

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “**Agreement**”) is made and entered into effective July __, 2020 (the “**Effective Date**”) by and between Prosocial Applications, Inc., whose business address is 1905 15th St., Suite 4585, Boulder, Colorado 80302, together with its affiliates and subsidiaries (“**Prosocial**”), and _____, whose business address is _____ (the “**Business Associate**”).

BACKGROUND INFORMATION

A. Reference is made to that certain services and consulting agreement between Prosocial and Business Associate dated _____, as may be amended from time to time (the “**Service Agreement**”), pursuant to which Business Associate performs certain activities or functions on behalf of Prosocial which may include quality and health services analyses and may involve Business Associate’s access to 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. Prosocial 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. Business Associate may have access to Protected Health Information in fulfilling its responsibilities to Prosocial under this Agreement and the Services Agreement.

G. In order for Prosocial and Business Associate to comply with HIPAA, Business Associate must agree to certain provisions designed to preserve the privacy and security of Protected Health Information obtained by Business Associate in the course of providing services to or on behalf of Prosocial.

H. When applicable, Prosocial 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 [REDACTED].

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 Prosocial.

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. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Prosocial and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Prosocial or its affiliates or subsidiaries to Business Associate or is created or received by Business Associate on Prosocial’s behalf shall be subject to this Agreement.

2. **COMPLIANCE WITH LAW**. In providing services under the Service Agreement and under this Agreement, Business Associate 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. Business Associate may use or disclose PHI only as permitted or required by this Agreement or as required by law. To the extent Business Associate carries out any of Prosocial’s obligations under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Prosocial in the performance of such obligations.

3.2. Business Associate may use or disclose PHI for the following purposes only:

3.2.1. To fulfill its obligations under the Services Agreement and 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. Business Associate makes the disclosure pursuant to an agreement consistent with Section 4 of this Agreement or Business Associate 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 Business Associate 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. Business Associate shall not, 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 Prosocial.

3.4. Business Associate 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, Business Associate 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.** To ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Prosocial, agrees to the same restrictions and conditions that apply to Business Associate 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, Business Associate agrees to take reasonable steps to ensure that its employees’ actions or omissions do not cause Business Associate to breach the terms of this Agreement. Business Associate 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 Business Associate. Business Associate shall ensure that the written agreement with each Subcontractor does the following: (a) obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Business Associate under this Agreement; and (b) prohibits Subcontractor from sharing with Business Associate the raw data files provided to Subcontractor by Prosocial.

5. **CONFIDENTIALITY AND SAFEGUARDING OF PHI.** Business Associate shall comply with the HIPAA Security Rule with respect to EPHI. Business Associate 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 Business Associate creates, receives, maintains, or transmits on behalf of Prosocial. Such safeguards shall include, but not be limited to those required by applicable law, including, but not limited to, the Privacy and Security Rule. Business Associate shall ensure that: only those employees and agents of Business Associate 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 Business Associate 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.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure, including a Breach, of PHI by Business Associate in violation of this Agreement or HIPAA.

7. **REPORTING REQUIREMENT.**

7.1. Business Associate shall, following the discovery of a breach of unsecured PHI, as defined in the HITECH Act or accompanying regulations, notify the covered entity of such breach pursuant to the terms of 45 CFR § 164.410 and cooperate in the covered entity's breach analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate will provide such notification to Prosocial 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. Business Associate 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 (as defined below) by Business Associate, including its personnel or subcontractors. Business Associate shall provide Prosocial with sufficient information to permit Prosocial 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 Provider 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 Provider with whom Prosocial may ask questions and learn additional information concerning the Breach.

7.2.6. 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. Provider 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) Provider or (b) any Provider personnel other than the individual committing the Breach.

7.3. Indemnification. Business Associate shall indemnify, defend and hold harmless Prosocial 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 Business Associate or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives in connection with the Business Associate'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 2.6 shall survive the termination of this Agreement. Business Associate 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 2.6 in an amount not less than \$ 1,000,000 per claim. A copy of such policy or certificate evidencing the policy shall be provided to Prosocial upon written notice.

8. **PERSONAL INFORMATION**. To the extent that Business Associate has access to Personal Information, Business Associate 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 Prosocial, Business Associate shall provide access to PHI in a Designated Record Set as directed by Prosocial, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524. Prosocial shall designate the time and manner in which this requirement must be met at the time of the request.

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

11. **AUDIT AND INSPECTION OF RECORDS**. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Prosocial to Prosocial, or to the Secretary, in a time and manner designated by Prosocial or the Secretary, for purposes of the Secretary's determining Prosocial's and/or Business Associate's compliance with the Privacy and Security Rule. Business Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or other review to determine Prosocial's or Business Associate'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**. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Prosocial 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.

