

Prosocial Applications, Inc., Terms of Service

Last Updated: September 25, 2023

RedKangaroo and RK360 are trade names of Prosocial Applications, Inc. and its subsidiaries including Smart Health Records, Inc. (“**Prosocial**,” “**we**” or “**us**” or “**our**”). Prosocial owns and operates websites located at rk360.health, redkangaroo.us, and smartphr.com and all associated, redirected, and linked sites (together, the “**Site**”); digital health privacy, health information exchange, and telehealth cloud software platforms (together, the “**Platform**”); application programming interfaces (APIs), databases, hardware devices, mobile device applications or mobile apps, user interfaces, web applications or web portals, and related services (together, the “**Services**”); and electronic health records (the “**Records**”). These Terms of Service apply to individuals and enterprises that visit the Site (together, “**Visitors**”), to individuals and enterprises that subscribe to Services and Records (together, “**Subscribers**”) and to individuals and enterprises authorized to access and utilize Services and Records (together, “**Users**”). You must accept the following Terms of Service to access Site, Services or Records as a Visitor, Subscriber or User.

PLEASE READ THE FOLLOWING TERMS, AS THEY CONSTITUTE A BINDING LEGAL AGREEMENT BETWEEN YOU AND PROSOCIAL. BY ACCESSING OR BROWSING THE SITE OR OTHERWISE ACCESSING OR USING THE PLATFORM, SERVICES, AND RECORDS YOU HEREBY ACKNOWLEDGE THAT YOU (A) HAVE READ, (B) UNDERSTAND, AND (C) AGREE TO BE BOUND BY THESE TERMS AND BY OUR PRIVACY POLICY WITHOUT MODIFICATION. IF YOU DO NOT AGREE TO THE TERMS, THEN YOU MAY NOT USE THE SITE, PLATFORM, SERVICES OR RECORDS.

Prosocial reserves the right to change or modify these Terms or any policy, procedure, or guideline of the Site, Platform, Services, Records, or Subscriptions (collectively “**Changes**”) at any time. You waive any right you may have to receive specific notice of Changes, which will be effective immediately upon implementation of Changes and upon active notification of Users about Changes implemented in new releases of Services, Records and Subscriptions. Your continued use of the Site, Platform, Services, Records or Subscriptions following the posting or implementation of Changes will confirm your acceptance of such Changes. If the Changes are not acceptable to you, your only option is to stop using the Site, Platform, Services, Records; cancel Subscriptions; export data from Records to storage devices you control; authorize deletion of Records; and uninstall associated mobile and web apps from your devices and computers.

1. Definitions

1.1. “**Credentials**” means passwords, tokens, answers to secret questions, and other measures implemented by Prosocial to recognize and authenticate Users and to protect the security, privacy, and integrity of User data.

1.2. **“Cures Act”** means the 21st Century Cures Act, Pub.L. 114–255, a law enacted by the 114th United States Congress in December 2016, with health IT provisions aiming to promote nationwide interoperability and prevent information blocking.

1.3. **“Distributors”** means third parties (e.g., a Healthcare Provider, clinic, hospital, federally qualified health center, regional health information exchange public or private health insurance plan, self-insured employer) that contract with Prosocial to make the Services available to Users.

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

1.5. **“Healthcare Provider”** means an individual or organization with a National Provider Identifier (NPI) number registered in the National Plan and Provider Enumeration System (NPES) maintained by the U.S. Centers for Medicare & Medicaid Services.

1.6. **“HIPAA Security and Privacy Rules”** means regulations of the U.S. Department of Health & Human Services for protection of patient health information located at 45 CFR Part 160 and Subparts A, C, and E of Part 164. The 2000 HIPAA Privacy Rule established an individual’s right to access, inspect, and obtain a copy of health records, upon request, from a covered Healthcare Provider.

1.7. **“Information Blocking”** means information blocking provisions of the Office of the National Coordinator of Health Information Technology (ONC) Cures Final Rule, effective April 5, 2021, which require Healthcare Providers to give patients secure access to their health records by methods they request including digital health apps that use open APIs; secure or insecure email and direct messaging; and patient portals. Information Blocking is generally defined under the Final Rule as practices which, except as required by law or specified by the Secretary of Health and Human Services (HHS) as a reasonable and necessary activity, are likely to interfere with patient access, exchange, or use of their electronic health information (EHI).

