

PROACT, INC. SERVICE AGREEMENT

with

Town of Prosper

ProAct, Inc.
6333 Route 298
East Syracuse, New York 13057
(315) 287-3652

SERVICE AGREEMENT

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PROACT, INC. SERVICE AGREEMENT

THIS SERVICE AGREEMENT (hereinafter referred to as the “Agreement”) is entered into this first day of January, 2020, between ProAct, Inc., a New York corporation with offices located at 6333 Route 298, East Syracuse, New York 13057 (hereinafter referred to as “ProAct”), and Town of Prosper with offices located at 200 S. Main Street, 3rd Floor, Prosper, TX 75078 (hereinafter referred to as “Plan Sponsor”).

WHEREAS, Plan Sponsor is a business organized under the laws of the State of Texas and desires to offer a pharmacy prescription drug benefit plan providing for the dispensing of prescription drugs and other covered products to Plan Participants; and

WHEREAS, Plan Sponsor desires to hereby engage ProAct to perform services relating to prescription drug claim processing, eligibility verification, mail service pharmacy and preparation of drug management and utilization reports required by Plan Sponsor; and

WHEREAS, ProAct is qualified to perform the matters referred to hereunder and is willing to do so upon and subject to the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual promises and agreement herein contained, Plan Sponsor and ProAct hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Average Wholesale Price

The term “Average Wholesale Price” shall mean the average wholesale price of a prescription drug or medication dispensed as set forth in the current price list updated no less than weekly in recognized sources such as Medi-Span or First Data Bank, including its supplements, or other nationally recognized pricing source as determined by ProAct in its sole discretion. The applicable Average Wholesale Price (“AWP”) for prescriptions dispensed at retail and mail services pharmacies shall be based on the actual package size submitted. In the event of any material change in the method used to determine AWP by First DataBank or Medi-Span, or should First DataBank and Medi-Span not continue to publish AWP pricing, the parties agree to modify the pricing hereunder to maintain the parties’ respective economic position under this Agreement as of the Effective Date such that the aggregate net price of a product is the same as before such change or discontinuance occurred.

1.2 Benefit Plan

The term “Benefit Plan” shall mean Plan Sponsor’s plan document covering prescription drug benefits, including Claims processing parameters and other information specifying healthcare coverage for Plan Participants, as those parameters currently exist or may be amended in the future. Plan Sponsor will provide ProAct with certain information relating to such Benefit Plans (“Benefit Plan Information”), as required in Section 4.2.

1.3 Claims

The term “Claims” shall mean those prescription drug claims processed through ProAct’s on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with a Benefit Plan.

1.4 Copayment

The term “Copayment” shall mean such amounts as are required to be paid to Participating Pharmacies by Plan Participants according to the Benefit Plan Information provided by Plan Sponsor, which may be a deductible, a percentage of the prescription price or a fixed charge.

1.5 Dispensing Fee

The term “Dispensing Fee” shall mean the amount established by agreement between Plan Sponsor and ProAct on the date of execution hereof, and modified thereafter by agreement between ProAct and Plan Sponsor, as the standard Participating Pharmacy fee for filling a single prescription.

1.6 Effective Date

The term “Effective Date” shall mean the date upon which this Agreement shall be effective. The Effective Date is January 1, 2020.

1.7 ERISA

The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

1.8 Formulary

The term “Formulary” shall mean the list of prescription drugs and medications identified by ProAct for routine use and which will be dispensed through Participating Pharmacies to Plan Participants.

1.9 HIPAA

The term “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.

1.10 Identification Cards

The term “Identification Cards” (“ID Cards”) shall mean printed identification cards containing specific information about the prescription drug benefits to which the Plan Participants are entitled. All ID Cards shall have the applicable ProAct pharmacy

network logo or other method of identifying the fact that ProAct is the provider of the prescription drug benefit in a form acceptable to ProAct.

1.11 Implementation Date

The term “Implementation Date” shall mean the date upon which ProAct completes the input of Plan Sponsor’s Plan Participants List, unless such date is extended because Plan Sponsor’s data required conversion or is in a format that is unacceptable to ProAct, pursuant to Section 3.2.

1.12 Maximum Allowable Cost or MAC

The term “Maximum Allowable Cost” or “MAC” shall mean the unit price that has been established by ProAct for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Plan Sponsor, which list may be amended from time to time by ProAct in maintaining its generic pricing program. Plan Sponsor acknowledges that the MAC list applicable to Plan Sponsor is not the same as the MAC published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or “HCFA MAC”).

1.13 Participating Pharmacies

The term “Participating Pharmacies” shall mean those organizations which contract with ProAct to provide Pharmacy Drug Services for Plan Participants and shall include, but shall not be limited to, walk-ins, mail order, specialty injectible and e-commerce vendors.

1.14 Pharmaceutical Manufacturer

The term “Pharmaceutical Manufacturer” shall mean a pharmaceutical company which has entered into an agreement with ProAct to offer discounts for pharmaceutical products.

1.15 Pharmacy Network

The “Pharmacy Network” consists of a retail pharmacy network, established and maintained by ProAct, to provide covered prescription drugs and other products.

1.16 Pharmacy Network Management

The term “Pharmacy Network Management” shall mean ProAct’s responsibility for contract reimbursement negotiations as well as provider relations with Participating Pharmacies. Reimbursement negotiations shall include: i) payment terms; ii) method of payment; iii) timeliness of payment; and iv) access fees, as well as any other issues related to payment to Participating Pharmacies. Provider relations shall include: i) store information updates; ii) credentialing; iii) contract compliance; and iv) Plan Participant service issues, as well as any other issues related to the relationship with Participating Pharmacies.

1.17 Plan Participants

The term “Plan Participants” shall mean those individuals who are entitled to Prescription Drug Services under the Plan as identified by Plan Sponsor as set forth in Plan Sponsor’s eligibility file prepared and maintained by Plan Sponsor and delivered to ProAct.

1.18 Plan Participants List

The term “Plan Participants List” shall have the meaning set forth in Section 3.2.

1.19 Prescription Drug Services

The term “Prescription Drug Services” shall mean all claims processing, reporting, rebate administration, pharmacy network management and other pharmacy benefit management services to be provided by ProAct pursuant to this Agreement.

1.20 Protected Health Information or PHI

The terms “Protected Health Information” or “PHI” shall have the meaning given such terms by HIPAA but limited to that information created or received by ProAct in its capacity as a business associate to the Benefit Plan.

1.21 Rebates

The term “Rebates” shall mean the formulary rebates, including base and market share rebates, collected by ProAct in its capacity as a group purchasing organization for the Benefit Plan from various pharmaceutical companies that are attributable to the utilization of single source brand prescription drugs by Plan Participants.

ARTICLE 2
PROACT SERVICES

2.1 Claims Processing Services. ProAct shall provide Claims processing services related to Claims for prescriptions dispensed on or after the Effective Date of this Agreement. ProAct shall process Claims received from Participating Pharmacies and Plan Participants, determine whether such Claims qualify for reimbursement in accordance with the terms of the applicable Benefit Plan and determine the applicable payment. ProAct agrees to process Claims within National Council for Prescription Drug Programs (NCPDP) prevailing standards. ProAct shall process Claims within the time frames established by applicable state and federal law. Upon termination of this Agreement, ProAct shall be obligated to process only those Claims which are for prescriptions dispensed before the termination date and which are received by ProAct within ninety (90) days of the termination date. Any Claims submitted and processed after the termination date will be invoiced at the rates set forth for such Claims in Exhibit A.

ProAct shall arrange for the following services to be provided upon receipt of a Claim:

- (a) Verify that the patient for which the prescription has been claimed is a Plan Participant and is entitled to Prescription Drug Services.
- (b) If applicable, verify that the prescriber is an authorized prescriber under the Benefit Plan.
- (c) Verify that the medication dispensed is a drug covered by the Benefit Plan.

