



MEMO 12 - 48

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**RECEIVED**

OCT - 9 2012

CITY OF GROSSE PTZ. WOODS

TO: Alfred Fincham, City Administrator  
FROM: Joseph J Ahee, Jr., Director of Public Services  
DATE: October 8, 2012  
SUBJECT: Administrative Clerk I Position – Department of Public Works

The pending retirement of Noel Paavola on October 26, 2012 will create an opening for an Administrative Clerk I position in the Department of Public Works. This position is necessary to handle a wide variety of office and clerical duties including maintenance of departmental files and records, preparation of weekly/monthly reports, handling cash payments and balancing receipts, and the ability to interact courteously with residents as the office handles an average of 50 phone calls each day. This position also provides backup for the Confidential Administrative Assistant and assistance to DPW management and staff as needed.

I am requesting approval to fill this soon to be vacated position. This is a budgeted position in the 2012/2013 budget included in 203-482-702.000 (40%) and 592-536-702.000 (60%).

If you have any questions concerning this matter please contact me.

c.c. Dee Ann Irby  
O/F

Recommended for Approval as Submitted:

  
\_\_\_\_\_  
Alfred Fincham, City Administrator

10-9-12  
Date

  
\_\_\_\_\_  
Dee Ann Irby, City Treasurer/Comptroller

10-9-12  
Date

\_\_\_\_\_  
Council Approval Required

5A

**DON R. BERSCHBACK**  
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OF COUNSEL  
CHARLES T. BERSCHBACK \*  
\* ALSO ADMITTED IN FLORIDA

October 10, 2012

Dee Ann Irby, City Comptroller  
City of Grosse Pointe Woods  
20025 Mack Plaza  
Grosse Pointe Woods, MI 48236

RE: Navitus Business Agreements

Dear Dee Ann:

In accordance with our telephone conversation, I reviewed the Navitus Business Associate Agreement (6 pages) and the Pharmacy Management Services Agreement (22 pages). After my review, the following questions/concerns have arisen:

1. Navitus Business Associate Agreement – other than 14(B) (a difference of wording) that agreement is satisfactory.

**Pharmacy Management Services Agreement**

- Article V – Compensation: I leave that section to your Department although it is my understanding that compensation provisions will be less than the current Express Scripts Agreements.
- Article VI – Term of Agreement and Article VII – Termination and Notice: The current agreement appears to be effective the date of the signing of the Agreement and a yearly agreement - renewable. Sec. 7.01 indicates that it can be terminated by mutual written consent.
- Sec. 7.02: This provides for a 60 day written notice termination – but only for cause.

There is a provision for 120 days termination prior to the expiration of the year to year term but there is no 30 or 60 day opt out provided to the City.

- Article XI – Dispute Resolution:

Specifically Sec. 11.02 and 12.07 provide for the jurisdiction in Madison, Wisconsin and the laws of the State of Wisconsin apply rather than Michigan law. It would be in our best interest to have the jurisdiction in our City/County/State.

Dee Ann Irby  
October 10, 2012  
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It is my understanding that these agreements will be discussed by the Council sitting as a Committee of the Whole and we can finalize them after that discussion. If there are any questions please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Don R. Berschback", with a large, sweeping flourish extending to the right.

DON R. BERSCHBACK

DRB:gmr

5B



## Navitus Business Associate Agreement

This agreement is hereby entered into by and between by and between **[Entity]** (hereinafter "Business Associate") and **Navitus Health Solutions, LLC** (hereinafter "Covered Entity") on \_\_\_\_\_.

The Covered Entity and Business Associate mutually agree the terms of this Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and HIPAA's implementing regulations Title 45, Parts 160 and 164 of the Code of Federal Regulations ("Privacy Rule"), dealing with the confidentiality of health or health related information.

### 1. Definitions:

- A. Business Associate: Business Associate shall mean **[Entity]**.
- B. Capitalized terms used in this Agreement, but not otherwise defined, shall have the same meaning as those in the terms in the Privacy Rule.
- C. Covered Entity: Covered Entity shall mean **Navitus Health Solutions, LLC**
- D. Individual: Individual shall have the same meaning as the term "Individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
- E. Privacy Rule: Privacy Rule shall mean the standards for privacy of individually identifiable health information at 45 CFR Part 160 and Part 164, subparts A and E.
- F. Protected Health Information (PHI) means any information, whether oral or recorded in any form or medium, that: a) relates to the past, present or future physical or mental condition of any Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and b) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.

