

## TERMS AND CONDITIONS FOR THE SLEEP PROFILER PORTAL

The Advanced Brain Monitoring, Inc. (ABM) policies with respect to a) protection of patient privacy, b) administrative, physical, and technical security safeguards, c) protection for a potential loss of data, and d) limitations of use as they apply to the Portal User (“Provider” or “Client”) are defined below. Refer to the Sleep Profiler Hardware and Software Technical Manuals for additional information related to the software license, limitations of use, liability, and warranties.

**Maintaining Patient Privacy:** The Sleep Profiler portal electronically obtains, processes, and enables access to “protected health information” by a patient’s healthcare provider (“Provider”). Protected health information relates to past, present, or future physical or mental health conditions of an individual; the provision of health care to the individual; or past, present, or future payment for health care to an individual. The privacy of this health information is protected by the Health Insurance Portability and Accountability Act (HIPAA) in the United States, and its EU-US and Swiss-US Privacy Shield Policy.

- **Protected Health Information (PHI):** ABM may use or disclose PHI (i.e., first name, last name, and date of birth) to perform functions, activities, and/or services for, or on behalf of, its Clients, provided that such use or disclosure does not violate Privacy Rules (e.g., HIPAA or EU-US and Swiss-US Privacy Shield regulations), or additional requirements explicitly requested by the Client. All ABM employees, agents, and subcontractors that create, receive, maintain, transmit, or Onward Transfer PHI on behalf of ABM shall apply the same restrictions, conditions, and requirements to ensure protection of said PHI.
- **Ownership of PHI:** Ownership of PHI is the responsibility of the Provider and includes: a) obtaining permission from the patient to enable storage of their health information on the Sleep Profiler servers, b) utilizing the software features designed to limit access to the protected health information, and c) notifying ABM if/when patient data must be deleted from the servers (i.e., patient opt-out).
- **Business Associates Agreement (BAA):** A BAA must be executed when study recordings are identified with a patient’s name. A BAA Waiver can be executed when the Portal is used for research in a non-clinical/medical setting and PHI is not transferred.
- **Breach Reporting:** ABM will report in writing to its Client, within two (2) business days after discovery, any suspected or actual: a) access, use, or non-permitted disclosure of PHI; b) breach of unsecured PHI in accordance with 45 CFR 164.410; c) security breach or intrusion; d) use or disclosure of PHI in violation of any applicable U.S. federal or state laws or regulations.

### **IT Compliance:**

- SQL Server 2012 is used for the database servers. Secure SSL protocol (2048-bit) is used to encrypt when transferring data over the internet. Patient names associated with other PHI stored in the database are encrypted at rest.
- Primary servers and mirrored backup servers are located in a different city(s) at secure SOC 1/SSAE-16 certified facilities with 24-hrs/day x 7-days/week staffing, biometric and physical electronic card access, locked cabinets, redundant power, and internet diversity with over 6 different providers.
- Firewall and router protection with Distributed Denial of Service recognition capability to secure inbound connections from/to Internet with intrusion protection, antivirus/antispymware, and ongoing logging via firewall router.
- Controlled access to servers containing PHI with monitoring and logging of all administrative level access to servers.

### **Disaster Recovery:**

- The primary servers employ Raid-6 arrays to allow for failure of multiple drives without impacting availability of data.
- Point-in-time snapshots/backups of the data are taken at multiple points per day to provide recovery of any of the servers.
- The primary servers are replicated every 15-minutes to identical secondary servers located in Arizona.
- Snapshots via Hyper-V Replication are generated hourly and retained for >6-hours. Local VSS snapshots are taken 3 times per day and retained for up to 60 days. Full backup recovery points are taken twice per day and retained for 30 days.

### **Maintenance of Portal:**

- ABM will provide 72-hour advanced notification on the Portal of planned maintenance which will limit Portal access by more than 15-minutes and will make best efforts to schedule maintenance on Friday or Saturday evenings Pacific Time (e.g., Friday 2200 to Saturday 0400).

### **Retention and Ownership of Data:**

- The Client owns the Study File recorded with the Sleep Profiler device and the Sleep Profiler report.
- The Processed Data and the Sleep Profiler Report (i.e., required retention for clinical applications) will be transferred to cold storage one month after being uploaded to the Portal. Files in cold storage will become accessible within five business days from the date of request for a period of seven (7) years from the date of initial upload.
- Study Files (typically used by researchers to reprocess studies at a future date) will be scheduled for permanent deletion one month after upload to the Portal unless other terms are mutually agreed to by ABM and the Client in advance.
- ABM retains the right to aggregate Client de-identified Processed Data on its servers so long as PHI is not disclosed and de-identified Processed Data aggregation is related to system improvements, research related to improvement of methods of payment or coverage policies, and publications that may benefit the scientific community or improve patient care.

### **Restrictions for Use:**

- A license is required for each study and you agree to only use the Portal with a license from ABM. The license for a single night study for a single patient is included with the purchase of each set of disposable sensors (typically included in the 50-night study kit).
- You may not use the Processed Data derived from the Sleep Profiler Software to assist in the development or validation of methods, procedures, software, or commercial or non-commercial technologies intended to characterize sleep architecture or sleep continuity without ABM’s express written permission.
- ABM may terminate Client’s use of the portal for new studies if Client violates any of the terms herein, any of the terms of the Standard Warranty contained in the Sleep Profiler Hardware Technical Manual, or any of the terms of the Standard Warranty contained in the Sleep Profiler Portal Technical Manual.
- The Client is responsible for confirming the accuracy of the Processed Data. When applicable, ABM reserves the right to terminate use of the portal for new studies for violations of the Recommendations for Establishment of a Practice Protocol.