- 2.2 Collection of Copayment by Participating Pharmacies. Prior to providing to a Plan Participant any Prescription Drug Services to which such Plan Participant is or may be entitled under a Benefit Plan, Participating Pharmacies shall be required to collect from Plan Participant the amount of any applicable Copayment. Participating Pharmacies shall not recover from Plan Participants any unpaid balances due Participating Pharmacies from ProAct or Plan Sponsor.
- 2.3 Mail Order Delivery Pharmacy. ProAct shall provide mail order home delivery services through PROACT Pharmacy Services as follows:
- (a) Dispense new or refill prescriptions following receipt from a Plan Participant of a prescription and a completed order or refill order form and any applicable Copayment;
 - (b) Fill prescriptions subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards and product labeling guidelines; and
 - (c) Ship all filled prescriptions to Plan Participants via United States postal service or other appropriate carriers to the address provided by the Plan Participant.
- 2.4 Direct Plan Participant Reimbursement. To the extent authorized by the Benefit Plan, ProAct or Plan Sponsor shall provide Plan Participants with a ProAct (and Plan Sponsor approved) Claim form for use for reimbursement for Prescription Drug Services provided by a Participating or non-Participating Pharmacy. When such a Claim is submitted on the approved form, ProAct shall process the Claim according to the Benefit Plan and in the amount approved by Plan Sponsor for payment.
- 2.5 Claim Submission. Plan Sponsor acknowledges that ProAct shall require the Participating Pharmacies to send to ProAct, at the expense of the Participating Pharmacies, Claims via on-line point-of-sale terminals (“POS”), and/or on the Universal Claim Forms (“UCF”), and/or magnetic tapes or diskettes containing Claims information. Incorrect Claims will be denied. The Claim forms shall be sent to:

ProAct, Inc.
1230 US Highway 11
Gouverneur, New York 13642
Attention: Helpdesk

or at such other address designated by ProAct upon written notice.

- 2.6 Pharmacy Network Administration. ProAct shall contract with Participating Pharmacies at various reimbursement rates throughout the term of the Agreement, and shall charge Plan Sponsor a blended reimbursement rate which may be greater or less than the actual rate paid to Participating Pharmacies. Plan Sponsor acknowledges and agrees that such

difference in provider discount, if any, shall be retained by ProAct as compensation for administering the pharmacy network.

- 2.7 Therapeutic Alternative Program. Generic substitutions may be conducted through ProAct's mail order delivery service pharmacies and Participating Pharmacies under a program that substitutes brand name drugs with generic equivalents or therapeutic alternatives, where available and clinically appropriate, unless (i) the prescriber requires the prescription to be dispensed as written and does not authorize generic substitution; or (ii) the Plan Participant has notified the dispensing pharmacy to dispense the brand name drug only.
- 2.8 Payments to Participating Pharmacies. ProAct shall pay to the Participating Pharmacies, on behalf of Plan Sponsor, such reimbursement as may be agreed upon by Plan Sponsor and ProAct for dispensing of prescriptions to Plan Participants no later than fourteen (14) business days from confirmation of receipt of funds from Plan Sponsor for this purpose.
- 2.9 Transaction Charges. Participating Pharmacies shall be responsible for any applicable transaction charges associated with the submission of Claims to ProAct. Such charges are to be deducted by ProAct from the reimbursements to such Participating Pharmacies. Reimbursement checks to Participating Pharmacies using POS, Pharmacy Computer Systems and UCF for Claims processing will be paid in the net amount of the Claim after deduction by ProAct of all applicable transaction charges.
- 2.10 Customer Service for Pharmacy and Plan Participant Inquiries. ProAct shall be responsible for responding to inquiries from Participating Pharmacies and Plan Participants regarding the services provided by ProAct under this Agreement through a ProAct toll-free phone line. Services to be provided by ProAct include providing answers to questions on eligibility, Benefit Plan guidelines, deductibles, Copay levels, maximum benefit status, instructions on completing a direct Plan Participant reimbursement claim form and status of direct Plan Participant reimbursement claims.
- 2.11 Hours of Service. ProAct's 800 Help Line shall be available to Plan Sponsors, Participating Pharmacies and Plan Participants 24 hours a day. These hours do not include national holidays and may be changed at any time. ProAct shall notify Plan Sponsor and the Participating Pharmacies prior to any changes to the schedule of business hours.
- 2.12 Pharmacy Audits. ProAct shall maintain criteria, which it may amend from time to time, to establish when and how a Participating Pharmacy shall be audited to determine compliance with its contract with ProAct. The audit may be conducted by ProAct's internal auditors or its outside auditors or by ProAct's review of electronically transmitted Claims. On-site pharmacy audits shall be conducted on a contingency basis. ProAct shall not be required to institute any action to collect any overpayments to Participating Pharmacies.

- 2.13 Core Reports. ProAct shall prepare and deliver to Plan Sponsor core claims reports no later than thirty (30) days from the close of each quarter. Additional or customized reports shall incur costs to Plan Sponsor as described in Exhibit A.
- 2.14 Eligibility and Benefit Plan Changes. ProAct shall load Plan Participant data into the ProAct system no later than five (5) business days from receipt of such data. ProAct shall have thirty (30) days to implement any changes in any coverage criteria used by Plan Sponsor that require customized edits. The charges, as determined by agreement between ProAct and Plan Sponsor, for the necessary custom programming to implement any such customized edit will be borne by Plan Sponsor unless otherwise agreed by the parties. Plan Sponsor shall be bound by the change date requirements as described in Section 4.2 of this Agreement.
- 2.15 Plan Participant Services. Plan Participants shall be able to view their personal drug history for retail and mail order medications, expenditures and Copayments.
- 2.16 Government Agency Submitted Claims. Plan Sponsor acknowledges that government agencies may seek eligibility or similar data from ProAct regarding Plan Participants. Additionally, government agencies, or their agents, may submit to ProAct claims for reimbursement for prescription drug benefits provided by such government agencies to Plan Participants (“Government Claims”). Plan Sponsor authorizes ProAct to provide such data as requested by government agencies or their agents and further authorizes ProAct to process such Government Claims on behalf of Plan Sponsor. Plan Sponsor shall reimburse ProAct for all amounts advanced by ProAct for payment of Government Claims. Plan Sponsor acknowledges that Government Claims submitted by or on behalf of a state Medicaid agency shall be paid if submitted within three (3) years from the original date of fill unless a longer period is required by applicable law. In addition, Government Claims submitted by or on behalf of a state Medicaid agency may not be denied on the basis of the format of the Government Claim or failure to present proper documentation at the point-of-sale. Plan Sponsor shall also reimburse ProAct for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. ProAct reserves the right to (i) terminate these services upon ninety (90) days’ prior written notice to Plan Sponsor; or (ii) delegate these services to a third party claims processor.
- 2.17 Non-Standard or Excessive Services or Materials. In the event Plan Sponsor requests non-standard Identification Cards, services, forms, materials or documents, or standard services, forms, materials or documents in an amount which ProAct determines to be unreasonable or excessive, Plan Sponsor shall be charged for such additional services as provided based on the fee structure described in Exhibit A.
- 2.18 Additional Services. In the event that Plan Sponsor requests ProAct to provide services other than those described herein, including special research projects, special reports, consultative services (e.g., HIPAA compliance consultation), ProAct system changes to accommodate changes in Plan Sponsor’s Benefit Plan or system, or other tasks to be

specifically performed for or on behalf of Plan Sponsor, Plan Sponsor shall pay to ProAct an additional charge to be mutually agreed upon by the parties in writing before the services are provided.

ARTICLE 3 IMPLEMENTATION

- 3.1 Implementation Services. ProAct shall provide standard implementation services to Plan Sponsor at no additional charge. In consultation with Plan Sponsor, ProAct shall develop a mutually agreeable implementation plan prior to the Effective Date. .
- 3.2 Plan Participant Lists. Plan Sponsor shall provide to ProAct (i) a full file list of Plan Participants (including eligible dependents) as described in Section 4.1 hereof at least fourteen (14) days prior to the Implementation Date in a format acceptable to ProAct; (ii) the governing Benefit Plan, including a summary plan description; and (iii) such other information required by Section 4.2 hereof describing the Plan Sponsor's Benefit Plan to be used by ProAct to provide Prescription Drug Services under the terms of this Agreement.

