

Prosocial Applications HIPAA Business Associate Addendum (BAA)

Last Updated: February 13, 2021

This HIPAA Business Associate Addendum (“**BAA**”) is entered into between Prosocial Applications, Inc., whose business address is 1905 15th St., Suite 4585, Boulder, Colorado 80302, together with its affiliates and subsidiaries (“**Prosocial**”), and the undersigned healthcare provider (“**Healthcare Provider**”), which supplements, amends and is incorporated into the Prosocial’s Terms of Service (“**Terms of Service**”) solely with respect to Covered Services (defined below). This BAA will be effective as of the date electronically accepted by the Healthcare Provider.

Healthcare Provider must have electronically accepted the Terms of Service and Prosocial’s Privacy Policy (“**Privacy Policy**”) for this BAA to be valid and effective. Together with the Terms of Service and Privacy Policy, this BAA will govern each party’s respective obligations regarding Protected Health Information (defined below).

You represent and warrant that: (i) you possess full legal authority to bind Healthcare Provider to this BAA, (ii) you have read and understand this BAA, and (iii) you agree, on behalf of the Healthcare Provider, to the terms of this BAA as may be amended from time to time and as published on the Site (defined below). If you do not have legal authority to bind Healthcare Provider, or do not agree to the terms of this BAA, do not click to accept the terms of this BAA.

1. **DEFINITIONS.**

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

1.2 “**Breach**” has the definition given to it under HIPAA.

1.3 “**Business Associate**” has the definition given to it under HIPAA.

1.4 “**Covered Entity**” has the definition given to it under HIPAA.

1.5 “**Covered Services**” means health information technology services and products, which Prosocial makes available to Users, including the Site, Records, mobile device applications or mobile apps, user interfaces, application programming interfaces (APIs), software platforms, databases, web applications and hardware devices, as may be updated from time to time.

1.6 “**Credentials**” means passwords, tokens, answers to secret questions, and other measures implemented by Prosocial to recognize and authenticate Users authorized to access the contents of a Record and to protect the security, privacy and integrity of User Data and Record Contents.

1.7 “**Designated Record Set**” has the definition given to it under HIPAA.

1.8 “**Distributors**” means third parties (e.g., husband of a breast cancer patient, a dentist, physician or regional health information exchange involved in patient care) that contract with Prosocial to make Services available to Record Owners (e.g., a breast cancer patient) and the Users she has authorized to access contents of her Record (e.g., her husband, dentist, primary-care doctor and oncologist).

1.9 “**Group Data**” means aggregated statistical information that cannot be attributed to particular Record Owners or Users due to the absence of personal identifiers or Protected Health Information and is otherwise anonymized in accordance with applicable legal requirements and best practices.

1.10 “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder, as amended.

1.11 “**HIPAA Security and Privacy Rule**” means the Administrative Simplification provisions, which the Secretary of Health and Human Services issued in regulations modifying 45 CFR Parts 160 and 164.

1.12 “**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act enacted in the United States Congress, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111- 5), and the regulations thereunder as amended.

1.13 “**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.

1.14 “**Protected Health Information**” or “**PHI**” has the definition given to it under HIPAA and for purposes of this BAA is limited to PHI of Record Owners managed by Covered Services.

1.15 “**Record**” means a cloud repository comprising PHI and other personal information, which Prosocial implements on behalf of a Record Owner and a Record Administrator under brand names including “RK360™ Cloud Health Record,” “RedKangaroo® 360 Record,” “SmartPHR®,” “SmartPHR® Health Aware™ Mobile App,” “SmartPHR® Cancer Aware™ Mobile App,” “SmartPHR® Fit Aware™ Mobile App,” “SmartPHR® Heart Aware™ Mobile App,” and “SmartPHR® Kids Aware™ Mobile App.”

1.16 “**Record Administrator**” means a User with the highest level of Record Permissions, who controls access by all other Users to the Record and the usage and disposition of Record Content. The Record Administrator may be an adult Record Owner, the designated personal representative of an adult Record Owner, the parent or guardian of a minor Record Owner or of an incapacitated adult Record Owner, or the Individual assigned medical power of attorney for the Record Owner.

1.17 “**Record Content**” means the contents of a Record including information that the Record Owner, Record Administrator and other Users have entered, uploaded, and updated online or via mobile devices (e.g., demographics, photos, health insurance policies), have exported to or imported from electronic medical record and other information systems (e.g., clinical summaries), have requested automation of such export or import, or have synchronized with remote monitoring devices for data export and import (e.g., data streams from activity monitors).

1.18 “**Record Owner**” means the person whose health-related information is stored in a Record.

1.19 “**Record Permissions**” means the specific set of permissions for a User’s access to a Record, which the Record Owner has authorized directly herself or indirectly via her Record Administrator.

1.20 “**Required by Law**” has the definition given to under HIPAA.

1.21 “**Secretary**” means the Secretary of the U.S. Department of Health and Human Services

1.22 “**Security Incident**” has the definition given to it under HIPAA.

1.23 “**Services Data**” means data that Prosocial automatically collects in order to implement Services, including data related to Users’ computers and mobile devices and usage of Services.