13. **ACCOUNTING OF DISCLOSURES**. Business Associate shall provide to Prosocial or an Individual, in a time and manner designated by Prosocial, such information collected in accordance with Section 12 above to permit Prosocial to respond to a request by an Individual for

an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate 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. Business Associate shall provide information to Prosocial 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.** Business Associate hereby acknowledges that all PHI shall be and remain the sole property of Prosocial, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to this Agreement.

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

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

17. **OBLIGATIONS OF PROSOCIAL.**

17.1. Prosocial shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

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

17.3. Prosocial 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 Prosocial, other than as expressly permitted in Sections ___ and ___ of this Agreement.

18. **QUALIFIED SERVICE ORGANIZATION.**

18.1. To the extent that in performing its services for or on behalf of Prosocial, Business Associate uses, discloses, maintains, or transmits PHI that is protected by Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by Part 2; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by Part 2. This includes the processing of raw data by Business Associate's Vendor as defined in the Service Agreement. Business Associate shall ensure its Vendor is subject to a written agreement that requires Vendor to comply with Part 2 use and disclosure restrictions.

18.2. Notwithstanding any other language in this Agreement, Business Associate acknowledges and agrees that any patient information it receives from Prosocial that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

18.3. Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

19. **TERM AND TERMINATION.**

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

19.1.1. all PHI provided to Business Associate, or created or received by Business Associate on behalf of Prosocial is destroyed or returned to Prosocial;

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

19.1.3. the Service Agreement is terminated, subject to the provisions of this Agreement related to the Effect of Termination.

19.2. In the event Business Associate commits a material breach of the terms of this Agreement, Prosocial may, in its sole discretion, either (a) provide Business Associate with fifteen (15) days to cure such breach, and if Business Associate fails to cure such breach within such period, Prosocial shall have the right to immediately terminate this Agreement and the Service Agreement; or (b) terminate this Agreement and the Service Agreement immediately, if cure is not possible, as determined by Prosocial. Termination pursuant to this Section 19.2 shall be without prejudice to any other rights and remedies that Prosocial may have for a breach of this Agreement. Business Associate acknowledges and agrees that if termination or cure are not feasible, Prosocial shall report the violation to the Secretary.

20. **EFFECT OF TERMINATION.**

20.1. 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 Business Associate of Business Associate's obligations under this Section 20, nor shall it relieve Business Associate or Prosocial 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.

20.2. Immediately upon expiration or termination of this Agreement for any reason, Business Associate shall return, or at Prosocial's request destroy, all PHI in its possession without retaining copies thereof, and shall provide to Prosocial upon request a certificate as to the return

or destruction of such PHI. Business Associate shall also be responsible for ensuring the return or destruction of PHI in the possession of Business Associate's subcontractors or agents in accordance with this Section 20.2.

20.3. In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Prosocial 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, Business Associate 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 Business Associate maintains such PHI.

21. **INSURANCE**. Business Associate shall procure and maintain during the term of this Agreement liability insurance in accordance with the Service Agreement. Business Associate shall notify Prosocial immediately in the event of a lapse, cancellation, or material modification of such coverage as provided in the Service Agreement.

22. **INJUNCTION**. Business Associate hereby agrees that Prosocial will suffer irreparable damage upon Business Associate's breach of this Agreement, and that such damages shall be difficult to quantify. Business Associate hereby agrees that Prosocial may seek an injunction to enforce the terms of this Agreement against Business Associate, in addition to any other remedy that they may have.

23. **RELATIONSHIP OF THE PARTIES**. It is expressly understood that Business Associate and Business Associate's employees and agents, if any, are not agents or employees of Prosocial and have no authority whatsoever to bind Prosocial, by contract or otherwise.

24. **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.

25. **SURVIVAL**. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 18 shall survive the termination of this Agreement and any existing agreement, including the Service Agreement between Prosocial and Business Associate.

26. **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, as follows:

[INSERT INFORMATION]

The above addresses may be changed by giving notice of such change in the manner set forth in this Section 26.

27. **AMENDMENT**. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Prosocial to comply with HIPAA or other applicable law; provided, however, that any regulations applicable to Business Associate or to Prosocial with respect to Business Associate 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. Prosocial may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Prosocial, in its sole discretion, deems sufficient to ensure that Prosocial will be able to comply with HIPAA.

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

29. **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 Prosocial 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.

Business Associate

By: _____

By: _____

Print Name: Elaine A. Blechman

Print _____ Name: _____

Title: CEO

Title: _____