1.8. **“Protected Health Information”** or **“PHI”** means the content in Records, which have the definitions ascribed to them in the HIPAA Privacy Rule at 45 CFR Part 160 and Subparts A and E of Part 164.

1.9. **“Record”** means an electronic health record and a personal health record, possibly stored in the internet cloud, which Prosocial supplies 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.”

1.10. **“Record Administrator”** means a User with the highest level of Record Permissions, who controls access by all other Users to the Record, the usage and disposition of Record Content. The Record Administrator has the authority to export and delete Record Content at any time for any reason. 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.

1.11. “**Record Content**” means the contents of a Record including information that the Record Owner, Record Administrator, and/or other Users have entered, uploaded, and updated online or via mobile devices (e.g., demographics, photos, health insurance policies, care plans, referral notes, radiology images, genomic profiles, laboratory results, symptom reports), 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).

1.12. “**Record Owner**” means the person whose health-related information is stored in a Record and may be the patient of many Healthcare Providers.

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

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

1.15. “**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 National Provider Identifier (NPI) registration number.

2. **Early Adopter Beta Testing**

2.1. **Early Adopter Beta Testing.** You hereby acknowledge that if you have been so notified and have agreed to subscribe to Services as an “Early Adopter Beta Tester,” that you may be accessing a special version of Platform, Services and Records (“**Beta Versions**”) designed to investigate the user experience. You understand and agree that the Beta Version may still contain software bugs, suffer disruptions and not operate as intended or designated. Your agreement to utilize a Beta Version signifies your understanding of, and agreement to, participate in the testing of the Beta Version. You agree to provide information about bugs, errors, and usability issues encountered in the use of the Beta Version to Prosocial when prompted and in a timely manner at no charge to Prosocial and not to claim any right, including, but not limited to, any right under patent law and copyright law, with respect to correction or modification of the Beta Version of Platform, Services and Records which Prosocial may make using information provided from you. You agree to routinely utilize tools included in the Beta Version to export contents of your Records to external storage devices under your control and to authorize deletion of your Records if you are dissatisfied with the Beta Version. Prosocial reserves the right to discontinue the Beta Version without notice at any time for any reason including, but not limited to, launching of or discontinuing development of a commercial version of the Platform, Services and Records. You agree not to claim any damages with respect to discontinuance of access to the Beta Version. You agree that you do not have any right to a future non-Beta Version commercial version of the Services, if the commercial version of the Services is launched, unless otherwise designated explicitly in writing by Prosocial.

3. User Representations, Rights, and Responsibilities

3.1. **Representations and Covenants.** By accessing or using the Site, Platform, Services or Records you expressly represent and warrant to Prosocial that:

- You have the right, authority, and capacity to enter into these Terms and to abide by the terms and conditions of these Terms.
- This Site, Platform, Services and Records, are not intended for children under the age of 18 unless authorized by a parent or guardian. If you are under the age of 18, please do not use or access this Site, Platform, Services and Records at any time or in any manner unless authorized by a parent or guardian through the Site Platform, Services and Records.. By using this Site, Platform, Services and Records, you affirm that you are over the age of 18. We do not seek through this Site, Platform, Services and Records to gather personal information from or about persons under the age of 18 without the consent of a parent or guardian.
- You accurately supply and update your personal identifiers (e.g., name, birthdate, email address and mobile phone number).
- If applicable, you accurately supply and update professional identifiers (e.g., your NPI registration number, your business postal and email address and phone number) and professional credentials (e.g., your state licenses, board certification, and health insurance plan affiliations). When requested, you supply relevant documentation.
- When using the Services and Records as a healthcare consumer, you accurately represent your status as a Record Owner, as a Record Administrator acting on your own behalf, or as a Record Administrator acting as personal HIPAA representative, parent or guardian on behalf of another Record Owner.
- When using the Services and Records as a Record Administrator acting as personal HIPAA representative, parent or guardian on behalf of another Record Owner, when requested, you supply Medical Power of Attorney or other evidence of your role.
- When using the Services and Records as a Healthcare Provider, as defined under the Public Health Service Act (42 U.S.C. 300jj) you comply with the requests of Record Owners and Record Administrators for access to their health records in accord with the record access provisions of the HIPAA Privacy Rule and the anti-information blocking provisions of the ONC Cures Final Rule.
- You do not use aliases to create multiple Records, Subscriptions, or Credentials for real and/or fake Users.
- You do not authorize others to employ your User authorization, status or Record Permissions, and you do not assign or otherwise transfer your Credentials, Record Permissions, or Recordsto any other person or entity.