1.24 “**Site**” means the website, www.redkangaroo.us, and other related websites where Prosocial offers Covered Services.

1.25 “**Terms of Service**” means the written agreement entered into between Prosocial and Healthcare Provider, which agreement(s) may be in the form of an online agreement.

1.26 “**Users**” (commonly referred to as end users) means Individuals and organizations, including Healthcare Providers, healthcare consumers, family caregivers, patients, and their duly authorized personal and business representatives, who utilize Covered Services one or more times for business and/or personal reasons.

1.27 “**User Data**” means information that points to particular Users due to the inclusion of personal identifiers such as name, address, birth date, or photograph or of professional identifiers such as NPI registration number.

2. **APPLICABILITY** This BAA applies to the extent Healthcare Provider is acting as a User of Covered Services to create, receive, maintain or transmit PHI and to the extent that Prosocial, as a result, is deemed under HIPAA to be acting as a Business Associate or Subcontractor of Healthcare Provider. Healthcare Provider acknowledges that this BAA does not apply to (i) any other Prosocial product, service, or feature that is not a Covered Service; or (ii) any PHI that Healthcare Provider creates, receives, maintains, or transmits outside of the Covered Services (including Healthcare Provider’s use of its offline or on-premises storage tools or third-

party applications).

3. **PERMITTED USES AND DISCLOSURES.**

3.1 Except as otherwise stated in this BAA, Prosocial may use and disclose PHI and Record Contents, only (i) as permitted or required by the Terms of Service, Privacy Policy, this BAA and (ii) as authorized by a Record Administrator acting on behalf of a Record Owner via Covered Services, or (iii) as Required by Law.

3.2 Except as otherwise stated in this BAA, Healthcare Provider (including employees, other agents, contractors and subcontractors), may use and disclose PHI and Record Contents, only (i) as permitted or required by the Terms of Service, Privacy Policy, this BAA and (ii) as authorized by a Record Administrator acting on behalf of a Record Owner via Covered Services, or (iii) as Required by Law.

3.3 Healthcare Provider acknowledges and agrees that all PHI and Record Contents managed via Covered Services shall be and remain the sole property of the Record Owner, including any and all forms thereof developed by Healthcare Provider in the course of its fulfillment of its obligations pursuant to this BAA as authorized by the Record Administrator.

3.4 Healthcare Provider agrees to notify Prosocial within five (5) business days of Healthcare Provider's receipt of any request, subpoena, or judicial or administrative order for PHI and Record Contents managed via Covered Services. To the extent Prosocial decides to assume responsibility for challenging the validity of such request, Healthcare Provider agrees to cooperate fully with Prosocial in such challenge.

4. **HEALTHCARE PROVIDER OBLIGATIONS.**

4.1 Healthcare Provider will not request that Prosocial or the Covered Services use or disclose PHI or Record Contents in any manner that (i) would not be permissible under HIPAA if done by Healthcare Provider; or (ii) is not authorized by a Record Administrator acting on behalf of a Record Owner via Covered Services.

4.2 Healthcare Provider acknowledges and agrees that it will use controls available within the Covered Services to ensure that use of PHI and Record Contents by employees, other agents, contractors and subcontractors is limited to Covered Services, complies with HIPAA and HITECH and is authorized by a Record Administrator acting on behalf of a Record Owner via Covered Services.

5. **APPROPRIATE SAFEGUARDS.** Prosocial and Healthcare Provider will each use appropriate safeguards designed to prevent use or disclosure of PHI and Record Contents not authorized by a Record Administrator acting on behalf of a Record Owner via Covered Services.

6. **REPORTING AND RELATED OBLIGATIONS.**

6.1 Prosocial will promptly notify Healthcare Provider of (i) any Security Incident of which Prosocial becomes aware subject to this Section 6; and (ii) any Breach that Prosocial

discovers, provided that any notice for Breach will be made promptly and without unreasonable delay, and in no case later than 60 calendar days after discovery. Notifications made under this section will describe, to the extent possible, details of a Breach, including steps taken to mitigate the potential risks and steps Prosocial recommends Healthcare Provider takes to address the Breach.

6.2 Prosocial will send any applicable notifications to the notification email address provided by Healthcare Provider when accepting the Terms of Service or via direct communication with the Healthcare Provider.

6.3 Notwithstanding Section 6.1, this Section 6.3 will be deemed as notice to Healthcare Provider that Prosocial periodically receives unsuccessful attempts for unauthorized access, use, disclosure, modification, or destruction of information, or interference with the general operation of Covered Services. Healthcare Provider acknowledges and agrees that even if such events constitute a Security Incident, Prosocial will not be required to supply any notice under this BAA regarding such unsuccessful attempts other than this Section 6.3.

6.4 Healthcare Provider 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 Healthcare Provider or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives in connection with the Healthcare Provider's performance under this BAA. The indemnification provisions of this Section 6.4 shall survive the termination of this BAA and utilization by Healthcare Provider of Covered Services.