ARTICLE 4 DUTIES TO BE PERFORMED BY PLAN SPONSOR

- 4.1 Eligibility Data. Plan Sponsor shall provide to ProAct all information concerning the Prescription Benefit Plan and Plan Participants necessary for ProAct to perform the Prescription Drug Services, including all updates thereto, on a daily basis and at least fourteen (14) days prior to the Implementation Date. Plan Sponsor shall be responsible for ensuring the accuracy of the Eligible Member List and Plan Sponsor shall be obligated to pay ProAct for Claims accepted by ProAct that are submitted by or on behalf of persons listed on any Plan Participants List. Plan Sponsor shall bear the entire risk of all fraudulent Claims submitted by Plan Participants or by unauthorized persons using a Plan Participant's ID Card or identification number. The Plan Participant List shall contain the following minimum information:
- Plan Participant's identification number;
 - Plan Participant's full name (last, first, and middle initial);
 - Plan Participant's date of birth;
 - Plan Participant's address;
 - the names of dependents;
 - the dates of birth for dependents;
 - the date the Plan Participant's participation in Prescription Drug Services under the Benefit Plan becomes effective;
 - the date the Plan Participant's participation in Prescription Drug Services under the Benefit Plan is terminated;
 - the Benefit Plan group number

Plan Sponsor agrees to indemnify ProAct for any damages related to Plan Sponsor's failure to provide accurate and timely data described in this Section 4.1.

- 4.2 Benefit Plan Information. Thirty (30) days prior to the Effective Date hereof, Plan Sponsor will deliver to ProAct detailed Benefit Plan Information. Such information shall contain all of the elements required by ProAct so that ProAct may verify and price the Claims submitted by Participating Pharmacies, and to prepare the various reports as described in this Agreement. In addition, Plan Sponsor shall provide any Benefit Plan Information changes to ProAct immediately, preferably thirty (30) days prior the date such changes shall become effective (the "Change Date"), except that changes to Benefit Plan Information that are to be effective on January 1 of any given year must be provided to ProAct at least ninety (90) days prior to January 1. Failure to provide Benefit Plan Information changes within the time frames described in this Section 4.2 may result in postponement of the proposed Change Date. Plan Sponsor shall also provide to ProAct copies of and any subsequent changes to the applicable plan document, certificate of insurance or summary plan description documentation containing Benefit Plan Information related to the Prescription Drug Services administered by ProAct under this Agreement.
- 4.3 Notification Requirements. Plan Sponsor will review all reports, statements, and invoices provided by ProAct and shall notify ProAct in writing of any errors or objections within thirty (30) days of receipt. Specifically, this shall also apply to all service requests, benefit change request forms, pharmacy operations change requests or any notification resulting from an independent audit. Until Plan Sponsor notifies ProAct in writing of any errors or objections, ProAct will be entitled to rely on the information contained in the reports, statements, and invoices. If Plan Sponsor does not notify ProAct in writing of any errors or objections within the thirty (30) day period, the information contained therein will be deemed accurate, complete, and acceptable to Plan Sponsor, and thereafter ProAct shall have no liability related thereto. This does not apply with respect to any undercharges or underpayments of Plan Sponsor.
- 4.4 Plan Participant Copayments. ProAct may, but shall not be obligated to, dispense a prescription even if the prescription is not accompanied by the applicable Copayment. ProAct will credit any amount submitted by Plan Participant in excess of the Plan Participant's Copayment. In the event a Plan Participant submits to ProAct an insufficient Copayment and the Plan Participant fails to remit the balance of the Copayment amount to ProAct within thirty (30) days of ProAct's request, then ProAct shall have the right to invoice Plan Sponsor and Plan Sponsor shall have an obligation to pay ProAct the amount of the uncollected Copayment.

ARTICLE 5
PAYMENTS DUE PROACT

- 5.1 Invoicing. ProAct shall invoice Plan Sponsor for claims on a bi-weekly basis. Plan Sponsor shall remit to ProAct via overnight mail the full amount reflected on such invoices within ten (10) business days to the bank account designated by ProAct. Should said amount not be remitted via overnight mail within ten (10) business days, Plan Sponsor shall be subject to interest charged on all overdue amounts at an amount equal to one and one-half percent (1.5%) per month, to accrue on a daily basis. If Plan Sponsor questions the amount of the Statement, Plan Sponsor may notify ProAct of its questions regarding said amount but shall remain obligated to send via overnight mail the full amount of the invoice. If ProAct receives such a notice, it shall make a commercially reasonable effort to respond to such questions within five (5) business days.
- 5.2 Suspension of Services. In the event amounts due ProAct under Section 5.1 are more than two (2) days' past due and payment has not yet been sent via overnight mail to a ProAct designated bank account, then ProAct may give notice to Plan Sponsor of ProAct's intent to suspend its services and system operations. At any time thereafter, ProAct may terminate this Agreement as provided in Article 12 of this Agreement. Plan Sponsor shall be responsible for all costs of collection and agrees to reimburse ProAct for such costs and expenses, including reasonable attorneys' fees.
- 5.3 Deposit. In the event Plan Sponsor fails to remit its full payment within ten (10) business days of its receipt of ProAct's invoice three (3) or more times during any twelve (12) month period, ProAct shall have the option, in its sole discretion, to collect from Plan Sponsor a deposit in an amount equal to the average invoice amount over the previous six (6) months, or, if there is a less than six (6) months' billing history, then such deposit shall be equal to the average invoice amount over the actual billing history. ProAct shall retain the deposit until the termination of this Agreement, at which time such deposit shall be returned, without interest, less any offsets for payment defaults and collection costs (in accordance with Section 5.5 below).
- 5.4 Sale and Use Taxes. The parties hereby agree that the payment of any and all state and local sales taxes and use taxes attributable to any Prescription Drug Services delivered pursuant to this Agreement shall be the sole and exclusive obligation of Plan Sponsor.
- 5.5 Offsets. In the event of any uncured payment default, Plan Sponsor hereby authorizes ProAct to offset the amount of such payment defaults and collection costs against any amounts otherwise payable to Plan Sponsor (including any Rebate amounts as provided in Article 7) or Plan Sponsor's deposit (as described in Section 5.3 above).

ARTICLE 6 RECORDS

- 6.1 Maintenance of Records. ProAct shall maintain, in the original form or other media, the Claims received from the Pharmacy Network and adequate records to establish payment to the Pharmacy Network. Upon prior written notification to ProAct, Plan Sponsor shall have access to such records during normal business hours.
- 6.2 Use of Information. ProAct and Plan Sponsor may use, reproduce, or adapt information obtained in connection with this Agreement, including Claims data information and eligibility information, in any manner they deem appropriate, except that each party and its agents, employees and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, including the provisions of HIPAA, and may not use the information in any way prohibited by Law. Each party shall be solely responsible for its own use of the information and shall indemnify and hold the other party harmless for, from and against any and all costs, losses and damages incurred by such other party as a result of such use.
- 6.3 Ownership of Information. Without limiting the generality of Section 6.2, and subject to the restrictions set forth therein:
- a. Claims data information provided to ProAct directly by Plan Sponsor shall be the property of Plan Sponsor.
 - b. Plan Sponsor agrees that the aggregate compilations of information contained in any and all databases developed by ProAct or its designees, and any prior and future versions thereof, are the property of ProAct and protected by copyright which shall be owned by ProAct.
 - c. ProAct, its agents, employees, and contractors shall have the right to use, reproduce, and adapt all information obtained in connection with this Agreement, to render services to ProAct's clients and to develop new products and services which may be outside the scope of this Agreement. Any work, compilation, processes, or inventions developed by ProAct or its agents, employees, or contractors pursuant to this Section 6.3 shall be owned by ProAct and deemed its confidential information.
- 6.4 Right to Audit Claims and Business Records. Plan Sponsor may inspect and audit once annually ProAct's business records that directly relate to billings made to Plan Sponsor for Claims. ProAct may inspect and audit, or cause to be inspected and audited, once annually the books and records of Plan Sponsor directly relating to this Agreement, including the existence and number of Plan Participants. Plan Sponsor and ProAct shall fully cooperate with representatives of each other and with representatives of any regulatory or accreditation agency in the conduct of any such inspection or audit. Such audits shall be at the auditing party's sole expense and shall only be made during normal business hours, following fifteen (15) days' written notice, without undue interference to

the audited party's business activity, and in accordance with reasonable audit practices. An audit of ProAct's records shall be conducted at ProAct's office where such records are located and shall be limited to transactions over the twelve (12) month period preceding such audit. If a completed audit reveals a discrepancy in the results and the previous calculations of the audited party, then the auditing party shall deliver written notice setting forth in reasonable detail the basis of such discrepancy. The parties shall use reasonable efforts to resolve the discrepancy within thirty (30) days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon the parties. Upon a final and conclusive determination of a discrepancy revealed by an audit procedure under this Agreement, the party that owes money shall pay such sums to the other party within thirty (30) days of the delivery of the conclusive audit findings.