- You agree to comply with all applicable laws from your home nation, the country, state and city in which you are present while using the Services and Records.
- You only access the Services and Records using authorized means.
- You always check to ensure you download the correct, most recent versions of web and mobile Apps. Prosocial is not liable if you do not have a compatible computer, device, or handset or if you have downloaded the wrong version of Apps for your computer, device or handset. Prosocial reserves the right to terminate the Services and Records should you be accessing or using the Services and Records with an incompatible or unauthorized computer, device, or handset.
- You only use the Services and Records for lawful purposes. You do not use the Services for sending or storing any unlawful material or for fraudulent purposes.
- You do not use the Services and Records to cause nuisance, annoyance or inconvenience to any person or entity.
- You do not try to harm the Site, Platform, Services and Records in any way or to impair the proper operation of Prosocial's servers or network.
- You keep your password, Credentials, tokens, codes, or any identifiers we give you that allow access to the Services and Records, secure and confidential, and do not share them with others. You permit others to access Services only by means of tools we make available to you.
- You give us whatever proof of identity we may reasonably request.
- If you access the Services and Records from a mobile device, you may incur additional message or data charges. Please contact your mobile service provider for more information.
- By registering for Subscriptions, Services, and Records you agree to: (i) provide accurate, current and complete User Data; (ii) maintain the security of your User Data and Credentials; (iii) maintain and promptly update any User Data that you provide to us in order to keep it accurate, current and complete; (iv) immediately notify us of any unauthorized use of your password, Credentials, Record Permissions, or Record, or any other breach of security; (v) access Records consistent with your Record Permissions; and (vi) ensure that you log out from a Record at the end of each session.
- You acknowledge and agree that you shall be solely liable for all activities with respect to the use of the Services and Records by any third party who accesses the Services and Records using your Credentials. Prosocial will not be liable for any loss or damage arising from your failure to comply with this section, and your Credentials, User Data, and Record Permissions may be deleted or suspended without warning if we have reason to believe that you do not meet eligibility requirements.

- You acknowledge and agree that you will not exploit, manipulate, use or misuse Services and Records intended for consumer Users for unauthorized commercial purposes.

3.2. **Credentials.** Prosocial enrolls individuals as Users only after issuing them with Credentials based on User Data that Prosocial requests and that Users supply. It is each User's responsibility to respond to Prosocial's requests for User Data and for Credentials while preventing unauthorized third parties from accessing User Data or Credentials. Users must access Services and Records periodically to avoid permanent cancellation of Credentials and deletion of User Data. Prosocial may prompt Users to login after prolonged periods of absence and Prosocial may assist Users in resetting passwords and Credentials but does not guarantee that Users will avoid cancellation of Credentials and Record Permissions or deletion of User Data and Record Content.

3.3. **Record Access by Distributors and Corporate Entities.** Whether Record Owners or duly authorized Record Administrators subscribe directly to Services and Records or are enrolled by Distributors, such as healthcare providers, health insurance companies, or employers, Record Administrators control access to Record Content. When Distributors are individual persons, they may not access Records unless they agree to these Terms and Record Administrators grant them Record Permissions. When Distributors are corporate or government healthcare or health insurance or other entities, they may not access Records except if they identify individual corporate or government representatives who agree to these Terms and to whom Record Administrators grant Record Permissions. Distributors may not supply Records to Record Owners and assign corporate or government representatives as Record Administrators before Record Owners (or their personal representatives if Record Owners are minors or incapacitated adults) have had an opportunity to select Record Administrators who are not controlled or influenced by Distributors. The foregoing provision supersedes any HIPAA Business Associates Agreement or Notice of Privacy Practices of distributors and of corporate or government entities even if agreed to by patients or their personal representatives.