7. **SUBCONTRACTORS.**

7.1. Prosocial will take appropriate measures to ensure that any Subcontractors Prosocial enlists to perform its obligations under the Terms of Service, requiring access to PHI managed via Covered Services, are bound by written obligations that provide the same material level of protection for PHI as this BAA. To the extent Prosocial uses Subcontractors in its performance of obligations hereunder, Prosocial will remain responsible for their performance as if performed by Prosocial.

7.2. Healthcare Provider will take appropriate measures to ensure that any Subcontractors Healthcare Provider enlists to perform its obligations under the Terms of Service, requiring access to PHI managed via Covered Services, are bound by written obligations that provide the same material level of protection for PHI as this BAA. To the extent Healthcare Provider uses Subcontractors in its performance of obligations hereunder, Healthcare Provider will remain responsible for their performance as if performed by Healthcare Provider.

8. **ACCESS AND AMENDMENT.**

8.1 Healthcare Provider acknowledges and agrees that Healthcare Provider is solely responsible for the form and content of PHI managed via Covered Services.

8.2 Healthcare Provider is responsible for managing its use of Covered Services to appropriately respond to the requests of Record Administrators.

8.3 Prosocial will enable Healthcare Provider via Covered Services to fulfill its obligations under HIPAA with respect to Individuals' rights of access and amendment to Designated Record Sets and to respond to the requests of Record Administrators but will have no other obligations to Healthcare Provider or any Individual with respect to the rights afforded to Individuals by HIPAA related to Designated Record Sets, including rights of access or amendment of PHI.

9. **ACCOUNTING OF PHI DISCLOSURES.**

9.1 Healthcare Provider will document disclosures by the Healthcare Provider of PHI managed via Covered Services ("**PHI Disclosures**") and provide an accounting of such PHI Disclosures to Prosocial as and to the extent required of a Business Associate under HIPAA, in accordance with the requirements applicable to a Business Associate under HIPAA, and as would be required for Prosocial to respond to a request by a Record Administrator for an accounting of PHI Disclosures.

_____9.2. Prosocial will document disclosures by Prosocial of PHI Disclosures and provide an accounting of such PHI Disclosures to Healthcare Provider as and to the extent required of a Business Associate under HIPAA, in accordance with the requirements applicable to a Business Associate under HIPAA, and as would be required for Healthcare Provider to respond to a request by a Record Administrator for an accounting of PHI Disclosures.

10. **ACCESS TO RECORDS.** To the extent required by law, and subject to applicable attorney client privileges, Prosocial and Healthcare Provider will each make its internal practices, books, and records relating to PHI Disclosures, available to the Secretary for the purpose of the Secretary determining Prosocial's and/or Healthcare Provider's compliance with this BAA.

11. **QUALIFIED SERVICE ORGANIZATION.**

11.1 To the extent that Healthcare Provider is federally assisted and provides alcohol or drug abuse diagnosis, referral or treatment, Healthcare Provider acknowledges and agrees that it is a Qualified Service Organization ("**QSO**") fully bound by 42 CFR Part 2 when managing PHI and Record Contents via Covered Services and will resist in judicial proceedings any efforts to obtain access to PHI and Record Contents managed via Covered Services except as permitted by Part 2. The QSO will ensure its Vendors are subject to written agreements requiring them to comply with Terms of Service and Privacy Policy and with Part 2 use and disclosure restrictions regarding PHI and Record Contents managed via Covered Services.

11.2 Notwithstanding any other language in this BAA, the QSO acknowledges and agrees that any PHI or Record Contents it receives via Covered Services is protected by Part 2 and is subject to protections that prohibit the QSO from disclosing such information to agents or subcontractors without the specific written consent of the Record Administrator.

11.3 QSO acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

12. **EXPIRATION AND TERMINATION.**

12.1 This BAA will terminate on the earlier of (i) a permitted termination in accordance with Section 12.2; or (ii) the expiration or termination of Terms of Service and other agreements under which Healthcare Provider has access to Covered Services.

12.2 If either party materially breaches this BAA, the non-breaching party may terminate this BAA on 10 days' written notice to the breaching party unless the breach is cured within the 10-day period. If a cure under this Section 12.2 is not reasonably possible, the non-breaching party may immediately terminate this BAA, or, if neither termination nor cure is reasonably possible under this Section 12.2, the non-breaching party may report the violation to the Secretary, subject to all applicable legal privileges.

12.3 When this BAA is terminated due to an uncured material breach by Healthcare Provider under Section 12.2, Prosocial may prohibit Healthcare Provider from management of PHI via Covered Services either until the breach is cured, or indefinitely.

13. **MISCELLANEOUS.**

13.1 Survival. Section 6 (Reporting and Related Obligations), Section 11 (QSO) and this Section 13 (Miscellaneous) will survive termination or expiration of this BAA.

13.2 Counterparts. The parties may execute this BAA in counterparts, including facsimile, PDF, or other electronic copies, which taken together will constitute one instrument.

13.3 Effects of Addendum. To the extent this BAA conflicts with the Terms of Service, this BAA will govern. This BAA is subject to the governing law section in the Terms of Service. Except as expressly modified or amended under this BAA, the Terms of Service and other services agreements remain in full force and effect.

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