

Prosocial Applications Terms of Service

Last Updated: March 21, 2014

Prosocial Applications, Inc. (“Prosocial,” “we” or “us”) provides certain Services (as defined below) related to health information technology to healthcare consumers and providers. In order to access and use the Services, you must accept the following Terms of Service (the “Terms”) without modification.

PLEASE READ THE FOLLOWING TERMS, AS THEY CONSTITUTE A BINDING LEGAL AGREEMENT BETWEEN YOU AND PROSOCIAL. BY ACCESSING OR BROWSING THIS WEBSITE OR OTHERWISE ACCESSING OR USING ANY OF THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS AND THE PRIVACY POLICY WITHOUT MODIFICATION. IF YOU DO NOT AGREE TO THE TERMS, THEN YOU MAY NOT USE THE SERVICES.

Prosocial reserves the right to change or modify these Terms or any policy or guideline of the Services, at any time. Any changes or modification will be effective immediately upon posting of the revisions on the Site (as defined below) or through the Services, and you waive any right you may have to receive specific notice of such changes or modifications. Your continued use of the Site or the Services following the posting of changes or modifications will confirm your acceptance of such changes or modifications. If the modifications or changes are not acceptable to you, your only option is to stop using the Services and uninstall any application contained in the Services from any computers or devices on which you have it installed.

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 and Record Content.

1.2. “**Distributors**” means third parties (e.g., husband of a breast cancer patient, a health information exchange) that contract with Prosocial to make Services available to Users (e.g., breast cancer patient, providers and patients affiliated with a health information exchange).

1.3. “**Group Data**” means information that cannot be associated with particular Users due to the absence of personal identifiers, Protected Health Information and Personally Identifiable Information.

1.4. “**Protected Health Information (or PHI)**” and “**Personally Identifiable Information (or PII)**,” means User Data, 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.

1.5. “**Record**” means a personal health record, which Prosocial supplies under brand names including “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.”

1.6. **“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 Holder, the designated personal representative of an adult Record Holder, the parent or guardian of a minor Record Holder or of an incapacitated adult Record Holder.

1.7. **“Record Content”** means the contents of a Record including information that 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), or have synchronized with remote monitoring devices for data export and import (e.g., data streams from activity monitors).

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

1.9. **“Record Permissions”** means the specific set of permissions for a User’s access to a Record, which the Record Administrator has authorized.

1.10. **“Services”** or **“Prosocial Health IT Services”** means the Site, the personal health records, mobile device applications or mobile apps, user interfaces and tools, software platforms, databases, and web applications made available by Prosocial.

1.11. **“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.

1.12. **“Site”** means the website, www.thesmartphr.com, and other related websites where Prosocial offers Services.

1.13. **“Users”** means persons authorized to access Services.

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

2. **Beta Version and Changes to Services**

2.1. **Beta Version.** You hereby acknowledge that this is a pre-release version of the Services (the **“Beta Version”**) and is undergoing beta testing. You understand and agree that the Beta Version may still contain software bugs, suffer disruptions and not operate as intended or designated. Your use of the Beta Version signifies your understanding of and agreement to participate in the testing of the Beta Version. You agree to provide information about bugs and errors encountered in the use of the Beta Version to Prosocial 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 or Services which Prosocial

may make using information provided from you. 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 a development of a commercial version of the Services. 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 commercial version of the Services, if the commercial version of the Services is launched, unless otherwise designated explicitly by the program and officers at Prosocial.

2.2. Changes to Services.

Prosocial is not obligated to maintain or support the Services, or to provide you with updates, upgrades or services related thereto. You acknowledge that Prosocial may from time to time in its sole discretion, issue updates or upgrades to the Services, and may automatically update or upgrade the version of the Services that you are using on your computer or device, either automatically or as a result of your request. These updates or upgrades may be designed to fix bugs, security issues, improve performance, add, remove, or update functionality, and generally improve the Services. Prosocial reserves the right to discontinue the Services with or without notice to you. You consent to such updating or upgrading on your computer or device. If you object to any such changes, your sole recourse shall be to cease using the Services. Continued use of the Services following notice of any such changes shall indicate your acknowledgement of such changes and satisfaction with the Services as so modified.

3. User Representations, Rights and Responsibilities

3.1. Representations and Covenants. By accessing or using the Site or the Services, 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.
- You are at least 18 years old.
- Your participation in using the Services is for your personal use, for your use as a personal representative of an Record Holder, or for your use as an informal or formal provider of services to an Record Holder. You may not authorize others to use your User status or Record Permissions, and you may not assign or otherwise transfer your Credentials, Record Permissions, or Record to 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.
- You may only access the Services using authorized means.

- It is your responsibility to check to ensure you download the correct applications for your computer or device. Prosocial is not liable if you do not have a compatible computer, device or handset or if you have downloaded the wrong version of the applications for your computer, device or handset. Prosocial reserves the right to terminate the Services should you be using the Services with an incompatible or unauthorized computer, device or handset.
- You will only use the Services for lawful purposes; you will not use the Services for sending or storing any unlawful material or for fraudulent purposes.
- You will not use the Services to cause nuisance, annoyance or inconvenience to any person or entity.
- You will not try to harm the Site or the Services in any way or to impair the proper operation of the Prosocial's servers or network.
- You will keep secure and confidential your password, Credentials, or any identification we provide you which allows access to the Services.
- You will provide us with whatever proof of identity we may reasonably request.
- If you access the Services from a mobile device you may incur additional message or data charges. Please contact your mobile service provider for more information.
- By registering for the Services, 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; (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 by any third party who accesses the Services 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.