3.4. **Record Permissions.** It is the responsibility of Distributors, Record Owners, and Record Administrators to select trusted Users for Record Permissions, grant them suitable permissions, review audit reports, change or remove User permissions as needed, promptly report User misconduct to Prosocial and the appropriate authorities, and take all necessary actions to remedy User misconduct and prevent additional misconduct. The foregoing provision supersedes any HIPAA Business Associates Agreement or Notice of Privacy Practices of distributors and of corporate or government entities even if agreed to by patients or their personal representatives.

3.5. **Protection of User Data.** Users are responsible for protecting the security and privacy of User Data. Prosocial reserves the right to review User actions for protection of the security and privacy of their own and others' User Data, to remove Credentials and Record Permissions of Users in breach of these Terms, and otherwise to enforce these Terms.

3.6. **Creating Record Content.** Users, consistent with their Record Permissions, control and are responsible for Record Content they have authorized for import from other sources or have entered, updated, altered, annotated, or removed from Records.

Prosocial claims no ownership of Record Content, except for Record Content created or copyrighted by Prosocial. Users represent and warrant that for the duration of these Terms, they have all rights necessary for Record Content and that use of Record Content does not violate any law. Users who introduce Record Content, such as spam or viruses, which jeopardizes others' safety, security, privacy, or intellectual property rights, threatens the privacy, security, or functionality of Services, or is prohibited by applicable government rules and regulations are in breach of these Terms. Prosocial reserves the right to review Record Content for purposes of enforcing these Terms, block and remove prohibited Record Content, remove access permissions of Users in violation of these Terms, and otherwise enforce these Terms.

3.7. Sharing Record Content. Users are responsible for controlling access to their own Records and for properly exercising Record Permissions on others' Records. Users who share others' User Data and Record Content in public forums and Users who employ their access to Services to infringe on, or threaten, others' safety, security, privacy, or intellectual property rights, are in breach of these Terms.

3.8. Data Outages. Services offered by Prosocial may experience unexpected or planned outages to improve services and functionality. In case of such outages Prosocial will not be liable in any way due to the lack of access to the offered Services.

4. Data Protection. As described further in our Privacy Policy, Prosocial takes reasonable measures to protect the security and privacy of data, including User Data and Record Content, from unauthorized access, disclosure, or use. These measures may change at the sole discretion of Prosocial, as circumstances require, to improve the security and privacy of all data including User Data and Record Content.

4.1. No Data Selling. Prosocial does not sell personally identifiable User Data or Record Contents including for targeted marketing.

5. Data Retention. When accessed by authorized Users, our Site and Services collect and exchange data, including User Data and Record Content as they direct. The data retention policies in this section apply to all authorized Users and to the Records they own or administer for others and describe how and why we hold onto different types of data for different periods of time.

5.1. Information Retained Until Deleted by You. Record Administrators may, at any time, authorize export of Record Content to their chosen external storage repositories and deletion of Record Content from our servers. We will use best efforts to delete Record Content from our servers within 45 days from the date of authorization by a verified Record Administrator. Until Record Administrators authorize information deletion, we retain personally identifiable User Data and Record Content on our servers to assure availability to Record Owners following unintended expiration of Record subscriptions. Record Owners and their Record Administrators and other representatives who supply proof of identity and authority may contact us to reactivate expired subscriptions or to authorize Record Content export and deletion from our servers.

5.2. Data that Automatically Expires After a Period of Time. Data pertaining solely to our management of Site and Services, excluding User Data and Record Content or information related to management of User Data and Record Content, may be set to expire, and be expunged from our servers after reasonable time periods.

5.3. **Information Retained Indefinitely.** Audit logs of User activity in Records are deleted when Record Administrators authorize deletion of Record content as in Section 5.1. Otherwise, logs of User activity are retained indefinitely.

5.4. **Information Shared with Healthcare Providers.** Prosocial has no control over retention, processing, or exchange of information that Healthcare Providers receive via our Site and Services.