### 2. Unauthorized Use or Disclosure of PHI Is Prohibited:

Business Associate shall not use or disclose any PHI received from or on behalf of Covered Entity except as permitted or required by the Agreement, this Addendum, as required by law, or as otherwise authorized in writing by Covered Entity.

3. Use and Disclosure of Protected Health Information: Unless otherwise limited herein, the Business Associate may:

- A. Use the protected health information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- B. Use protected health information to fulfill its obligations to the Covered Entity pursuant to the underlying agreement between Business Associate and Covered Entity, whether or not that agreement is in writing.

4. Safeguarding of PHI:

Business Associate shall develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to prevent the improper use or disclosure of all PHI, in any form or media, received from or created or received by Business Associate on behalf of, Covered Entity. Business Associate shall document and keep these security measures current.

5. Subcontractors and Agents:

- A. If Business Associate provides any PHI which was received from, or created for, Covered Entity to a subcontractor or agent, then Business Associate shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on the Business Associate by this Addendum.
- B. Business Associate shall disclose PHI to third parties (other than disclosures required by law) only to the extent necessary for Business Associate's proper management and administration, and only where Business Associate obtains reasonable assurances, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
  - 1. Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization, or as required by law; and;
  - 2. Notify Business Associate who shall in turn promptly notify Covered Entity, of any improper use or disclosure of PHI of which the person or organization becomes aware.

6. Maintenance of the Security of Electronic Information:

Business Associate shall develop, implement and maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted health information received from or on behalf of Covered Entity which pertains to an Individual. Business Associate shall document and keep these security measures current and available for inspection upon request. Business Associate's security measures must be consistent with HIPAA's security regulations, Title 45, Part 142 of the Code of Federal Regulations ("Security Rule") once these regulations are effective.

7. Compliance with Electronic Transactions and Code Set Standards:

If Business Associate conducts any standard transaction for or on behalf of Covered Entity, Business Associate shall comply and shall require any subcontractor or agent

conducting such standard transaction to comply with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulations. Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of standard transactions for or on behalf of the Covered Entity that:

- A. Changes the definition, health information condition, or use of a health information element or segment in a standard;
- B. Adds any health information elements or segments to the maximum defined health information set;
- C. Uses any code or health information elements that are either marked "not used" in the standards implementations specifications or are not in the standards implementations specifications; or
- D. Changes the meaning or intent of the standards implementations specifications.

8. Access to PHI:

At the direction of Covered Entity, Business Associate agrees to provide access to any PHI held by the Business Associate which Covered Entity has determined to be part of the Covered Entity's Designated Record Set (as defined in 45 CFR § 164.501), in the time and manner designated by Covered Entity. This access will be provided to Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under the Privacy Rule.

9. Amendment or Correction to PHI:

At the direction of the Covered Entity, Business Associate agrees to amend or correct PHI held by the Business Associate and which Covered Entity has determined to be part of Covered Entity's Designated Record Set, in the time and manner designated by Covered Entity.

10. Reporting of Unauthorized Disclosures or Misuse of PHI:

Business Associate shall report to Covered Entity any use or disclosure of PHI not authorized by this Addendum or in writing by Covered Entity. Business Associate shall make the report to Covered Entity's privacy official not less than one business day after the Business Associate confirms such use or disclosure. Business Associate's report shall identify: a) the nature of the unauthorized use or disclosure, b) the PHI used or disclosed, c) who made the unauthorized use or received the unauthorized disclosure, d) what Business Associate has done or shall do to mitigate any effect of the unauthorized use or disclosure, and e) what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure. Business Associate shall provide such other information including a written report as reasonably requested by Covered Entity's privacy official.

11. Mitigating Effect of Unauthorized Disclosures or Misuse of PHI:

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a misuse or unauthorized disclosure of PHI by Business Associate in violation of the requirements of this Addendum.