3.2. Credentials Prosocial enrolls individuals as Users only after issuing them with Credentials based on User Data that Prosocial requests and 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 periodically to avoid permanent cancellation of Credentials and deletion of User Data. Prosocial will prompt Users to login after prolonged periods of absence and Prosocial will 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 Holders enroll directly with Prosocial for their own Records or are enrolled by Distributors, 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 entities, they may not access Records except if they appoint corporate representatives who agree to these Terms and to whom Record Administrators grant Record Permissions. Distributors may not supply Records to Record Holders and assign corporate representatives as Record Administrators before Record Holders (or their personal representatives if Record Holders are minors or incapacitated adults) have an opportunity to select Record Administrators who are not controlled or influenced by Distributors.

3.4. Record Permissions It is the responsibility of Distributors, Record Holders 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.

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 Content they 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 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 others' safety, security, privacy or intellectual property rights, thereby breach 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 anyway due to the lack of access to the offered services.

4. Data Protection Prosocial takes reasonable measures to protect the security and privacy of data, including User Data and Record Content, from unauthorized access, disclosure, or use in ways such as:

4.1. Audit Reports Prosocial automatically audits all access to Records and makes the resulting audit reports available to Record Administrators. Based on these reports, Record Administrators may decide to modify or withdraw the Permissions of Users whose activities in the Record may jeopardize the security and privacy of data.

4.2. Cloud Hosting Prosocial employs a HIPAA-compliant secure cloud hosting facility to implement Services and to store and transmit data, including User Data, Record Content and Group Data, reasonably limiting the risk of cybercrime.

4.3. Data Encryption Prosocial encrypts data during transmissions over the internet and on the mobile devices there by reducing the risk of unauthorized access.

4.4. Data Storage Users, consistent with their Record Permissions, may import data into specific Records from external databases maintained and controlled by Distributors or other third parties or may export data from Records to external databases maintained and controlled by Distributors or other third parties. However, Prosocial stores data only in databases that it maintains and controls, reasonably limiting unauthorized access and data misuse by Distributors and third parties.

4.5. Record Administrator Prosocial requires that a Record have only one primary Administrator, minimizing diffusion of responsibility for the security and privacy of Record Contents. Adult Record Holders are the default primary Administrators for their Records although they may authorize other Users in this role. A parent or legal guardian is the default primary Administrator for a Record Holder below the age of 18 or an incapacitated, adult Record Holder. Primary Administrators are required to appoint Users as secondary Administrators in the event of their unavailability.

4.6. Record Permissions Prosocial enables the Record Administrator to grant, audit, change and withdraw the content- and function-specific Permissions of all Users with access to the Record. Prosocial invests the Record Administrator with Permissions greater than those of other Users and ultimate accountability for the security and privacy of Record Contents.

5. Termination or Cancellation of Services

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

5.2. Record Termination by Users Record Administrators may close the Records they administer for themselves or for other Record Holders, 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 Group Data related to closed Records.

5.3. 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 Group Data related to terminated Users.

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

5.4.1. 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;

5.4.2. A failure by the User or Distributor to pay any amounts due to Prosocial under these Terms or otherwise;

5.4.3. 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;

5.4.4. 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;

5.4.5. 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.

Prosocial may take action against Users who are in breach of these Terms including, without limitation, cancellation of Credentials; suspension, termination or deletion of a Record; deletion of User Data and Record Contents; denial of access to Services; or referral to the proper authorities.

6. 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 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-sublicenseable 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 this Agreement. 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.,” “SmartPHR,” “Health Aware” “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 site terms, without our prior written permission, is strictly prohibited and will terminate the license granted in these site 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, sublicenseable, 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, including without limitation for promoting and redistributing part or all of the Services (and derivative works thereof) in any media formats and through any media channels. 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.

7. Disclaimer and Limitation of Liability for Damages. EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE SITE, 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 TO USER OR DISTRIBUTOR FOR ANY AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID FOR SERVICES PROVIDED HEREUNDER. 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.

8. Indemnification. Each User, Record Holder, Record Administrator, and Distributor (each, an “**Indemnifying Party**”) will defend, indemnify, and hold harmless Prosocial, its

affiliates, 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:

12.a. The Indemnifying Party's access, use or other actions relating to Services and/or

12.b. The Indemnifying Party's breach of any provision of these Terms; and

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

9. 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 healthcare professional. Users are responsible for consulting with qualified healthcare providers before drawing any conclusions based on information they access via the Services.

Although the Services allow the User to monitor symptoms, physical findings and laboratory results, and to visualize temporal correlation to medications, supplements and life-style choices, there is no intent to provide medical advice or directions. Any conclusions drawn by the User from this data need to be discussed with the User's health care provider(s) before implementing any actions or changes in actions.

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.

10. Copyright Complaints If you believe that anything on the Site infringes upon any copyright which you own or control, you may file a notification of such infringement with our designated agent as set forth below.

Name of Designated Agent: Zachary N. Noffsinger

Full Address of Designated Agent:

Flatirons Law Group, LLC

2701 Iris Avenue, Suite S

Boulder CO 80304

United States of America

Telephone Number of Designated Agent: (303) 495-5112

Facsimile Number of Designated Agent: (303) 957-5495

E-Mail Address of Designated Agent: zach@flatironslaw.com

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.

11. 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.

12. Miscellaneous

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

12.2. Unless otherwise provided herein, any claim or controversy arising out of or relating to these Terms or its breach 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.

12.3. 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.

12.4. The article and paragraph 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.

12.6. 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.