6. **Termination or Cancellation of Services.**

6.1. **Usage of Services.** If Users stop using the Services at any time for any reason and allow their Credentials to expire through prolonged inactivity, Prosocial may terminate Users' access to Services.

6.2. **Record Termination by Users.** Record Administrators may close the Records they administer for themselves or for other Record Owners, at any time for any reason, employing methods that Prosocial supplies for exporting Record Content to external storage devices and requesting deletion of User Data and Record Content from Prosocial's servers. Following Record Termination by Users, Prosocial may retain anonymized or deidentified Group Data related to closed Records.

6.3. **Access Termination.** Upon termination of a User's access to Services, by the User or by Prosocial, the User's right to access Services and Records stops immediately. Prosocial may delete the User's User Data and Record Content from its servers and has no obligation to return any information including User Data and Record Content to the User. Following Access Termination, Prosocial may retain the audit logs of terminated Users and Group Data related to terminated Users.

6.4. **Record Termination or Suspension by Prosocial.** Prosocial reserves the right to suspend or terminate any Record upon one of the following events:

(a) A material breach of these Terms (other than the payment of amounts due hereunder) and the User or Distributor fails to cure such breach within ten (10) calendar days after written notice of the breach.

(b) A failure by the User or Distributor to pay any amounts due to Prosocial under these Terms or otherwise.

(c) With respect to any User or Distributor, the occurrence of an action in bankruptcy, an assignment for the benefit of creditors, the appointment of a receiver or trustee, or the liquidation of all or substantially all of its assets or Prosocial determines that the User or Distributor is not creditworthy.

(d) Upon a determination by any governmental authority with jurisdiction over the parties that any provision of these Terms is contrary to existing laws, rules or regulations.

(e) The passage of adoption of any law, rule, or regulation that in the reasonable judgment of Prosocial will make it materially more expensive or difficult to provide Services under these Terms.

6.5. **Actions by Prosocial.** Prosocial may take action against Users who are in breach of these Terms including, without limitation, (i) cancellation of Credentials; (ii)

suspension, termination, or deletion of a Record; (iii) deletion of User Data and Record Contents; or (iv) denial of access to Services; or referral to the proper authorities.

7. Intellectual Property; License to Service. All right, title, and interest including, but not limited to, copyright and other intellectual property rights in and to the Services (including but not limited to all html, asp, aspx, dll, graphic/image, and text files) are owned by Prosocial. Such rights are protected by United States copyright laws, other applicable patent laws, copyright laws, and international treaty provisions. Prosocial retains all rights not expressly granted herein.

Subject to your compliance with these Terms, Prosocial hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable license to access and use the Services and to install and use the executable form of any applications contained in the Services on computers or devices which are owned or controlled by you. This license is revocable at any time

You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, reverse engineer, decompile, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Site, the Services, the User Data or Record Content, except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Prosocial or its licensors, except for the licenses and rights expressly granted in under these Terms. Prosocial reserves the right to refuse permission to use the Services to any individual or company for any reason and may do so without notice. You may not delete, alter or remove any copyright notices, including any references to “Prosocial,” “Prosocial Applications, Inc.,” “Smart Health Records,” “SHARE,” “Red Kangaroo 360,” “RK360,” “SmartPHR,” “Cancer Aware,” “Fit Aware,” “Heart Aware,” or “Kids Aware,” in any of the source code, such as those in asp/asp.net scripts. Any use of the Site or the Services other than as specifically authorized in these Terms, without our prior written permission, is strictly prohibited and will terminate the license granted under these Terms. Such unauthorized use may also violate applicable laws.

You reserve all rights over any Record Content that you own or for which you have a license (other than Feedback, as defined and described in the section entitled “Feedback” below). In order to allow Prosocial to adequately operate and provide the Services, you grant to Prosocial a worldwide, non-exclusive, fully paid, royalty-free, sublicensable, and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform your Record Content for the purpose of operating the Site and the Services and Prosocial’s (and its successor’s) business; provided that such use is in accordance with U.S. federal and state law, including HIPAA. You may terminate this license with respect to any Record Content posted by you on the Site of which you are the owner by deleting the information from the Site. Otherwise, such license will be perpetual and irrevocable.