12. Tracking and Accounting of Disclosures:

So that Covered Entity may meet its accounting obligations under the Privacy Rule:

- A. Disclosure Tracking. Starting April 14, 2003 for each disclosure not excepted under subsection b below, Business Associate will record for each disclosure of PHI it makes to a Covered Entity or a third party of PHI that Business Associate creates or receives for or from Covered Entity.
  - a. the disclosure date
  - b. the name and if known address of the person or entity to whom Business Associate made the disclosure
  - c. a brief description of the PHI disclosed, and
  - d. a brief statement of the purpose of the disclosure.
- 1. For repetitive disclosures which Business Associate makes to the same person or entity including the Covered Entity for a single purpose, the Business Associate may provide:
  - a. the disclosure information for the first of these repetitive disclosures
  - b. the frequency or number of these repetitive disclosures, and
  - c. the date of the last of these repetitive disclosures.
- 2. Business Associate will make this log of disclosure information available to the Covered Entity within five (5) business days of the Covered Entity's request.
- B. Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for disclosures of PHI that meet each of the following conditions:
  - 1. the disclosures are permitted under this Addendum, or are expressly authorized by Covered Entity in another writing and
  - 2. the disclosure is for one of the following purposes:
    - a. Covered Entity's treatment, payment, or health care operations;
    - b. in response to a request from the Individual who is the subject of the disclosed PHI, or to that Individual's personal representative;
    - c. made to the persons involved in that Individual's health care or payment for health care;
    - d. for notification for disaster relief purposes;
    - e. for national security or intelligence purposes; or
    - f. to law enforcement officials or correctional institutions regarding inmates.
- C. Disclosure Tracking Time Periods. Business Associate must have available for Covered Entity the disclosure information required by this section for the six (6) year period preceding Covered Entity's request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before April 14, 2003).

13. Accounting to Covered Entity and Government Agencies:

Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of or created for Covered Entity available to Covered Entity, or at the request of Covered Entity, to the Secretary of the Department of Health and Human Services ("HHS") or his/her designee, in a time and manner designated by Covered Entity or the Secretary or his/her designee, for the purpose of determining Covered Entity's compliance with the Privacy Rule. Business



Associate shall promptly notify Covered Entity of communications with HHS regarding PHI provided by or created by Covered Entity and shall provide Covered Entity with copies of any information Business Associate has made available to HHS under this provision.

14. Term and Termination:

- A. This Agreement shall take effect upon execution.
- B. If Covered Entity reasonably determines in good faith that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity in its sole discretion, shall of right to the following:
  - 1. Exercise any of its rights to reports, access and inspection under this Agreement; and/or
  - 2. Require Business Associate to submit a plan of monitoring and reporting, as Covered Entity may determine necessary to maintain compliance with this Agreement; and/or
  - 3. Provide Business Associate with a 30 day period to cure the breach; or
  - 4. Terminate the Agreement immediately.
- C. Before exercising any of these options, Covered Entity shall provide written notice to the Business Associate describing the violation and the Covered Entity's intended action.

15. Return or Destruction of PHI:

Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate shall:

- A. Return to Covered Entity or if return is not feasible, destroy all PHI and all PHI in whatever form or medium that Business Associate received from or created on behalf of Covered Entity. This provision shall also apply to all PHI that is in the possession of the subcontractors or agents of the Business Associate. In such case, Business Associate shall retain no copies of such information including any compilations derived from and allowing identification of PHI. Business Associate shall complete such return or destruction as promptly as possible but not less than 30 days after the effective date of the conclusion of this Agreement. Within such 30 day period, Business Associate shall certify on oath in writing to Covered Entity that such return or destruction has been completed.
- B. If Business Associate believes that the return or destruction of PHI is not feasible, Business Associate shall provide written notification of the conditions that make the return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, the Business Associate shall extend the protections of this Addendum to PHI and health information received from or created on behalf of the Covered Entity, and limit future uses and disclosures of such PHI, for so long as the Business Associate maintains the PHI.

16. Miscellaneous:

- A. Automatic Amendment: Upon the effective date of any amendment to the regulations promulgated by Health and Human Services with regard to PHI, this Agreement shall

automatically amend so that the obligations imposed on the Business Associate remain in compliance with such regulations.

- B. Interpretation: Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

**Navitus Health Solutions, LLC**

**[Entity]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## PHARMACY MANAGEMENT SERVICES AGREEMENT

This Pharmacy Management Services Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between **Navitus Health Solutions, LLC** ("Navitus"), and \_\_\_\_\_ ("Client").

