

PROSOCIAL (RED KANGAROO) BUSINESS ASSOCIATE AGREEMENT (BAA)

Note: This is the template of our BAA with healthcare providers (Covered Entities).

To execute a BAA with us, register here for a free RK360 Basic Provider App.

This Business Associate Agreement (this “**Agreement**”) is made and entered into effective [redacted] (the “**Effective Date**”) by and between [Provider First Name, Last Name, NPI Number] whose business is located at [redacted], whose business fax number is [redacted], and whose business email address is [redacted], together with its affiliates and subsidiaries (“**Covered Entity**”), and Prosocial Applications, Inc. (“**Prosocial**”) whose business address is 1905 15th St., Suite 4585, Boulder, Colorado 80302, together with its affiliates and subsidiaries (the “**Business Associate**”).

BACKGROUND INFORMATION

A. Reference is made to Covered Entity’s online registration on the Effective Date for the RK360™ Basic Provider App offered by Prosocial (www. <https://redkangaroo.us/providerapp/>); to Covered Entity’s agreement on the Effective Date to the Prosocial Privacy Policy and Terms of Service; to the HIPAA Authorization for Information Access; and to the HIPAA Authorization for PHI Disclosure; and to any Future Agreement as may be amended from time to time, pursuant to which Business Associate performs certain activities or functions on behalf of Covered Entity, which may involve consumer-authorized access to and exchange of the consumer’s Protected Health Information (as hereinafter defined).

B. Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information.

C. Pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the “**HIPAA Security and Privacy Rule**”).

D. The American Recovery and Reinvestment Act of 2009 (Pub. L. 111- 5), pursuant to Title XIII of Division A and Title IV of Division B, called the “Health Information Technology for Economic and Clinical Health” (“**HITECH**”) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the “**HIPAA Security and Privacy Rule**” are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations).

E. Covered Entity and Business Associate desire to protect the privacy and security of such Protected Health Information as required by state and federal law, including but not limited to the HIPAA Security and Privacy Rule, and regulations promulgated, or to be promulgated, thereunder, as may be amended from time to time.

F. Covered Entity and Business Associate may each have access to Protected Health Information in fulfilling their responsibilities under this Agreement and any subsequently adopted agreements between the parties (the “**Future Agreement**”).

G. In order for Covered Entity and Business Associate to comply with HIPAA, Covered Entity and Business Associate must agree to certain provisions designed to preserve the privacy and security of Protected Health Information obtained by Covered Entity and/or Business Associate in the course of fulfilling their respective obligations and responsibilities under this Agreement and any Future Agreement.

H. When applicable, each party must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “**Part 2**”).

NOW, THEREFORE, in consideration of the parties’ continuing obligations under the existing agreements, as applicable, compliance with the HIPAA Security and Privacy Rule, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both parties.

1. **DEFINITIONS.**

1.1. Generally. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

1.2. Specific Definitions.

1.2.1. “**Breach**” shall have the same meaning as the term “breach” in 45 CFR 164.402, as in effect or as amended.

1.2.2. “**Business Associate**” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean Prosocial Applications, Inc., as it performs its functions and activities under this Agreement and any Future Agreement and which functions and activities involves the use and/or disclosure of Protected Health Information on behalf of the Covered Entity and/or healthcare consumers.

1.2.3. “**Covered Entity**” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean [Provider First Name, Last Name, NPI Number].

1.2.4. “**Electronic Protected Health Information**” or “**EPHI**” means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

1.2.5. “**Individual**” shall have the same meaning as the term “individual” in 45 CFR 160.103 as in effect or as amended and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g), as in effect or as amended.

1.2.6. “**Protected Health Information**” or “**PHI**” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. “**Protected Health Information**” includes without limitation “**Electronic Protected Health Information**” as defined below.

1.2.7. “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.3. The parties acknowledge and agree that all Protected Health Information that is created or received by a party (the “**Receiving Party**”) from the other party (the “**Disclosing Party**”) and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Disclosing Party or its affiliates or subsidiaries to the Receiving Party or is created or received by the Receiving Party on behalf of the other party shall be subject to this Agreement.

1.4. The Covered Entity acknowledges and agrees to comply with requests that Individuals make for information exchange via mobile apps supplied by the Business Associate, including their HIPAA Authorization for PHI Disclosure and/or HIPAA Authorization for Information Access, and sent by the Business Associate to the Covered Entity (www.redkangaroo.us/consumer-app).

2. **COMPLIANCE WITH LAW.** In providing services under this Agreement, the parties shall ensure that it acts in compliance with all applicable federal and state laws and regulations including, without limitation, HIPAA, as in effect or as amended, and, if applicable, the Confidentiality of Medical Information Act (Cal. Civ. Code § 56, et seq.).