8. Disclaimer and Limitation of Liability for Damages. EXCEPT AS PROVIDED IN THIS SECTION, THE SITE, PLATFORM, SERVICES, RECORDS AND ANY THIRD PARTY CONTENT, RECORD CONTENT, USER DATA, AND ALL SERVICES ARE DELIVERED “AS IS” AND WITHOUT WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR CONDITION OF TITLE. IN NO EVENT SHALL PROSOCIAL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR INTERRUPTION OF BUSINESS, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT, INDEMNITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitations include and apply to, without limitation, any liability arising out of the performance or failure to perform of any hardware, software, or Internet connection, from any errors, omissions, interruptions in or failure to provide Internet service; from interruptions in web page availability; from the consequences of computer viruses transferred over the Internet or otherwise; or from communication line failure, breach of security due to use of the Internet, or any loss of information or confidentiality due thereto.

IF ANY PART OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, ILLEGAL, OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF PROSOCIAL UNDER SUCH CIRCUMSTANCES TO YOU OR ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED WILL NOT EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

Further, you acknowledge that you may have or may in the future have claims against us which you do not know or suspect to exist in your favor when you agreed to these Terms and which if known, might materially affect your consent to these Terms. You expressly waive all rights you may have under Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

IF THIS CLAUSE IS HELD TO BE UNENFORCEABLE IN WHOLE OR IN PART IN ANY JURISDICTION DUE TO RELEVANT LAWS, THEN IN NO EVENT SHALL PROSOCIAL'S TOTAL LIABILITY TO YOU EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00). NOTHING IN THIS CLAUSE SHALL LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM GROSS NEGLIGENCE.

9. **Indemnification.** Each User, Record Owner, Record Administrator, and Distributor (each, an "**Indemnifying Party**") will defend, indemnify, and hold harmless Prosocial, its affiliates (including SHARE), directors, licensors, employees, and agents harmless from and against any claim, action, proceeding, loss, cost, expense, damages, and liability, including reasonable attorneys' fees, arising from:

(a) The Indemnifying Party's access to, use of, or other actions relating to the Services;

(b) The Indemnifying Party's breach of any provision of these Terms; and/or

(c) Any User Data or Record Content provided by the Indemnifying Party.

10. **No Medical Advice** The Services include no provision of medical or healthcare advice or directions and are not intended to be and should not be used in place of the advice of your physician or other medical professionals or a visit, call, or consultation with your physician or other medical professionals. You should never disregard medical advice or delay in seeking medical advice because of any content or information presented on this Site, and you should not use our content for diagnosing or treating a health problem. If you have any concerns about your health, you should always consult with a physician or other health-care professional. Record Owners and Record Administrators are responsible for consulting with qualified healthcare providers before drawing any conclusions based on information they access via the Services.

Although the Services may allow Record Owners and Record Administrators to monitor symptoms, physical findings and laboratory results; to visualize temporal correlation to medications, supplements, and life-style choices; to aggregate health data from multiple sources; and to exchange data and communicate about healthcare issues with Healthcare Providers, there is no intent to provide medical advice or directions, to confirm the accuracy of any data, or to verify the qualifications of any Healthcare Provider contacted via Services. Record Owners and Record Administrators are responsible for exercising reasonable judgment about actions they take as Users of our Services.

The transmission and receipt of User Data or Record Content, in whole or in part, or communication via the internet, e-mail or other means does not constitute or create a doctor-patient, therapist-patient, or other healthcare professional relationship between you and us.

Reference to any Healthcare Provider, product, recording, event, process, publication, service, or offering of any third party by name, trade name, trademark, service mark, company name or otherwise does not constitute or imply the endorsement or recommendation of such by Prosocial or SHARE. Any views expressed by third parties on the Site or Services are solely the views of such third party and we assume no responsibility for the accuracy or veracity of any statement made by such third party.