ARTICLE 7 REBATE ADMINISTRATION

- 7.1 Appointment of ProAct as Agent. Plan Sponsor appoints ProAct as its exclusive agent for the purpose of negotiating and arranging for Rebates on the purchase of prescription drugs from Pharmaceutical Manufacturers. ProAct agrees that it will comply with all applicable state and federal laws and regulations regarding the administration of Rebates on the purchase of prescription drugs. Plan Sponsor represents that it does not have any existing direct rebate and/or chargeback agreements with any Pharmaceutical Manufacturer and also agrees that during the term of this Agreement Plan Sponsor will not negotiate or arrange for rebates on the purchase of Prescription Drug Services from any Pharmaceutical Manufacturer. In the event Plan Sponsor negotiates directly with a Pharmaceutical Manufacturer for rebates on the purchase of prescription drugs, ProAct may immediately terminate Plan Sponsor's participation in ProAct's Rebate program.
- 7.2 Participation in Program. Plan Sponsor shall be eligible to receive rebates from certain Pharmaceutical Manufacturers for prescription drugs dispensed to Plan Participants who are covered by Benefit Plans which meet the following criteria:
- Develop, publish and distribute a drug formulary or other drug product selection guide consistent with ProAct's recommended drug Formulary and preferred product list, including all subsequent revisions;
 - Provide feedback to Plan Sponsor to ensure compliance with Plan Sponsor's drug formulary via established communication mechanisms (e.g., retrospective drug utilization review/evaluation programs, provider newsletters, contract compliance programs); and
 - Meet the eligibility criteria of each of the respective Pharmaceutical Manufacturers for plan applicable agreements.
- 7.3 Rebate Disclosure. Plan Sponsor agrees that it will fully comply with ERISA. In providing services under this Agreement, ProAct is not acting as a fiduciary (as defined

in Section 3.21(a) of ERISA) of Plan Sponsor's prescription drug program and Plan Sponsor shall not name ProAct as a "plan fiduciary."

- 7.4 Eligible Rebate Data. Claims which have been submitted to: (i) Medicaid; (ii) Medicare; or (iii) any other state or federal health care program which receives rebates, discounts, chargebacks or other forms of price reduction directly from Pharmaceutical Manufacturers shall not be eligible to participate in ProAct's Rebate program. Plan Sponsor will not contract, directly or indirectly, with any other entity for discounts, rebates or financial incentives on pharmaceutical products or formulary programs for claims processed by ProAct pursuant to this Agreement. In the event Plan Sponsor negotiates or arranges with a pharmaceutical manufacturer for rebates or similar discounts and any Pharmaceutical Manufacturer's audit of ProAct's Rebate program reveals improperly calculated rebates, then Plan Sponsor shall be solely responsible for the reimbursement of any Rebates improperly made and the cost of the audit services.
- 7.5 Other Pharmaceutical Relationships. Nothing in this Article 7 shall preclude ProAct from pursuing other, independent sources of revenue from Pharmaceutical Manufacturers and engaging in other revenue-producing relationships with Pharmaceutical Manufacturers.

ARTICLE 8 INDEMNIFICATION

- 8.1 Indemnity by Plan Sponsor. To the extent allowed by Texas law, Plan Sponsor shall indemnify and hold ProAct, its officers, directors, shareholders, employees, successors, other agents and assigns ("ProAct Indemnitees"), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by ProAct Indemnitees arising out of or as a result of any acts or omissions of Plan Sponsor, its officers, directors, employees or other agents, in connection with the performance of any of their respective obligations under this Agreement, including, without limitation, the submission to Participating Pharmacies or Pharmaceutical Manufacturers of inaccurate or false information provided by Plan Sponsor.
- 8.2 Indemnity by ProAct. ProAct shall indemnify and hold Plan Sponsor and its officers, directors, shareholders, employees, successors, other agents and assigns ("Plan Sponsor Indemnitees"), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by Plan Sponsor Indemnitees arising out of or as a result of any acts or omissions of ProAct, its officers, directors, employees or other agents, in connection with the performance of any of their respective obligations under this Agreement.
- 8.3 Limitation of Liability. ProAct relies on Medi-Span or First Data Bank or other industry comparable databases in providing Plan Sponsor and Plan Participants with Claims adjudication and drug utilization review services. ProAct has utilized due diligence in collecting and reporting the information contained in the databases and has obtained such information from sources believed to be reliable. ProAct, however, does not warrant the

accuracy of reports, alerts, codes, prices or other data contained in the databases. The clinical information contained in the databases and the Formulary is not intended as a supplement to, or a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals involved in Plan Participants' care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate or effective for any Plan Participant.

IN NO EVENT SHALL PROACT OR ANY AFFILIATE OF PROACT BE LIABLE TO PLAN SPONSOR OR ANY PLAN PARTICIPANT OR ANY AFFILIATE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO PROACT'S PERFORMANCE UNDER THIS AGREEMENT OR BREACH THEREOF, EVEN IF PROACT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. PROACT'S LIABILITY TO PLAN SPONSOR, PLAN PARTICIPANTS OR ANY AFFILIATE UNDER THIS AGREEMENT, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF COMPENSATION PAID TO PROACT BY PLAN SPONSOR FOR ADMINISTRATIVE SERVICES FOR THE PRIOR TWELVE (12) MONTHS FROM THE DATE THE CLAIM IS ASSERTED.

ARTICLE 9

DISPUTE RESOLUTION PROCEDURE

- 9.1 Resolution of Disputes. The parties agree that any and all disputes arising out of, or relating to, this Agreement shall first be addressed by direct negotiation between the parties. The disputing party shall provide the other party with written notice of the dispute ("Notice of Dispute"), containing a detailed description of the matter in controversy. The parties agree to exercise reasonable commercial efforts to resolve the dispute as soon as practicable.

ARTICLE 10

CONFIDENTIALITY

- 10.1 Confidential Information. The term "Confidential Information" means information of a confidential or proprietary nature relating to the subject matter described in this Agreement which is taken from or disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party"). Confidential Information includes, but is not limited to, matters of a technical nature such as trade secrets, methods, compositions, data and know-how, designs, systems, processes, computer programs, files and documentation, similar items or research projects and any information derived therefrom; matters of a business nature, such as the terms of this Agreement (including any pricing terms and Pharmaceutical Manufacturer contract terms), marketing, sales, strategies, proposals, and lists of actual or potential Plan Participants, Participating Pharmacies and Pharmaceutical Manufacturers; as well as any other information that is designated by either party as confidential.

10.2 Treatment of Confidential Information. The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information or any information derived therefrom to any third party unless required in the performance of the Receiving Party's duties under this Agreement; (iii) not to make any use whatsoever at any time of such Confidential Information except for the purpose of this Agreement nor use it for its own or any third party's benefit; and (iv) not to copy, analyze, transcribe, transmit, decompile, disassemble or reverse engineer any such Confidential Information nor use such Confidential Information in any patent application. The confidentiality obligations of this Section 10.2 shall not apply to information which, as evidenced in writing, (a) is or becomes publicly known by Receiving Party through no breach of this Agreement; (b) is learned by the Receiving Party from a third party entitled to disclose it; or (c) is rightfully obtained by the Receiving Party prior to this Agreement.

Receiving Party may make disclosures required by law or court order provided Receiving Party uses diligent, reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceeding.