3. **PERMITTED USES AND DISCLOSURES.**

3.1. A Receiving Party may use or disclose PHI only as permitted or required by this Agreement, the RK360™ Basic Provider App, or as required by law. To the extent that either party carries out any of the other party’s obligations under HIPAA with respect to this Agreement or any Future Agreement, each party shall comply with the requirements of HIPAA that apply to the other party in the performance of such obligations.

3.2. A Receiving Party may use or disclose PHI for the following purposes only:

3.2.1. To fulfill its obligations under this Agreement;

3.2.2. If necessary, for its proper management and administration to carry out its legal responsibilities. Disclosures pursuant to this Section 3.2.2 is permissible only if:

3.2.2.1. the disclosure is Required by Law; or

3.2.2.2. A party makes the disclosure pursuant to an agreement consistent with Section 4 of this Agreement or a party makes the disclosure pursuant to a written confidentiality agreement under which the recipient of the PHI is required to (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which it was disclosed to the recipient, and (3) notify the other party of any acquisition, access, use, or disclosure of PHI in a manner not permitted by the confidentiality agreement.

3.2.3. To report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

3.3. No party shall, and shall assure that its employees, other agents and contractors (including sub-contractors), do not, use or disclose PHI in any manner which would violate the HIPAA Privacy and Security Rule if so used or disclosed by a party.

3.4. A party shall, to the extent required by the “minimum necessary” requirements of HIPAA, request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. To the extent practicable, a party shall not request, use or disclose any Direct Identifiers (as defined in the limited data set standard of HIPAA) and shall comply with the minimum necessary guidance to be issued by the Secretary pursuant to HITECH.

4. **SUBCONTRACTORS AND AGENTS**. Each party shall ensure that its agents, including a subcontractor (collectively, “**Subcontractor**”), to whom it provides Protected Health Information received from or created by a party on behalf of the other party, such Subcontractor shall agree in writing to the same restrictions and conditions that apply to the applicable contracting party with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information which is Electronic Protected Health Information. In addition, the parties agree to take reasonable steps to ensure that its employees’ actions or omissions do not cause the other party to breach the terms of this Agreement. Each party shall enter into a written agreement meeting the requirements of 45 C.F.R. 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits Protected Health Information on behalf of the contracting party.

5. **CONFIDENTIALITY AND SAFEGUARDING OF PHI**. Each party shall comply with the HIPAA Security Rule with respect to EPHI. Each party agrees that it will use appropriate safeguards to prevent the use or disclosure of PHI in a manner contrary to the terms and conditions of this Agreement and will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that a party creates, receives, maintains, or transmits on behalf of the other party. Such safeguards shall

include, but not be limited to those required by applicable law, including, but not limited to, the Privacy and Security Rule. Each party shall ensure that: only those employees and agents that have a business need to know PHI are provided with access to it; access is limited to the minimum amount necessary to accomplish the intended purpose of the access; all employees and agents of a party handling PHI are educated on how to maintain its confidentiality and the requirements of this Agreement; and all PHI is stored and transmitted in a secure environment and in a manner that prevents its inadvertent disclosure.

6. **MITIGATION.** Each party shall mitigate, to the extent practicable, any harmful effect that is known to a party of a use or disclosure, including a Breach (as hereinafter defined), of PHI by a party in violation of this Agreement or HIPAA.

7. **REPORTING REQUIREMENT.**

7.1. Each party shall, following the discovery of a Breach of unsecured PHI, as defined in the HITECH Act or accompanying regulations, notify the other party of such Breach pursuant to the terms of 45 CFR § 164.410 and cooperate in the other party's breach analysis procedures, including risk assessment, if requested. A Breach shall be treated as discovered by a party as of the first day on which such Breach is known to the affected party or, by exercising reasonable diligence, would have been known to the affected party. Each party will provide such notification to the other party without unreasonable delay and in no event later than five (5) calendar days after discovery of the breach. Such notification will contain the elements required in 45 CFR § 164.410.

7.2. Each party will promptly, but in no event later than twenty-four (24) hours from discovery, provide written notification, of any actual or suspected Security Incident or Breach by the other party, including its personnel or subcontractors. The affected party shall provide the other party with sufficient information to permit the unaffected party to comply with the Breach notification requirements set forth at 45 C.F.R. §164.400 et seq., including without limitation:

7.2.1. the identities of and contact information for Individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, street address, phone number, email address);

7.2.2. a brief description of the circumstances of the Breach, including the date of the Breach, the date of discovery of the Breach, and the identity of who accessed and received the Unsecured PHI;

7.2.3. a description of the types of Unsecured PHI involved in the Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information);

7.2.4. a brief description of what the affected party has done or is doing to investigate the Breach, mitigate harm to the individual impacted by the Breach, and protect against future Breaches; and

7.2.5. contact information for a liaison appointed by the affected party with whom the other party may ask questions and learn additional information concerning the Breach.

