

PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 45 CFR part 160 and part of 164 subparts A and E, hereinafter referred to as the “HIPAA Rules,” the Covered Entity, **Town of Prosper**, and Business Associate, **Action Pharmaceutical Consulting (APC)**, jointly the “Parties,” wish to enter into an Agreement that addresses the requirements of the HIPAA Rules with respect to “business associates” as defined in the HIPAA Rules.

Specifically this Agreement is intended to ensure that Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) relating to Protected Health Information Business Associate may create, receive, maintain, use or disclose in connection with certain functions, activities, or services (collectively “Services”) to be provided by Business Associate to Covered Entity. The Services to be provided by Business Associate are identified in the Underlying Service Agreement between the Parties.

The Parties acknowledge and agree that in connection with the services to be provided, Business Associate may create, receive, maintain, use, or disclose Protected Health Information.

DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules and are incorporated by reference herein: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Business Associate- “Business Associate” generally shall have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this agreement shall mean **Action Pharmaceutical Consulting (APC)**.

Covered Entity- “Covered Entity” generally shall have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this agreement shall mean **Town of Prosper**.

Underlying Service Agreement. “Underlying Service Agreement” shall mean the contract, agreement or arrangement in effect at that time which governs the relationship between the Covered Entity and the Business Associate.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Business Associate will neither use nor disclose Protected Health Information, except as permitted or required by this Agreement or in writing by Covered Entity or as Required by Law. This Agreement does not authorize Business Associate to use or disclose Covered Entity's Protected Health Information in a manner that would violate the HIPAA Rules if done by Covered Entity, except as permitted for Business Associate's proper management and administration, as described herein.
- B. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- D. Business Associate agrees and acknowledges that it is acting as Covered Entity's independent contractor and not as Covered Entity's agent.
- E. Business Associate shall mitigate, to the extent practicable, any harmful effect known to Business Associate resulting from a use or disclosure in violation of this Agreement.
- F. Business Associate will ensure that its workforce, including all agents and/or subcontractors, is trained on the requirements under this Agreement to ensure compliance.
- G. Business Associate will identify all agent(s) and or subcontractor(s) and ensure that a HIPAA Business Associate Agreement with said agent(s) and/or subcontractor(s) is in place. Business Associate will further provide Covered Entity with a listing of each of its agents and subcontractors and update Covered Entity immediately should the listing change.
- H. Business Associate will establish and maintain a system to ensure it is fully aware of where its Protected Health Information is and to further monitor access to the Protected Health Information to ensure that it is able to meet its obligation to report Breaches and potential Breaches to Covered Entity.
- I. Business Associate agrees to, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable, ensure that any subcontractors and/or agents that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- J. Business Associate agrees to provide reasonable access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set that is in the Business

Associate's custody and control, to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524. The Parties acknowledge this provision applies only if the Business Associate maintains PHI in a Designated Record Set. If Covered Entity requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by Covered Entity if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enables Covered Entity to meet its electronic access obligations under 45 CFR 164.524.

- K. Business Associate shall indemnify and hold harmless Covered Entity against, and reimburse Covered Entity for, any expense, loss, damages, legal fees, or costs arising out of or related to any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions, whether brought by a third party or asserted by Business Associate, arising out of or related to Business Associate's acts and omissions associated with Business Associate's obligations under this Agreement or its use or disclosure of Protected Health Information. Business Associate shall further indemnify and hold harmless Covered Entity against, and reimburse Covered Entity for, any expense, loss, damages, legal fees, or costs arising out of or related to any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions, whether brought by a third party or asserted by Business Associate, in the event Covered Entity is determined to be in an agency relationship with Business Associate. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney's fees and costs associated with any claim, demand, action, cause of action, or lawsuit arising out of or relating to such acts or omissions.
- L. Business Associate shall obtain and maintain at its sole expense, and in amounts consistent with industry standards, insurance to support its indemnification obligation under item K, above. A certificate of insurance coverage shall be provided to Covered Entity upon request.
- M. Business Associate agrees to develop, maintain and adhere to internal HIPAA policies and procedures designed to ensure compliance with this Agreement.