10.3 Injunctive Relief. Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting, either expressly or by implication or otherwise, the Receiving Party any license under any invention or patent now or hereafter owned by or controlled by the Disclosing Party. Each party agrees that it may not be adequately compensated for damages arising from a breach or threatened breach of any of the covenants contained in this Article 10 by the other party, and each party shall be entitled to injunctive relief and specific performance in addition to all other remedies. None of the information that may be submitted or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.

ARTICLE 11 EXCLUSIVITY

11.1 Exclusivity. Plan Sponsor agrees that ProAct shall be the sole and exclusive agent for Plan Sponsor for each of the services described herein during the term of this Agreement. Notwithstanding the foregoing, this Section shall not be construed to prohibit Plan Sponsor from including pharmacy coverage under a fully insured medical/prescription benefit plan. Plan Sponsor acknowledges and agrees that Plan Sponsor shall not engage any prescription benefit manager or other third party to provide to Plan Sponsor or its Benefit Plan any service that is similar to one of the Prescription Drug Services provided by ProAct, including, without limitation, retail pharmacy network contracting, pharmacy

claims processing, mail pharmacy services and formulary and rebate administration services. Plan Sponsor acknowledges and agrees that a breach of this Section 11.1 shall be deemed a material breach of this Agreement and shall entitle ProAct to modify pricing terms pursuant to Section 13.2 of this Agreement.

ARTICLE 12

TERM AND TERMINATION

- 12.1 Term. This Agreement shall become effective on the Effective Date and shall be for a term of three (3) years and thereafter shall continue in effect for additional one (1) year terms unless terminated on its anniversary date by either party by certified mail, mailed at least ninety (90) days prior to such date. Termination shall have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination.
- 12.2 Termination For Cause. This Agreement may be terminated at any time by either party based on a material breach of any terms or conditions herein stated provided that sixty (60) days' advance written notice of such material breach shall be given to the other party and such party shall have the opportunity to cure such material breach during such sixty (60) day notice period.
- 12.3 Termination Due to Non-Payment. Notwithstanding the termination rights described in Section 12.2, above, in the event Plan Sponsor fails to timely remit to ProAct the full amount of payment (and any interest accrued thereon) as set forth in Section 5.1 above, and such payment (plus interest, if any) is not received by ProAct within the time limits set forth in Section 5.2 above, ProAct may terminate this Agreement on any date thereafter, effective on the date notice of such termination is received by Plan Sponsor.
- 12.4 Effect of Termination. If this Agreement is terminated pursuant to this Article 12: (i) all further obligations of the parties under this Agreement shall terminate (but not such party's obligation to make payments arising prior to the termination of this Agreement or any obligation surviving the termination hereof); (ii) all Confidential Information provided by either party shall, except for Confidential Information required by law to be retained by a party, be immediately returned by a Receiving Party (as defined in Section 10.1), or such Receiving Party shall certify to the Disclosing Party that such materials have been destroyed; (iii) should ProAct have a deposit from Plan Sponsor (as described in Section 5.3, above), such deposit shall be reduced by any offsets for payment defaults and collection costs (as described in Section 5.5 above) before being returned; (iv) neither party shall be relieved of any obligation or liability arising from any prior breach of such party of any provision of this Agreement; and (v) the parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in Sections 6.1, 6.3, 6.4, 7.3, 8.1, 8.2, 8.3, 9.1, 10.1, 10.2, 10.3, 13.1, 13.2, 13.8, 13.9, 13.11, 13.12 and 13.20.

ARTICLE 13

GENERAL PROVISIONS

- 13.1 Use of ProAct Software. Plan Sponsor acknowledges that ProAct owns or possesses license rights (including off-the-shelf vendor agreements) from certain third parties to the entire software system used by ProAct in processing Claims and preparing reports, including computer programs, system and program documentation, and other documentation relating thereto (collectively, including certain license rights, the “ProAct Software System”) and that the ProAct Software System is the exclusive and sole property of ProAct.
- 13.2 Pricing Assumptions. Upon thirty (30) days’ prior written notice to Plan Sponsor, ProAct may modify or amend the financial provisions of this Agreement in a manner which accounts for the impact of the events identified below. Such notice will include ProAct’s explanation of the manner in which the modification accounts for the impact of the event:
- (a) Any government-imposed or industry-wide change that would impede ProAct’s ability to provide the pricing described in this Agreement, including any prohibition or restriction on the ability to receive rebates or discounts for pharmaceutical products;
 - (b) Implementation or addition of a high deductible health plan/consumer-driven health plan option;
 - (c) Implementation or addition of a member-paid plan;
 - (d) A greater than twenty percent (20%) change in the total number of Plan Participants from the number provided during pricing negotiations; or
 - (e) A change in the coverage of Medicare-eligible Plan Participants, irrespective of the resulting change in total number of Plan Participants, as defined above.
- 13.3 Insurance. Each party shall obtain and maintain, with respect to the activities in which such party engages pursuant to this Agreement, professional liability (errors and omissions) insurance in amounts reasonable and customary for the nature and scope of business engaged in by such party and comprehensive liability insurance. Upon request, either party shall promptly deliver to the other party evidence of such insurance. Each party agrees to notify the other party immediately upon such party’s receipt of any notice canceling, suspending or reducing the coverage limits of its professional liability insurance or comprehensive liability insurance.
- 13.4 Successors and Assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party hereto without the prior written consent of the other party hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement (including this Section 13.4), no consent shall be required and this Agreement will apply to, be binding in all respects upon, and inure to the benefit of any successors of Plan Sponsor to this Agreement resulting from a Change of Control. A “Change of Control” shall occur if, as a result of one or a series of related transactions:

- (i) all or substantially all the assets of Plan Sponsor are disposed of to any entity not wholly owned and controlled by Plan Sponsor, outside the ordinary course of business; (ii) Plan Sponsor effects a merger with one or more other entities in which Plan Sponsor is not the surviving entity; or (iii) Plan Sponsor engages in a transaction that results in any entity holding securities possessing a majority of the voting power that does not hold such voting power as of the time of this Agreement.
- 13.5 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or other term or condition of this Agreement on any future occasion.
- 13.6 Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 13.7 Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (at or after the date hereof) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.
- 13.8 Choice of Law. This Agreement shall be construed, interpreted and governed according to the laws of the State of New York.
- 13.9 Non-Competition in Hiring. During the term of this Agreement, and for a period of one (1) year thereafter, neither party shall, without the prior written consent of the other party, knowingly employ or solicit for hire, or knowingly allow its officers, directors, agents or affiliates to employ or solicit for hire, any employees of the other party.
- 13.10 Force Majeure. The performance obligations of ProAct and/or Plan Sponsor respectively hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes which are outside the control of ProAct and/or Plan Sponsor and could not be avoided by the exercise of due care, including, but not limited to, acts of God, acts of a public enemy, acts of a sovereign nation or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in a subversive or terrorist activity or sabotage, fires, floods, earthquakes, explosions, strikes, slow-downs, freight embargoes, or by any enforceable law, regulation or order. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as conditions cease, the party affected thereby shall fulfill its obligations as set forth under this Agreement. In order to benefit from the provisions of this Section 13.10, the party claiming force majeure must notify

the other reasonably promptly in writing of the force majeure condition. If any event of force majeure, in the reasonable judgment of the parties, is of a severity or duration such that it materially reduces the value of this Agreement, then this Agreement may be terminated without liability or further obligation of either party (except for any obligation expressly intended to survive the termination of this Agreement and except for all amounts that have become or will become due and payable hereunder).

- 13.11 Entire Agreement; No Third Party Beneficiaries. This Agreement, including the Exhibits: (i) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and (ii) is intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights, and this Agreement does not confer any such rights, upon any other third party.
- 13.12 Use of Name. Neither party shall use the other party's name, trade or service mark, logo, or the name of any affiliated company in any advertising or promotional material, presently existing or hereafter established, except in the manner and to the extent permitted by prior written consent of the other party.
- 13.13 Notice. Any notice required or permitted by this Agreement, unless otherwise specifically provided for in this Agreement, shall be in writing and shall be deemed given: (i) one (1) day following delivery to a nationally reputable overnight courier; (ii) one (1) day following receipt by facsimile during the receiving party's business hours with written confirmation thereof; or (iii) three (3) days after the date it is deposited in the United States mail, postage prepaid, registered or certified mail, or hand delivered addressed as follows:

To ProAct: ProAct, Inc.
 6333 Route 298
 East Syracuse, New York 13057

To Plan Sponsor: Town of Prosper
 200 S. Main Street
 3rd Floor
 Prosper, TX 75078

Either party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

- 13.14 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the nonreceipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.