For purposes of this Agreement, “**Breach**” shall have the meaning given to such term in 45 C.F.R. § 164.402 and include any acquisition, access, use or disclosure of PHI by Provider under this Agreement that is (a) in violation of HIPAA; (b) triggering an obligation under one or more State data breach notification laws (“**State Breach**”) or (c) not permitted under this Agreement. A party will be deemed to have discovered a Breach as of the first day on which the Breach is, or should reasonably have been, known to (a) the party or (b) any party personnel other than the individual committing the Breach.

7.3. **Indemnification.** Each party shall indemnify, defend and hold harmless the other party and its directors, officers, subcontractors, employees, affiliates, agents, and representatives from and against any and all third party liabilities, costs, claims, suits, actions, proceedings, demands, losses and liabilities of any kind (including court costs and reasonable attorneys’ fees) brought by a third party, arising from or relating to the acts or omissions of a party or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives in connection with the party’s performance under this Agreement or other agreements between the parties, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement. The indemnification provisions of this Section 7.3 shall survive the termination of this Agreement. Each party shall obtain no later than one (1) month from Effective Date of this Agreement and maintain during the term of this Agreement liability insurance covering claims based on a violation of the HIPAA Security and Privacy Rule or any applicable law or regulation concerning the privacy of a patient information and claims based on its obligations pursuant to this Section 7.3 in an amount not less than \$ 1,000,000 per claim. Such insurance shall be in the form of occurrence-based coverage. A copy of such policy or certificate evidencing the policy shall be provided to the other party upon written notice.

8. **PERSONAL INFORMATION.** To the extent that a party has access to Personal Information, that party agrees that it has implemented and maintains appropriate security measures for the protection of Personal Information in accordance with HIPAA or state law.

9. **ACCESS TO PHI.** At the request of a party, the other party shall provide access to PHI in a Designated Record Set, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524. The time and manner in which this requirement must be met at the time of the request shall be through the use of the RK360™ Apps, as applicable to each party.

10. **AMENDMENT OF PHI.** Each party shall provide to the other party any PHI in a Designated Record Set requested by the requesting party for amendment as required by 45 C.F.R. § 164.526 within ten (10) days of receipt of such request. Each party shall make any amendments to PHI as directed by the requesting party within thirty (30) days of requesting party’s request for such amendment, and shall notify the other party, in writing, when such amendment has been completed.

11. **AUDIT AND INSPECTION OF RECORDS.** Each party shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by it on behalf of, the other party, to the other party, or to the Secretary, in a time and manner designated by the parties or the Secretary, for purposes of the Secretary’s determining a party’s compliance with the Privacy and Security Rule. Each party shall cooperate with the Secretary if the Secretary undertakes an investigation or other review to determine a party’s

compliance with the Privacy and Security Rule, and shall retain any and all such records, and submit such compliance reports, as may be required by the Secretary or the Privacy and Security Rule.

12. **DOCUMENTATION OF DISCLOSURES**. Each party shall document such disclosures of PHI and information related to such disclosures as would be required for a party to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, as in effect or as amended; provided, however, each party acknowledges and agrees that any disclosure of PHI of an Individual will require the written consent of such Individual prior to such disclosure (the “**Individual Consent**”). Furthermore, neither party shall sell or distribute an Individual’s PHI without obtaining a separate Individual Consent for such sale or distribution to a third party.

13. **ACCOUNTING OF DISCLOSURES**. In the event that an Individual has provided the Individual Consent, then each party shall provide to the other party or the Individual, in a time and manner designated by the parties, such information collected in accordance with Section 12 above to permit a party to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Each party shall provide, at a minimum, the following information for each disclosure: (a) the date of the disclosure; (b) the name and, if known, address of the entity or person who received PHI; (c) a brief description of PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Each party shall provide information to the other party pursuant to this subsection for all disclosures made within six (6) years prior to the date on which the accounting of disclosures was requested.

14. **OWNERSHIP OF PHI**. The parties hereby acknowledge that all PHI shall be and remain the sole property of the Individual, including any and all forms thereof developed by the parties in the course of its fulfillment of its obligations pursuant to this Agreement.

15. **Requests for PHI**. Each party agrees to notify the other party within five (5) business days of a party’s receipt of any request, subpoena, or judicial or administrative order for PHI. To the extent a party decides to assume responsibility for challenging the validity of such request, the other party agrees to cooperate fully in such challenge.

