**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("**BAA**") is entered into by and between Healthgrades Marketplace, LLC ("**Business Associate**") and ##COVERED\_ENTITY##\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Covered Entity**") as of ##EFFECTIVE\_DATE## (“**Effective Date**”) and applies to all services and relationships between Covered Entity and Business Associate. Business Associate and Covered Entity may each be referred to herein as a “party” or collectively as the “parties.”

**WHEREAS,** Business Associate provides certain services to Covered Entity pursuant to separate agreement(s) between Business Associate and Covered Entity (the “**Underlying Agreement**(s)" and this BAA is hereby incorporated by reference into said Underlying Agreement(s);

**WHEREAS,** In the performance of such agreements, Business Associate may receive or otherwise have access to certain information subject to the privacy and security rules of the Health Insurance Portability and Accountability Act of 1996, as amended; and

**WHEREAS,** In order to ensure compliance with its obligations under those privacy and security rules, Business Associate and Covered Entity are entering into this BAA.

**NOW THEREFORE,** in consideration of the promises and mutual covenants contained herein, the Parties agree as follows:

1. Definitions

a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended. Use of the term “**HIPAA**” herein is deemed to include HITECH, as defined below.

b. HITECH means the Health Information Technology for Economic and Clinical Health Act found at Title XIII of the American Recovery and Reinvestment Act of 2009.

c. Data Aggregation means, with respect to Protected Health Information created or received by Business Associate under this BAA, the combining of such protected health information by Business Associate with the PHI from another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

d. De-Identified PHI has the meaning set forth in HIPAA Section 164.514.

e. Electronic Protected Health Information or ePHI means Protected Health Information transmitted by, or maintained in, electronic media as defined in HIPAA.

f. Protected Health Information or PHI means any protected health information, as defined by HIPAA that was collected, created, received, maintained by, or transmitted to or from, the Covered Entity. For the purposes of this BAA, PHI means all PHI in Business Associate’s possession or under its control, received from or transmitted to the Covered Entity, and all PHI collected, created, received, maintained or transmitted by Business Associate or its Subcontractors to or from the Covered Entity after the Effective Date of this BAA.

g. Subcontractor means each of Business Associate’s subcontractors as well each of their downstream entities, as applicable.

h. Confidential Information means (i) any and all PHI; (ii) any and all nonpublic information from or about a party hereto; (iii) nonpublic information that belongs or relates to third parties to whom either party has an obligation of confidentiality; and, nonpublic information related to Covered Entities other business associates.

2. Use of PHI by Business Associate

a. Covered Entity authorizes Business Associate to use PHI and ePHI to exercise its rights and perform its obligations under the Underlying Agreement and as otherwise permitted by this BAA, applicable law or regulation.

b. Business Associate may de-identify and use PHI for its internal purposes and in connection with the performance of services for Covered Entity pursuant to this BAA or the Underlying Agreements. Business Associate may only access PHI to the extent required to perform its duties under this BAA or the Underlying Agreements.

c. Business Associate is permitted to use PHI or De-Identified PHI for Data Aggregation.

3. Use of PHI by Employees and Subcontractors

a. Business Associate will instruct its employees regarding the confidentiality, privacy and security of PHI and shall not disclose to its employees, or otherwise permit them to access, any PHI that is not necessary for the provision of services to Covered Entity under this BAA or an agreement covered by this BAA.

b. Business Associate will ensure its Subcontractors are advised of Business Associates obligations with respect to PHI and Business Associate shall require that each Subcontractor agree in writing to substantially similar permissible uses, disclosures, restrictions and obligations, as they relate to PHI hereunder, as the Business Associate.

4. Obligations of Business Associate

a. Business Associate agrees to return or destroy any PHI that is erroneously shared with, or delivered to, Business Associate by Covered Entity.

b. Business Associate agrees not to sell, or use, for its own purposes or for the benefit of its other customers, PHI, or other data that identifies, or may identify, the Covered Entity without Covered Entity’s prior written consent.

c. Business Associate will maintain reasonable administrative, physical, electronic and technical safeguards to protect the confidentiality, integrity and availability of PHI, including Covered Entity’s PHI.

d. Business Associate will require its permitted Subcontractors to agree in writing to implement reasonable administrative, physical, electronic, and technical safeguards to protect the confidentiality, integrity and availability of PHI.

e. Business Associate will report to Covered Entity, in writing within ten (10) business days, any confirmed privacy incident, breach of security, intrusion or unauthorized use or disclosure of PHI or ePHI not permitted by this BAA, made by its employees and/or Subcontractors, and will cooperate with Covered Entity in the investigation of these incidents.

f. In accordance with the requirements of HIPAA, upon request of Covered Entity, Business Associate will report, in summary form, any unsuccessful security incident of which Business Associate becomes aware which, if successful, may have compromised the confidentiality of PHI. To the extent the definition of “Security Incident” in HIPAA is modified to remove this requirement, Business Associate shall no longer be required to fulfill this obligation.

g. Business Associate shall report to the Covered Entity, upon reasonable investigation to the extent possible, the identification of each individual whose PHI or ePHI has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during an actual or suspected breach of privacy or security.

h. Business Associate will cooperate and collaborate with Covered Entity in mitigating any harmful effect resulting from a violation of the requirements of this BAA.