- 13.15 Independent Contractors. Plan Sponsor and ProAct are independent entities and nothing in this Agreement shall be construed or be deemed to create a relationship of employer and employee or principal and agent or franchiser and franchisee or any relationship, fiduciary or otherwise, other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Nothing in this Agreement is intended to be construed, or be deemed to create, any rights or remedies in any third party, including but not limited to a Plan Participant. Nothing in this Agreement shall be construed or deemed to confer upon ProAct any responsibility for or control over the terms or validity of the Prescription Drug Services. ProAct shall have no final discretionary authority over or responsibility for Plan Sponsor's administration. Further, because ProAct is not an insurer, plan sponsor, plan contract, third party administrator, or a provider of health services to Plan Participants, ProAct shall have no responsibility for: (i) any funding of Plan Sponsor's benefits; (ii) any insurance coverage relating to Plan Sponsor or any plan contract of Plan Sponsor or Plan Participants; or (iii) the nature or quality of professional health services rendered to Plan Participants.
- 13.16 Consent to Amend. This Agreement or any part or section of it may be amended at any time during the term of this Agreement only by mutual written consent of duly authorized representatives of ProAct and Plan Sponsor.
- 13.17 Headings. The headings of Articles, Sections and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 13.18 Compliance with Laws and Regulations. This Agreement will be in compliance with all pertinent federal and state statutes and regulations. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance. Each party shall comply with the provisions of all applicable laws relating to the performance of its obligations under this Agreement, including the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) (the "Anti-Kickback Statute"), and the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.
- 13.19 Subcontracting. ProAct may subcontract any or all services to be provided under this Agreement.
- 13.20 HIPAA Compliance. For the purposes of this Agreement, ProAct is deemed to be a "Business Associate" or "Covered Entity" as such terms are defined by HIPAA. The

parties will endeavor to comply with all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard. In addition, without limiting any other provision of this Agreement:

- a. all services provided by ProAct under this Agreement will be provided in such a manner as to enable Plan Sponsor to remain at all times in compliance with all HIPAA regulations applicable to Plan Sponsor, to the extent that Plan Sponsor's compliance depends upon the manner in which such services are performed by ProAct;
- b. all software, application programs and other products licensed or supplied by ProAct under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that Plan Sponsor's use of such software, application programs and other products and associate documentation from ProAct, when utilized by Plan Sponsor in the manner as directed by ProAct, will fully comply with the HIPAA regulations applicable to Plan Sponsor. In the event any amendment to this Agreement is necessary for Plan Sponsor to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, Plan Sponsor and ProAct will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations; and
- c. all software, application programs, eligibility lists or other member-specific information and other products licensed or supplied by Plan Sponsor under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that ProAct's use of such software, application programs and other products and associate documentation from Plan Sponsor, when utilized by ProAct in the manner as directed by Plan Sponsor, will fully comply with the HIPAA regulations applicable to ProAct. In the event any amendment to this Agreement is necessary for ProAct to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, ProAct and Plan Sponsor will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations.
- d. To the extent ProAct acts as a Business Associate of the Benefit Plan, ProAct shall adhere to applicable requirements established for Business Associates, as set forth in Exhibit B. In compliance with HIPAA, ProAct may share Plan Participant information as appropriate for the treatment, payment and health care operations of other health care providers or plans.

The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assignees. This Agreement constitutes the entire understanding between the parties hereto.

PROACT, INC.

Town of Prosper

BY

BY

David B. Warner

NAME

NAME

President

TITLE

TITLE

DATE

DATE

EXHIBIT A
ADMINISTRATIVE FEE SCHEDULE

CLAIMS PROCESSING FEE: **\$0.00**
PER PAID CLAIM

REBATE SHARE TO PLAN SPONSOR

	Year #1 (1/1/20 – 12/31/20)	Year #2 (1/1/21 – 12/31/21)	Year #3 (1/1/22 – 12/31/22)
	Minimum Rebate Guarantee (Premium)		
Retail 30 Brand	\$124.88	\$124.88	\$124.88
Retail 90 Brand	\$278.04	\$278.04	\$278.04
Mail Brand	\$386.75	\$386.75	\$386.75
Specialty Brand	\$1,207.13	\$1,207.13	\$1,207.13

PHARMACY RATES

Retail Network Pharmacy Rates:

Brand: The lesser of annual discount listed below + dispensing fee or U&C
 Generic: The lesser of MAC or listed brand discount + dispensing fee or U&C
 (overall effective rate for generic listed in table below)

	Year #1 (1/1/20 – 12/31/20)		Year #2 (1/1/21 – 12/31/21)		Year #3 (1/1/22 – 12/31/22)	
	Discount	DF	Discount	DF	Discount	DF
Retail 30 Brand	18.25%	\$0.80	18.25%	\$0.80	18.25%	\$0.80
Retail 90 Brand	21.50%	\$0.00	21.50%	\$0.00	21.50%	\$0.00
Retail 30 Generic	80.00%	\$0.00	80.00%	\$0.00	80.00%	\$0.00
Retail 90 Generic	82.00%	\$0.00	82.00%	\$0.00	82.00%	\$0.00

Mail Order Service Pharmacy:

	Year #1 (1/1/20 – 12/31/20)		Year #2 (1/1/21 – 12/31/21)		Year #3 (1/1/22 – 12/31/22)	
	Discount	DF	Discount	DF	Discount	DF
Mail Brand	25.00%	\$0.00	25.00%	\$0.00	25.00%	\$0.00
Mail Generic	83.00%	\$0.00	83.00%	\$0.00	83.00%	\$0.00

Specialty Drug Pricing:

PBM shall give specialty drug pricing discounts per drug; if a specialty medication does not have a unique discount assigned, it will follow the following:

	Year #1 (1/1/20 – 12/31/20)		Year #2 (1/1/21 – 12/31/21)		Year #3 (1/1/22 – 12/31/22)	
	Discount	Dispensing Fee	Discount	Dispensing Fee	Discount	Dispensing Fee
Specialty	15.50%	\$0.00	15.50%	\$0.00	15.50%	\$0.00

Generic Drugs: All non-specialty generics classified by Medi-Span as “Y” shall be reconciled against the generic guarantee. Single source generics are treated and reconciled as generics.

- | | |
|--|-------------------------------|
| 1. Electronic magnetic media | No charge |
| 2. Input and maintenance from hard copy | No charge |
| 3. Clinical Prior Authorizations | \$40.00 per Rx |
| 4. Direct Member Reimbursements (paper claims) | \$2.00 per paid claim |
| 5. Member Identification Cards | No charge |
| 6. Ad Hoc Reports | \$150.00 per programming hour |
| 7. Drug Utilization Review (DUR) Services | No charge |
| 8. Out-of-pocket expenses | |
| Mailing expenses/postage | At meter cost |
| Air freight/overnight letters | At carrier cost |
| 9. Shipping and handling charges | At cost |
| 10. Standard Clinical Programs | |
| Step Therapy | No Charge |
| Concurrent DUR Edits | No Charge |
| Plan Design Changes | No Charge |
| Physician Profiling | No Charge |
| Administrative Overrides/Prior Authorizations | No Charge |
| Formulary Management | No Charge |
| Therapeutic Alternative Programs | No Charge |
| On-site Member Education Programs | No Charge |
| Over the Counter Drug Programs | No Charge |
| Half Tablet Program | No Charge |
| Direct Mail Utilization Program | No Charge |

Appeals \$150 per internal / \$550 per external

11. Optional Programs

On-line Eligibility Access	\$1,500 (3 year licensing fee non-recurring)
On-line Reporting Access	\$1,500 (3 year licensing fee non-recurring)
Customized On-Site Wellness Programs	\$75.00 per program hour
Retiree Drug Subsidy-Basic Services	\$0.45 per paid claim
RDS Account Setup	No Charge
RDS Notice of Creditable Coverage	\$500 to \$1,500
RDS Additional Subsidy Related Services (ProAct uploads cost reports to CMS)	\$500 per hour
Actuarial Certification & Attestation	\$1,500 to \$3,500

12. Drug Rebates. ProAct shall remit to Plan Sponsor that portion of the Rebates as set forth above (“Plan Sponsor Rebates”), with the excess, if any, of actual Rebates over Plan Sponsor Rebates to be retained by ProAct as an additional service fee for the services provided under this Agreement. In lieu of billing Plan Sponsor for this fee, ProAct may retain the amount due from the Rebates collected by ProAct. No Rebate shall be credited for any generic Claim, whether such Claim is filled with a generic drug or by a brand-name drug dispensed in lieu of a generic drug reimbursement rate. Quarterly Rebate payment shall be made within sixty (60) days following the quarter collected. ProAct may adjust the Plan Sponsor Rebate payments in an equitable manner if: (i) a generic version of a branded product is introduced in the market; or (ii) a branded product is recalled or withdrawn from the market.

