certain limited PHI to the Lab. Covered Entity agrees in advance that Lab may disclose PHI to ABRET reviewers as part of the accreditation examination as long as ABRET agrees to the same or similar terms and conditions as agreed to by Lab contained herein. Patient records and information shall be reviewed over a five week period. In the course of receiving such PHI, by this Agreement and as a “Business Associate” under the Health Insurance Portability and Accountability Act (codified at 45 CFR parts 160 and 164, as may be amended from time to time), the Lab agrees to do the following:
- (a)** Preserve the confidential nature of all data and documents submitted related to the application for accreditation of the Lab, an employee of Covered Entity, including, but not limited to, records that contain patient

confidential and/or privileged information and quality review information, to the extent required by state and/or federal law.

- (b) Only use, disclose and maintain individually identifiable health information in all forms including but not limited to electronic form, from Covered Entity or any other party as a result of the aforesaid application for accreditation in the performance of Business Associate's obligations hereunder, in compliance with federal and state law, rules and regulations, such obligations being the review of said Lab's performance with respect to the operations of Covered Entity's operations for the purpose of possible accreditation of Lab.

**II. DUTIES AND OBLIGATIONS:** Lab agrees to:

- A.** Request the minimum necessary PHI for any uses or disclosures required by subparagraph (b) above.
- B.** Use appropriate administrative, physical, and technical safeguards and security measures consistent with the healthcare industry to prevent uses or disclosures of PHI other than those specified hereunder.
- C.** Report to Covered Entity any use or disclosure of the health information not provided for hereunder.
- D.** Require and ensure that its agent, including a subcontractor, to whom it provides PHI received from, or created or received by, or on behalf of Covered Entity, maintains the confidentiality of such health information, reports any disclosure or breach of security and/or confidentiality to Business Associate and agrees to be bound by the same restrictions and conditions that apply, to Business Associates with respect to the PHI.
- E.** In accordance with HIPAA, make any received PHI available if requested by the applicable patient for amendment(s).
- F.** Make available, if requested by Covered Entity, PHI in order to provide an accounting of all disclosures of PHI. In doing so, Business Associate agrees to implement appropriate procedures and methods to allow it to track and maintain a log of any of its disclosures of PHI that are required to be accounted for pursuant to the Privacy Standards. Within ten (10) business days notice, by Covered Entity to Business Associate that it has received a request for any accounting of disclosures, Business Associate shall make available to Covered Entity such information as is in its possession and is required as to make the accounting required by 45 C.F.R. §164.528.
- G.** Recognize that nothing herein constitutes a transfer of ownership; provided, however, that the parties agree that Business Associate is hereby granted a license to use information contained in Lab's application(s) for its accreditation activity.

**H.** Maintain any PHI it receives from Covered Entity in compliance with Covered Entity's policies and procedures and all applicable federal and state laws, rules and regulations and allow Covered Entity access to the PHI it possesses as needed to provide patient care and to comply with all applicable federal and state laws, rules, and regulations.

**III. TERMINATION:** The following procedures shall govern the termination of this Agreement for breach of confidentiality:

**A.** Covered Entity may immediately terminate this Agreement for cause upon the knowledge of a material breach of confidentiality by Business Associate.

**B.** Any for cause termination shall be effective only after Covered Entity has provided reasonable written notice of the potential "cause" to Business Associate of the material breach of any term or condition of this Business Associate Agreement.

**C.** In the event of the termination of this Agreement, Business Associate agrees to return all PHI and other information in all forms or, upon Covered Entity's request, destroy such information in all forms. If for any reason, such health information cannot be returned or destroyed, then all obligations of Business Associate regarding such information shall survive the termination of this Agreement indefinitely or until such information is returned to the Covered Entity or destroyed. Under no circumstances shall Business Associate be considered owner of the PHI used or disclosed by or to Business Associate.

**D.** Business Associate understands that Covered Entity may be required to report a breach of any term or condition of this Business Associate Agreement required by HIPAA to the Secretary of Health and Human Services.

**IV. THIRD PARTY RIGHTS:** The terms of this Business Associate Agreement are not intended, nor should they be construed, to grant any rights to any other parties other than Business Associate and Covered Entity.

**V. INDEMNIFICATION:** Business Associate shall indemnify Covered Entity for any and all claims, inquiries, costs, or damages, including but not limited to any monetary penalties, incurred by Covered Entity arising from a violation by Business Associate of its obligations under this Business Associate Agreement.

**VI. CONTROL OF RESPONSE:** In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate's response to such request. Business Associate shall notify Covered Entity within two (2) business days of receipt of such request.

**VII. REGULATORY CHANGES:** The parties acknowledge and agree that this Agreement is at all times subject to applicable laws, including, but not limited to, the Social Security Act and the rules, regulations, and policies of the U.S. Department of Health and Human Services. In the event legislation is enacted or rules, regulations or interpretations thereof are set forth by a governmental agency or a decision or ruling by any such agency or a court or tribunal of competent jurisdiction, which in the opinion of Covered Entity's or Business Associate's legal counsel affects or may affect the legality of this Agreement or materially and adversely affects the ability of either party to perform its obligations or receive the benefits intended hereunder, then, within ten (10) business days of notice from Covered Entity's or Business Associate's legal counsel, the parties will meet to amend this Agreement to carry out the original intentions of the parties. If the parties cannot reach a mutually agreeable resolution within forty-five (45) days after notice from legal counsel, either party may terminate this Agreement upon an additional thirty (30) days written notice to the other.

This Agreement shall govern the Lab's receipt, use and disclosure of PHI.

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

LAB:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

COVERED ENTITY:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

WITNESS \ ATTEST:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_