INDIVIDUAL RIGHTS

- A. Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of an individual's Protected Health Information that is in a Designated Record Set in the custody or control of Business Associate, so that Covered Entity may meet its amendment obligations under 45 CFR § 164.526. The Parties acknowledge this provision applies only if the Business Associate maintains PHI in a Designated Record Set.
- B. Business Associate agrees to maintain and make available the information required to

provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528

C. To allow Covered Entity to meet its obligations to account for disclosures of Protected Health Information under 45 CFR 164.528:

1) Disclosures Subject to Accounting. Business Associate will record the information specified below (Disclosure Information) for each disclosure of Protected Health Information, not excepted from Disclosure Accounting as specified below, that Business Associate makes to Covered Entity or to a third party.

2) Disclosures Not Subject to Accounting. Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Protected Health Information if Covered Entity need not account for such disclosures under the HIPAA Rules.

3) Disclosure Information. With respect to any disclosure by Business Associate of Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

a) Disclosure Information Generally. Except for repetitive disclosures of Protected Health Information described below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) the address of the entity to which Business Associate made the disclosure, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

b) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency periodicity or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures

4) Availability of Disclosure Information. Business Associate will maintain the Disclosure Information for at least six (6) years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to Covered Entity within 10 calendar days following Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting.

BREACHES AND SECURITY INCIDENTS

A. Business Associate will report to Covered Entity any security incident of which it becomes aware as soon as it becomes aware of such incident. Business Associate will further report to Covered Entity any attempted but unsuccessful security incident on a reasonable, regular

basis but not less than annually. Business Associate will make unsuccessful security incident reports annually except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions in this Agreement.

- B. Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this Agreement or HIPAA immediately upon Business Associate becoming aware of such non-permitted use or disclosure.
- C. Business Associate will report any Breach or potential Breach involving the Plan's Unsecured Protected Health Information in any form (hard copy, electronic or spoken) to Covered Entity's designated privacy officer immediately upon discovery. When reporting a Breach or potential Breach situation, Business Associate will provide a brief description of the event, including the date of the potential Breach and the date of discovery; the type of Protected Health Information involved; the identity of who made the non-permitted use or disclosure and who received the non-permitted disclosure; any preliminary steps taken to mitigate the damage; any steps the individuals who were subject to the Breach should take to protect themselves and a description of any investigatory steps taken. Business Associate will provide other such information, including a written report and risk assessment under 45 CFR 164.402 as Covered Entity may reasonably request. Further, Business Associate will promptly supplement the information to Covered Entity if and when further information becomes available. A Breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence, would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of Business Associate (determined in accordance with the federal common law of agency).
- D. When reporting a potential Breach or actual Breach to Covered Entity, Business Associate acknowledges that Business Associate will not implement the notification procedures required under federal law to the affected individuals, media outlets and/or HHS, as that function is reserved exclusively per this Agreement to Covered Entity. Further, Business Associate will ensure that its agents and/or subcontractors are aware that any actual or potential breach will be reported by Business Associate immediately and directly to Covered Entity.
- E. Business Associate shall reimburse Covered Entity all costs associated with any required notification resulting from Business Associate's breach.
- F. Business Associate shall be deemed to have knowledge of a potential Breach if the Breach is known, or by exercising reasonable diligence, would have been known to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate (determined in accordance with the federal common law of agency).

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information as necessary to accomplish the Services set forth in the Underlying Service Agreement provided such use or disclosure would not violate the Privacy Rule if done by the Covered Entity. Consistent with these general guidelines Business Associate may:

- a. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from any person or entity to whom the information is disclosed that: 1) the person or entity will hold the Protected Health Information in confidence and use or further disclose the Protected Health Information only for the purpose for which Business Associate disclosed Protected Health Information to the person or entity as Required By Law and 2) the person or entity will promptly notify Business Associate of any instance of which the person or entity is aware in which the confidentiality of the Protected Health Information has been breached.
- b. Business Associate will, in its performance of the functions, activities, services and operations specified in this Agreement, make reasonable efforts to use, to disclose and to request only the minimum amount of Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure, or request, except that Business Associate will not be obligated to comply with this minimum necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary under the HIPAA Rules. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HITECH Act and HIPAA Rules.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(I)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