13. AWP discounts are guaranteed and will be reconciled according to the corresponding dispensing channel; Retail Brands, Retail Generics, Mail Brands, Mail Generics and Specialty. If ProAct fails to meet the guaranteed discounts the guarantees will be trued-up. Guarantees are trued-up annually, 90 days after the end of the plan year. The shortfall, if any, will be returned to CLIENT in the form of a check or as a credit on the CLIENT’s invoice, whichever the CLIENT prefers.

EXHIBIT B
BUSINESS ASSOCIATE CONTRACT

This Business Associate Contract (“Contract”) is entered into on January 1, 2020 (“Contract Effective Date”) between Town of Prosper, having a principal location at 200 S. Main Street, 3rd Floor, Prosper, TX 75078 (“Covered Entity”), and ProAct, Inc., having a principal location at 6333 Route 298 East Syracuse, New York 13057 (“Business Associate”) (Each a “Party” and collectively, the “Parties”).

RECITALS:

- A. Covered Entity will make available and/or transfer to Business Associate protected health information (“PHI”) in order for Business Associate to carry out i) its contractual obligations under a contract between Covered Entity and Business Associate dated January 1, 2020 (the “Underlying Services Agreement” between the Parties) and/or ii) certain business responsibilities on behalf of Covered Entity.
- B. Business Associate will have access to and/or receive from Covered Entity PHI that may be used or disclosed only in accordance with this Contract and the Privacy, Security, Breach Notification and Enforcement Regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as set forth in the Code of Federal Regulations (“CFR”) at Title 45, Parts 160 and 164, as may be amended (collectively “HIPAA”).
- C. Covered Entity and Business Associate qualify, respectively, as a “covered entity” and as a “business associate” as such terms are defined under HIPAA.

NOW THEREFORE, for good and valuable consideration, intending to be legally bound, Covered Entity and Business Associate agree as follows:

- 1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning given such terminology by HIPAA.
 - a. **Administrative, Physical and Technical Safeguards** shall have the same meaning as those terms are defined in 45 CFR 164.304.
 - b. **Breach** shall mean the unauthorized acquisition, access, use, or disclosure of PHI (as defined herein) which compromises the security or privacy of such PHI.
 - c. **Contract** shall refer to this document
 - d. **Electronic PHI** shall have the same meaning as “electronic protected health information” in 45 CFR 160.103.

- e. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“CFR”) at Title 45, Sections 160 and 164, as may be amended.
- f. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined by 45 CFR 160.103, including a person who qualifies as a personal representative in accordance with 45 CFR 164.502.
- g. **Party or Parties** shall mean Business Associate and/or Covered Entity.
- h. **PHI** shall mean information provided and/or made available by Covered Entity to Business Associate, and has the same meaning as the term “protected health information” as defined by 45 CFR 160.103.
- i. **Required by Law** shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- j. **Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.
- k. **Security Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- l. **Unsecured PHI** shall have the same meaning as the term “unsecured protected health information” in 45 CFR 164.402.

2. Permitted Use or Disclosure of PHI.

- a. Business Associate shall be permitted to use or disclose PHI provided or made available from Covered Entity to perform any function on behalf of Covered Entity with regard to the use and disclosure of, and/or access to, PHI that is required, necessary or desirable for Business Associate to carry out its contractual obligations set forth in the Underlying Services Agreement and/or other business responsibilities on behalf of Covered Entity provided such function would not violate HIPAA if done by Covered Entity. Business Associate may use or disclose PHI as Required by Law.
- b. Except as otherwise limited in this Contract, Business Associate is permitted to use and disclose PHI received from Covered Entity if necessary for the proper management and administration of Business Associate, to carry out legal responsibilities of Business Associate, or otherwise in a manner which does not identify individual patients, provided:
 - i) The disclosure is Required by Law;

- ii) The Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person or entity; the person or entity will use appropriate safeguards to prevent unauthorized access to, use, or disclosure of the PHI, and the person or entity in possession of the PHI immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the PHI has been breached; or
- iii) The PHI is de-identified.
- c. Business Associate shall ensure that its uses and disclosures of, and requests for PHI to or on behalf of Covered Entity, are consistent with the Minimum Necessary requirement under HIPAA and Covered Entity's Minimum Necessary policies and procedures.
- d. Business Associate may use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
- e. Business Associate may provide data aggregation services relating to the Health Care Operations of Covered Entity.

3. Business Associate's Obligations:

- a. **Limits on Use and Disclosure.** Business Associate shall not use or further disclose the PHI provided or made available by Covered Entity other than as permitted or required by this Contract, or as Required by Law.
- b. **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards, including but not limited to those necessary for compliance with Subpart C of 45 CFR Part 164, to prevent any access to, or use or disclosure of the PHI, other than as provided for in this Contract and shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- c. **Education.** Business Associate shall provide HIPAA compliance education to its existing employees and all new hires who may have access to PHI.
- d. **Policies and Procedures.** Business Associate shall implement reasonable and appropriate policies and procedures, as set forth in 45 CFR §164.316, to comply with the standards, implementation specifications, and/or other security requirements for the protection of Electronic PHI.

- e. Reports of Improper Use, Disclosure, Security Incident or Breach of Unsecured PHI.** Business Associate shall report to Covered Entity promptly, but no later than five (5) business days after discovery of any access to, use or disclosure of PHI not provided for or allowed by this Contract, or any Security Incident, or Breach of Unsecured PHI of which Business Associate becomes aware. (ref. 45 CFR 164.504(e)(2)(ii)(C), 45 CFR 164.410 and 164.314(a)(2)(i)(C).). With respect to a Breach of Unsecured PHI, Business Associate must include the following information in its report to Covered Entity, but must not delay initial notification of the suspected Breach for purposes of collecting such information:
- i) To the extent possible, the identity of each Individual whose PHI has been Breached;
 - ii) Brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - iii) Description of the types of Unsecured PHI that were involved in the Breach;
 - iv) Steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - v) Brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches; and
- f.** Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, web site, or postal address.
- g. Subcontractors and Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), anytime Business Associate's Subcontractor or agent creates, receives, maintains, or transmits the PHI on behalf of Business Associate, Business Associate shall first enter into a written agreement with the Subcontractor or agent that contains the same terms, conditions and restrictions on the access, use and disclosure of PHI as contained in this Contract. Business Associate shall also ensure that any such Subcontractor or agent to whom Business Associate provides Electronic PHI agrees in writing to implement reasonable and appropriate safeguards to protect such Electronic PHI.
- h. Right of Access.** Business Associate shall make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligation under 45 CFR 164.524. In the event Business Associate receives a request for access to PHI directly from the Individual, Business Associate shall forward such request to Covered Entity promptly, and in no case later than five (5) business days following such request.