5. Patient Rights with Respect to PHI

a. Business Associate shall notify the privacy officer of Covered Entity if a patient contacts Business Associate directly in connection with such patient’s PHI.

b. Covered Entity shall be responsible for communicating with patients regarding their rights with respect to PHI.

c. To the extent there are any limitations and/or restrictions that may affect Business Associate’s use or disclosure of PHI, the Covered Entity shall notify the Business Associate of such limitations and/or restrictions in writing.

d. Business Associate will make PHI available in electronic format to Covered Entity, to the extent such PHI is provided or disclosed under this BAA, upon request of Covered Entity.

e. In the case of a direct request for an accounting from an individual to Business Associate related to treatment, payment or health care operations disclosures from electronic health records, Business Associate shall, in collaboration with Covered Entity, provide such accounting to the individual in accordance with the applicable effective date of Section 13405(c) of HITECH. Business Associate shall document such disclosures and provide Covered Entity notice of the disclosure.

6. Access to Systems

To the extent Business Associate requires electronic access to Covered Entity’s systems or servers for the purposes of this BAA or any agreement covered by this BAA, the following shall apply:

a. Upon provision of any applicable policies related to the interconnectivity of systems or servers provided to Business Associate by Covered Entity, Business Associate agrees to comply with such policies as applicable to its access, use or connectivity to Covered Entity’s systems or servers.

b. If access to Covered Entity’s systems or services requires log in credentials, Business Associate agrees that it and its employees will use Business Associate’s access security codes or passwords only in support of this BAA, or an agreement covered by this BAA, and will keep such codes and/or passwords in confidence.

c. Business Associate will grant access to Covered Entity’s servers and/or systems only to employees with a need to know in order to fulfill Business Associate’s obligations under this BAA or the Underlying Agreements.

d. Business Associate shall use its access to Covered Entity’s systems and/or servers only in the performance of services under this BAA, or the Underlying Agreements, where such services are permitted by HIPAA and whereby Business Associate accesses only the information required for its performance of the applicable services.

7. Confidential Information

a. The parties hereby acknowledge and agree that, in support of this BAA or an agreement covered by this BAA, each party may be provided with, or given access to, Confidential Information of the other party. The recipient of Confidential Information shall employ the same degree of care in preventing the disclosure of the Confidential Information to a third party (or parties) as it uses with regard to its own confidential information of similar importance, provided that, in no event, shall the recipient employ less than a reasonable degree of care. Except as otherwise permitted in this BAA, or an agreement covered by this BAA, recipient shall disclose Confidential Information of the other party only to third parties who have a need to know the Confidential Information for purposes of performing or exercising the rights granted under this BAA, or an agreement under this BAA, and shall use Confidential Information of the other party only for such purposes. Except for PHI provided by Covered Entity, the term “Confidential Information” shall not include, and neither party shall have any obligation of confidentiality with respect to, information that: (a) is in, or comes into the public domain (except as a result of a breach of this provision); (b) is received without obligation of confidentiality by the recipient from a third party not under an obligation of confidentiality with respect thereto; or (c) is independently developed by the recipient without access to the Confidential Information of the discloser. Recipient may, if ordered to do so by a regulatory authority with jurisdiction over it or if it is required to be disclosed by the recipient under operation of law, court order, or other valid legal process, disclose Confidential Information of the other party to such regulatory authority or other recipient, provided sufficient written notice is given to the discloser prior to such disclosure to enable discloser to seek an order limiting or precluding such disclosure. If the recipient becomes aware of any unauthorized use or disclosure of the discloser’s Confidential Information, the recipient will promptly notify the discloser and reasonably cooperate with the discloser’s efforts to investigate such unauthorized use or disclosure.

b. Upon termination of this BAA and request by the disclosing party, or at any time upon discloser’s request, recipient shall, at its option, promptly return or destroy all, or any part, of the Confidential Information, and all copies thereof, and recipient shall certify in writing its compliance with the foregoing. The foregoing shall not apply to De-Identified PHI utilized by Business Associate which does not identify either a patient or the Covered Entity as its source.

c. The parties acknowledge that, in the event of a breach of this Section 7, damages may not be an adequate remedy and either party shall be entitled to seek injunctive relief to restrain any such breach, threatened or actual, in addition to any other rights and remedies available to such party under this BAA or at law or in equity.

8. Audit

Business Associate shall make its books and records relating to its use and disclosure of PHI, received or disclosed under this BAA or any agreement covered by this BAA, available to authorized government investigators for the purposes of determining Business Associate’s and Covered Entity’s compliance with HIPAA. The parties agree that all information in such books and records is considered confidential and shall be treated as Confidential Information and protected in accordance with Section 7 of this BAA.