16. **ELECTRONIC DATA INTERCHANGE**. To the extent applicable, each party represents and warrants that it shall conduct only as Standard Transactions, as defined in 45 C.F.R. Part 162, any electronic transactions that a party conducts on behalf of the other party or with other Covered Entities or with any entity that requests a transaction be conducted as a Standard Transaction.

17. **OBLIGATIONS OF THE PARTIES**.

17.1. Each party shall notify the other party of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect a party’s use or disclosure of PHI.

17.2. Each party shall notify the other party of any restriction to the use or disclosure of PHI that a party has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the other party's use or disclosure of PHI.

17.3. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy and Security Rule if done by Covered Entity, other than as expressly permitted in this Agreement.

18. **TERM AND TERMINATION.**

18.1. This Agreement shall commence as of the Effective Date, and shall continue in effect until such time as:

18.1.1. all PHI provided to a party, or created or received by a party on behalf of the other party is deleted or returned to the Individual;

18.1.2. if it is infeasible to return or destroy PHI, as determined in accordance with Section 4 of this Agreement, protections are extended to such PHI in accordance with the terms of this Agreement; or

18.2. In the event a party commits a material breach of the terms of this Agreement, the non-breaching party may, in its sole discretion, either (a) provide the breaching party with fifteen (15) days to cure such breach, and if the breaching party fails to cure such breach within such period, the non-breaching party shall have the right to immediately terminate this Agreement; or (b) terminate this Agreement and the Service Agreement immediately, if cure is not possible, as determined by the non-breaching party. Termination pursuant to this Section 18.2 shall be without prejudice to any other rights and remedies that the non-breaching party may have for a breach of this Agreement. Each party acknowledges and agrees that if termination or cure are not feasible, the non-breaching party shall report the violation to the Secretary.

19. **EFFECT OF TERMINATION.**

19.1. Upon the expiration of this Agreement or in the event of the termination of this Agreement for any reason, each party shall be released from all obligations and liabilities to the other under this Agreement and the Service Agreement occurring or arising after the date of such event, except that the expiration or termination of this Agreement shall not relieve a party of their obligations under this Section 19, nor shall it relieve a party from any liability arising from any breach of this Agreement. The Service Agreement shall also terminate concurrently with the termination or expiration of this Agreement, subject to the survival provisions of that Service Agreement.

19.2. Immediately upon expiration or termination of this Agreement for any reason, each party shall return, or at the other party's request, or at the request by an Individual delete, all PHI in its possession without retaining copies thereof, and shall provide to the other party upon request a certificate as to the return or destruction of such PHI. Each party shall also be responsible for ensuring the return or deletion of PHI in the possession of a party's Subcontractors in accordance with this Section 19.2.

19.3. In the event that a party determines that returning or destroying PHI is infeasible, such party shall provide to the other party written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, the parties shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the parties maintain such PHI.

20. **INSURANCE**. Each party shall procure and maintain during the term of this Agreement liability insurance in accordance with Section 7.3. A party shall notify the other party immediately in the event of a lapse, cancellation, or material modification of such coverage as provided in the Service Agreement.

21. **INJUNCTION**. Each party hereby agrees that the parties will suffer irreparable damage upon a breach of this Agreement, and that such damages shall be difficult to quantify. Therefore, each party hereby agrees that the non-breaching party may seek an injunction to enforce the terms of this Agreement against the breaching party, in addition to any other remedy that they may have.

22. **RELATIONSHIP OF THE PARTIES**. It is expressly understood that each party and each party's employees and agents, if any, are not agents or employees of the other party and have no authority whatsoever to bind the other party, by contract or otherwise.

23. **THIRD PARTY BENEFICIARIES**. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

24. **SURVIVAL**. Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement which by the subject matter of their terms shall survive the termination of this Agreement and any existing agreement, including a Future Agreement between Covered Entity and Business Associate.

25. **NOTICE**. Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, recognized overnight carrier, or by email to the addresses or email addresses of the parties contained in the introductory paragraph of this Agreement.

26. **AMENDMENT**. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with HIPAA or other applicable law; provided, however, that any regulations applicable to Business Associate or to Covered Entity promulgated following the Effective Date of this Agreement shall be deemed incorporated into this Agreement until such time as the parties enter into an appropriate amendment. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that the parties do not promptly enter into an amendment that the parties deem sufficient to ensure that the parties will be able to comply with HIPAA.

27. **INTERPRETATION**. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA or other applicable law.

28. **EFFECT**. The terms and provisions of this Agreement shall supersede any other conflicting or inconsistent terms in the Service Agreement. All other terms of the Service Agreement between Covered Entity and Business Associate shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused this Business Associate Agreement to be executed in its name and on its behalf as of the Effective Date.

Prosocial Applications, Inc.

Covered Entity

By: _____

By: _____

Print Name:

Print _____ Name:

Title:

Title: _____