- i. Right to Amendment.** Business Associate shall use reasonable efforts to facilitate Covered Entity’s obligation to make PHI in a Designated Records Set available for appropriate amendment by an Individual pursuant to 45 CFR 164.526. In the event Business Associate receives a request to amend such PHI directly from the Individual, Business Associate shall forward such request to Covered Entity promptly, and in no case later than five (5) business days following such request.
- j. Right to an Accounting.** Business Associate shall maintain and make available the information required to provide an accounting of disclosures of PHI to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.528. In the event Business Associate receives a request for an accounting directly from the Individual, Business Associate shall forward such request to Covered Entity promptly, and in no case later than five (5) business days following such request.
- k. HIPAA Obligations.** To the extent Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of such Subpart that apply to the Covered Entity in the performance of such obligation(s).
- l. Access to Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use or disclosure of PHI received from, created, maintained or received by Business Associate on behalf of Covered Entity, available to the Secretary or the Secretary’s designee for purposes of determining compliance with HIPAA.
- m. Mitigation Procedures.** Business Associate shall have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the access, use or disclosure of PHI in a manner contrary to or inconsistent with this Contract and HIPAA.
- n. Sanction Procedures.** Business Associate shall establish and implement a system of sanctions, including documentation of the sanctions that are applied, if any, for any employee, agent or Subcontractor who violates this Contract or HIPAA.
- o. HITECH Act Compliance.** All provisions of Subtitle D of the Health Information Technology for Economic and Clinical Health Act, signed into law on February 17, 2009 (“HITECH”), that are made applicable with respect to Covered Entity shall also be applicable to Business Associate, and shall be deemed incorporated herein by reference. In accordance with HITECH and in furtherance of Business Associate’s obligations set forth in this Contract, Business Associate shall:

 - i) Comply with sections 45 CFR 164.308; 164.310; 164.312; and 164.316 of the Security Rules.

- ii) Not use or disclose PHI unless such use or disclosure is in compliance with each applicable requirement of section 45 CFR 164.504(e), provided that Business Associate shall not be in compliance with such section if it knows of a pattern of activity of the Covered Entity that is a material breach or violation of Covered Entity's obligations under this Contract, unless Business Associate takes reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Contract or, if termination is not feasible, report the problem to the Secretary.
- iii) Comply with the applicable minimum necessary rules established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.
- iv) Comply with the rules on marketing and fundraising communications established by HITECH and pursuant to any applicable regulations promulgated by the Secretary provided however, that Business Associate shall not make any such communications unless specifically authorized by the Covered Entity.
- v) Comply with the rules on restrictions on certain disclosures of PHI requested by Individuals established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.
- vi) If Business Associate is responsible for providing an Individual access to PHI maintained in an electronic health record, provide such access in accordance with HITECH and any applicable regulations promulgated by the Secretary.
- vii) Comply with the rules on accounting of disclosures of certain PHI maintained in an electronic health record (if Covered Entity uses an electronic health record) established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.
- viii) Comply with the rules on the sale of PHI established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.

4. Covered Entity's Obligations.

- a. Covered Entity shall notify Business Associate of Covered Entity's Notice of Privacy Practices, including any limitation(s) in accordance with 45 CFR

164.520, to the extent the Notice of Privacy Practices and/or such limitation(s) may affect Business Associate's use or disclosure of PHI.

- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the 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.
- c. Covered Entity shall notify Business Associate of any amendment or restriction to use or disclosure of PHI that Covered Entity 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 the PHI.
- d. Covered entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity (except as set forth in 2(b) and (e) of this Contract).

5. Property Rights. The PHI shall be and remain the property of Covered Entity. Business Associate shall acquire no title or rights to the PHI as a result of this Contract.

6. Independent Entities. This Contract shall establish no relationship between the Parties other than that of independent contractors. Neither Covered Entity nor Business Associate, nor any of their respective agents or employees, shall be construed to be the agent, employee or representative of the other. None of the provisions of this Contract are intended to create, nor shall they be deemed or construed to create, any partnership, joint venture, or other relationship between the Parties except that of independent contracting entities. Business Associate acknowledges that it has independent obligations to comply with certain HIPAA requirements. Covered Entity does not make any warranties, representations or guarantees that this Contract satisfies Business Associate's independent obligations to comply with HIPAA.

7. Term and Termination.

- a. **Term.** The term of this Contract shall commence on the Contract Effective Date, and shall terminate upon termination of the Underlying Services Agreement (or other arrangement between the Parties), or when terminated for cause by the Covered Entity, as set forth below. Business Associate understands that termination for any reason nonetheless requires the further obligations by Business Associate set forth in section 7(c) below.
- b. **Termination for Cause.** Covered Entity shall have the right to immediately terminate this Contract if Covered Entity determines that Business Associate (or its Subcontractor) has violated a material term of this Contract and/or HIPAA and the Business Associate (or its Subcontractor) has not taken steps

to cure such material default within thirty (30) days of receipt of the Covered Entity's written notification of such material breach. However, in the event that the default cannot be cured within the 30-day cure period, the 30-day cure period shall be extended for a reasonable additional time to cure such default, provided the Business Associate commences to cure the default within the 30-day cure period and proceeds diligently to affect the cure within such reasonable additional time.

c. Effect of Termination. The obligations of Business Associate to protect the confidentiality of the PHI in its possession and/or known to it, its employees, agents or Subcontractors, shall survive termination of this Contract for any reason. In addition, at the termination of this Contract for any reason, Business Associate shall return, destroy or de-identify (so that the respective information does not identify Individuals) all PHI received from, created, maintained or received by Business Associate on behalf of Covered Entity. If return or destruction of all or part of the PHI is not commercially feasible, Business Associate shall extend the protections of this Contract for as long as necessary to protect the PHI and to limit any further access, use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If Business Associate elects to destroy the PHI it shall certify to Covered Entity in writing that the PHI has been destroyed. Destruction of PHI must be in accordance with industry standards and processes for ensuring that reconstruction, re-use and/or re-disclosure of PHI is prevented after destruction, with the exact method of destruction dependent on the media in which the PHI is contained. To the extent applicable, Business Associate shall ensure any such destruction is consistent with state and/or federal record retention laws or regulations.

8. Change In Law/Regulation. In the event that any new laws, regulations, or interpretations of the foregoing are promulgated, the Parties shall use reasonable efforts to promptly amend this Contract to comply with such change without any financial concession.

9. Amendment. This Contract may be amended by written agreement of the Parties.

10. Choice of Law. This Contract shall be governed by New York law and applicable federal law. The Parties also agree that for purposes of privacy rights, HIPAA shall supersede all applicable state laws, except to the extent such State laws are not preempted.

11. Injunctive Relief. Notwithstanding any rights or remedies provided for in this Contract, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized access to, or use or disclosure of PHI by Business Associate or any agent, Subcontractor or third party that received PHI from Business Associate.

12. Binding Nature and Assignment. This Contract shall be binding on, and inure to the benefit of the Parties hereto and their successors and permitted assigns, but neither Party may assign this Contract without the prior written consent of the other (except to any entity controlled by, controlling or under common control with the assigning entity).

13. Notices. Whenever under this Contract a Party is required to give notice to the other Party, such notice shall be deemed given if mailed by First Class Certified United States mail, return receipt requested, postage prepaid or hand-delivered, including recognized overnight courier service, with confirmed receipt, and addressed as follows:

BUSINESS ASSOCIATE:

PROACT, INC.
6333 Rte 298
East Syracuse, NY 13057

COVERED ENTITY:

Town of Prosper
200 S. Main Street, 3rd Fl
Prosper, TX 75078

Attn: David B. Warner, President

Attn: _____

14. Article Headings. The article headings used are for referenced and convenience only, and shall not enter into the interpretation of this Contract.

15. Entire Contract. This Contract consists of this document, and constitutes the entire agreement between the Parties with respect to the subject matter herein. There are no understandings or other agreements which are not fully expressed in this Contract, and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced. This Contract supersedes any previous HIPAA business associate agreement between the Parties.

16. Indemnification. Each Party (“Indemnifying Party”) shall defend, indemnify and hold the other Party harmless for any and all costs, including fines, penalties, interest and reasonable attorneys’ fees, related to any claim, liability, suit, or investigation by law enforcement or other governmental or regulatory agency or brought by an Individual related to the wrongful acts or omissions of the Indemnifying Party, its employees, agents or subcontractors, whether intentional or negligent, that violates the HHS Privacy Regulations regarding access to, use of or disclosure of PHI.

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date first set forth above.

PROACT, INC.

Town of Prosper

BY

David B. Warner
NAME

President
TITLE

DATE

BY

NAME

TITLE

DATE