9. Term and Termination

a. The term of this BAA shall commence upon the Effective Date and shall continue until the latter of: (i) termination or expiration of any agreement executed by the parties under this BAA, or (ii) termination of this BAA in accordance with this Section 9.

b. Covered Entity may immediately terminate its relationship with Business Associate upon written notice to Business Associate, and without damages or liability to Business Associate, where Business Associate violated a material requirement related to HIPAA and Business Associate does not cure the violation within thirty (30) business days. Covered Entity, at its option and discretion, has the right to allow Business Associate additional time to cure the breach and, upon cure, maintain the relationship under this BAA.

c. Either party may terminate this BAA effective immediately if: (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy laws; or (ii) there is a finding or stipulation that a party has violated any standard or requirement of HIPAA or other security or privacy laws in any administrative or civil proceeding in which such party is involved.

d. If this BAA is terminated pursuant to this Section 9, either party may terminate without damages or liability any or all other agreements between the parties which involve the use or disclosure of PHI. This provision shall supersede any termination provision to the contrary in any applicable agreement covered by this BAA.

10. Following Termination

Unless Business Associate is required by law to maintain PHI, upon termination or expiration of this BAA, Business Associate shall, at its discretion, return or destroy all PHI used or disclosed under this BAA in its possession or control within thirty (30) days of such termination or expiration and upon the request of the Covered Entity. If Business Associate is unable to return PHI and if destruction is not feasible, then Business Associate shall notify Covered Entity in writing of the reasons for being unable to return or destroy PHI and will maintain PHI as required by this BAA and HIPAA for so long as the Covered Entity’s PHI exists. If, at any time, Business Associate determines it is unable to protect the Covered Entity’s PHI, Business Associate shall destroy all such PHI and all copies thereof and maintain proof of such destruction. The foregoing obligation to return or destroy shall not apply to De-Identified PHI used by Business Associate which does not identify either a patient or the Covered Entity as its source.

11. Injunctive Relief

Business Associate acknowledges that an unauthorized use or disclosure of PHI while performing services pursuant to this BAA or any agreement covered by this BAA may cause irreparable harm to Covered Entity and, in the event of an unauthorized use or disclosure, Covered Entity will be entitled to seek injunctive relief.

12. Miscellaneous

a. Amendment

i. Upon enactment of any law, regulation, court decision or relevant government publication and/or interpretive policy affecting the use or disclosure of PHI, as received or disclosed under this BAA or any agreement covered by this BAA, upon written notification to Business Associate, the parties agree to amend this BAA in such a manner necessary to comply with the same.

ii. Any other amendment to this BAA shall be upon written agreement of the parties.

b. Assignment - Neither party may assign its rights or obligations under this BAA without the express written consent of the other party.

c. Laws - Each party will comply with all federal and state security and privacy laws applicable to its obligations under this BAA.

d. Survival - The rights and obligations of the parties under this BAA shall survive termination of this BAA, and any agreement covered by this BAA, to the extent necessary to fulfill their purposes with respect to use, disclosure, return or destruction of PHI.

e. Severability. If any term or other provision of this BAA is invalid, illegal or incapable of being enforced by any law or public policy, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and all other terms and provisions of this BAA shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

f. No Third-Party Beneficiaries. Nothing in this BAA, either express or implied, is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this BAA.

g. No Waiver. Failure by either Party to enforce any provision of this BAA shall not be deemed a waiver of the right to thereafter enforce that provision, or any of the provisions of this BAA. All waivers must be in writing.

h. Relationship of the Parties. Nothing in this BAA shall be construed to create any franchise, joint venture, trust or commercial partnership or any other partnership between the parties hereto. Neither party shall have any authority to contract for or to bind the other party in any manner and shall not represent itself as an agent of the other party or as otherwise authorized to act for or on behalf of the other party.

i. Headings. Captions and other headings are for ease of reference only and do not form part of a clause within, and in no way affect the interpretation of, this BAA.

j. Entire Agreement. This BAA constitutes the entire agreement between the parties with respect to the exchange of PHI between the parties and supersedes all prior and contemporaneous agreements and understandings, as well as all subsequent click-through agreements (if any) regarding such exchange of PHI, whether written or oral, between the parties with respect to the subject matter hereof.

k. Notices. All notices pertaining to this BAA shall be given in writing and deemed given when delivered to an authorized representative of a Party or if delivered by overnight mail or U.S. mail with tracking capability. All notices to Covered Entity shall be addressed to

##COVERED\_ENTITY\_ADDRESS##

or if to Business Associate, addressed to 1423 Red Ventures Drive, Fort Mill, SC 29707, Attn: Legal Department.

**IN WITNESS WHEREOF** and upon execution by the parties, Business Associate and Covered Entity cause this BAA to be effective as of the Effective Date.

**Healthgrades Marketplace, LLC**  [**##COVERED\_ENTITY\_LEGAL\_NAME##]**

By:  By: ##SIGNHERE##

Name: Name: ##NAME##

Title: Title: ##TITLE##

Date: Date: ##DATESIGNED##