A. Information Safeguards.

- i. **Privacy of Protected Health Information.** Business Associate will develop, implement, maintain and use appropriate administrative, technical and physical safeguards to protect the privacy of Protected Health Information. The safeguards must reasonably protect Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement. To the extent the

Underlying Service Agreement specifies that Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

- ii. Security of Covered Entity's Electronic Protected Health Information.
Business Associate will comply with the Security Rule and will use appropriate administrative, technical and physical safeguards that reasonably or appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on Covered Entity's behalf. Business Associate will make any risk assessment documentation available to Covered Entity upon Covered Entity's request.
 - iii. No Transfer of Protected Health Information Outside United States.
Business Associate will not transfer Protected Health Information outside of the United States without the prior written consent of Covered Entity. In this context, a transfer outside of the United States occurs if Business Associate's workforce members, agents or subcontractors physically located outside of the United States are able to access, use or disclose Protected Health Information.
- B. Subcontractors. Business Associate will required each of its Subcontractors to agree, in a written agreement with Business Associate, to comply with the provisions of the Security Rule; to appropriately safeguard Protected Health Information created, received, maintained or transmitted on behalf of Business Associate; and to apply the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information.
 - C. Prohibition on Sale of Protected Health Information. Business Associate shall not engage in any sale (as defined in the HIPAA Rules) of Protected Health Information.
 - D. Prohibition on Use or Disclosure of Genetic Information. Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.
 - E. Penalties for Non-Compliance. Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided by the HITECH Act and the HIPAA Rules.

COMPLIANCE WITH ELECTRONIC TRANSACTIONS RULE

If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each

applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.

OBLIGATIONS OF COVERED ENTITY

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information 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 Protected Health Information.
- D. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of **January 1, 2020** and shall terminate upon termination of the Underlying Services Agreement or on the date Covered Entity terminates for cause, whichever is sooner, subject to this Agreement's provisions regarding return or destruction of Protected Health Information.
- B. Termination for Cause. Covered Entity may terminate this Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Agreement, and after written notice to Business Associate of the Breach, Business Associate has failed to cure the breach within the time specified by Covered Entity. Any such termination shall be effective immediately or at such other date specified by Covered Entity's notice of termination.
- C. Obligations of Business Associate Upon Termination.
 - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of

subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity the remaining Protected Health Information that Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information for Protected Health Information that cannot be feasibly destroyed or returned, while limiting further uses and disclosures to those purposes that make the return or destruction of the information infeasible;
 - iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in this Agreement, which applied prior to termination; and
 - v. Return to Covered Entity the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- E. Survival. The obligations of Business Associate to protect the privacy and safeguard the security of Protected Health Information as specified in this Agreement will be continuous and shall survive the termination of the Agreement and/or the Underlying Service Agreement.

GENERAL PROVISIONS

- A. Third Party Beneficiaries. Nothing in this agreement shall be construed to create any third party beneficiary rights in any person, including any participant or beneficiary of the Plan.

- B. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.
- C. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- D. Amendment. The Parties agree to take such action as is necessary to amend this agreement from time to time to comply with the requirements of the HIPAA Rules and any other applicable law. This Agreement may be amended only by a written instrument signed by the parties.
- E. Inspection Rights. Business Associate agrees to make internal practices, books, and records, available to the Secretary for purposes of determining compliance with HIPAA Rules.
- F. Construction and Interpretation. The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement has been negotiated at arm's length and each of the parties has had an opportunity to modify the language of the Agreement. Accordingly, the Agreement shall be treated as having been drafted equally by the parties and the language shall be construed as a whole and according to its fair meaning. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. Any presumption or principle that the language is to be construed against any party shall not apply.
- G. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by the law of California, except to the extent preempted by federal law.
- H. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.
- I. Notices. All notice and communications required by this Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person; (ii) by a nationally-recognized, next-day courier service; (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing.
- J. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter.

IN WITNESS WHEREOF, and in consideration of the mutual promises and provisions contained herein, the parties have executed this Agreement to safeguard the Protected Health Information of the Plan's participants and beneficiaries.

Town of Prosper

Action Pharmaceutical Consulting

Signature: _____

Signature: _____

Printed Name: Harlan Jefferson

Printed Name: Aaron Bren

Title: Town Manager

Title: CEO

Date: _____

Date: _____