11. **Copyright Complaints.** In the event that you find content posted on our Site or Services which you believe to be an infringement of the copyright ownership or other intellectual property rights of your company or any third party, you are requested to immediately contact the Prosocial. To report any alleged infringement, please contact us in writing by providing a signed statement containing the following information pursuant to the Digital Millennium Copyright Act ("**DMCA**"):

- 1) your name, address, telephone number, and email address, and if you are acting on behalf of the owner of the intellectual property, the name of the owner;
- 2) a statement, made under penalty of perjury, that you are the owner of the copyright or are authorized to act on behalf of the owner;

- 3) a detailed description of the copyrighted work or other intellectual property that you claim has been infringed;
- 4) if your claim is based on a registered work, the registration number, and the date of issuance of the registration;
- 5) a description of the infringing material and the URL where such material is located on the Site or Services, or a description of where on our Site or Services you found such material;
- 6) your written statement that you believe, in good faith, that the use of the work on our Site or Services has not been authorized by the true owner of the work, its agent, or as a matter of law; and
- 7) a statement that all of the information you have provided is true.

Please send your notice of alleged infringement to the following:

By Postal Mail:

Data Privacy Officer
Prosocial Applications
1905 15th St. #4585
Boulder CO 80302-4585
United States
Attn: Legal Department

By Email:

privacy@redkangaroo.us

Prosocial may give notice of a claim of copyright infringement to our Users by means of a general notice on the Site, electronic mail to a User's email address in our records, or by written communication sent by first-class mail to a User's address in our records. In accordance with the DMCA, we may terminate use of our Site or Services by repeat infringers in appropriate circumstances.

12. **Feedback.** Any comments or materials sent to Prosocial including feedback data, such as questions, comments, suggestions, or the like regarding the Site, the Service, the Record, the App or any other products or programs of Prosocial (collectively "**Feedback**"), shall be deemed to be non-confidential. Prosocial shall have no obligation of any kind with respect to such Feedback and shall be free to reproduce, use, disclose, exhibit, display, transform, create derivative works and distribute the Feedback to others without limitation. Further, Prosocial shall be free to use any ideas, concepts, know-how or techniques contained in such Feedback for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products incorporating such Feedback. The foregoing does not apply to any materials posted in your Record.

13. **Miscellaneous.**

13.1. These Terms and the relationship between the parties hereto will be governed by the laws of the State of Colorado, United States of America.

13.2. Unless otherwise provided herein, any claim or controversy arising out of or relating to these Terms or the breach of these Terms shall, upon the request of any party involved, be submitted to and settled by a sole arbitrator in Colorado, in accordance with the rules of the American Arbitration Association. The decision made pursuant to arbitration shall be rendered within sixty (60) days of submission to arbitration and shall be binding and conclusive on all parties involved; and judgment upon that decision may be entered in the highest court of any forum, federal or state, having jurisdiction. In the event that any arbitration proceeding is brought forth to enforce or interpret these Terms, the prevailing party shall be entitled to collect from the other party its expenses and reasonable arbitration fees exclusive of attorney fees. We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration, we each waive any right to a jury trial.

13.3. In the event a court of competent jurisdiction determines that any part or provision of these Terms is invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of these Terms.

13.4. The article and section headings used herein are for reference purposes only and shall not in any way affect the meaning or interpretation of these Terms and the terms and provisions herein.

13.5. Under California Civil Code Section 1789.3, California users of our Site and Services are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

13.6. You agree that Prosocial may communicate with you electronically regarding your use of the Services and that any notices, agreements, disclosures or other communications that Prosocial sends to you electronically will satisfy any legal communication requirements, including that the communications be in writing. To withdraw your consent from receiving electronic notice, please notify Prosocial at support@redkangaroo.us.

13.7. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of our Services or relating to these Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred.

13.8. No agency, partnership, joint venture, or employee-employer relationship is intended or created by these Terms.

13.9. We will not be liable for any failure or deficiency in the performance or availability of the Site or Services by reason of the occurrence of any event beyond our reasonable control, including without limitation, a labor disturbance, an Internet outage, interruption of service, communication outage, failure by our service provider(s), fire, terrorism, natural disaster, or war.

13.10. These Terms, including any exhibits attached hereto, sets forth the entire agreement and understanding of the parties hereto and supersedes and merges any and

all prior proposals, negotiations, representations, agreements, arrangements or understandings, both oral and written, relating to the subject matter hereof. The parties hereto have not relied on any proposal, negotiation or representation, whether written or oral, that is not expressly set forth herein.