### RECITALS

**Whereas**, Client provides its employees and their dependents with medical benefits including benefits for prescription drugs and certain devices and supplies dispensed by pharmacists; and

**Whereas**, Navitus provides its clients services in connection with the healthcare operations and payments of claims on behalf of their Plans; and

**Whereas**, Client and Navitus desire to establish this Agreement for the management of the pharmacy benefits sponsored by Client;

**Now therefore**, in consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, Navitus and Client agree as follows:

### Article I DEFINITIONS

The terms below, including their single and plural forms, shall have the meanings set forth in this Article I:

**Account** means a depository account maintained by Client at a federal or state chartered bank, savings and loan association or savings bank.

**Average Wholesale Price** or **AWP** means the average wholesale price of a prescription drug published and updated by Medi-Span, or another national reporting service purchased or licensed by Navitus.

**Business Associate** means a person assisting a Covered Entity in connection with its payment, treatment or health care operations, as more fully defined in 45 CFR §160.103.

**Cardmember** means one of Client's active and, if so indicated on the signature page below, retired employees who satisfy all the eligibility criteria necessary to receive pharmacy benefits under Client's Plan and is identified by Client to Navitus in accordance with the provisions of this Agreement as eligible for such benefits.

**CFR** means Official Code of Federal Regulations.

**Claim** means: (a) a contractual payment request submitted by a Participating Pharmacy dispensing one or more prescription drugs and transmitted in accordance with the electronic transaction standards set forth in 45 CFR Parts 160, 162 and 164; or (b) a Direct Reimbursement Claim submitted by a Participating Pharmacy, another provider, an Eligible Person or such Eligible Person's representative in connection with one or more prescription drugs dispensed to such Eligible Person.

**Coinsurance** means that portion of the charge for Covered Products, calculated as a percentage of the charge, which is to be paid by Eligible Persons pursuant to Client's Plan Guidelines (or for certain Participating Pharmacies, if less, the U&C of the Covered Products).

**Confidential Information** shall have the meaning given in Section 10.04 of this Agreement.

**Contract Administrator**, if any, means the person so indicated on the signature page below.

**Coordination of Benefits** means claims administration when Eligible Persons are covered by more than one pharmacy benefit plan.

**Co-payment** means a fixed dollar portion of the charge for Covered Products which is to be paid by Eligible Persons pursuant to Client's Plan Guidelines (or for certain Participating Pharmacies, if less, the U&C of the Covered Products).

**Covered Entity** means a health plan, a health care clearinghouse or a health care provider, as more fully defined in 45 CFR§160.103.

**Covered Products** means those prescription drugs and ancillary devices and supplies that are covered under Client's Plan Guidelines.

**Deductible** means a predetermined amount of money that an Eligible Person must pay before benefits are eligible for payment as indicated in Client's Plan Guidelines. The deductible applies to each Eligible Person each contract year. Only charges for Covered Products calculated in accordance with Exhibit 2 may be used to satisfy the deductible.

**Direct Reimbursement Claim** means a request for reimbursement of one or more Covered Products dispensed by a pharmacy and submitted by a Participating Pharmacy, a Non-Participating Pharmacy, an Eligible Person, or Cardmember in a pre-printed universal claim form acceptable to Navitus.

**Dependent** means an individual who satisfies all the eligibility criteria through a Cardmember necessary to receive pharmacy benefits under Client's Plan and is identified by Client to Navitus in accordance with the provisions of this Agreement as eligible for such benefits.

**Effective Date** means the effective date of this Agreement as set forth on the signature page below.

**Eligible Person** means each Cardmember and Dependent.

**ERISA** means the Employment Retirement Income Security Act of 1976.

**FDA** means the United States Food and Drug Administration.

**Formulary** means the list of FDA-approved Covered Products developed by Navitus' Pharmacy and Therapeutics Committee, subject to Client's Plan Guidelines and coverage decisions. Navitus may modify the Formulary from time to time subject to Client's approval, as a result of factors described above and new therapeutic agents that become available. Final decisions on the Formulary for Client's plan shall be made by Client.

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996.

**HIPAA Privacy Rule** means the federal regulations related to the use and disclosure of patients' Protected Health Information under 45 CFR Parts 160 and 164.

**HIPAA Rules** mean the medical records, privacy, security, and standard transaction regulations under 45 CFR Parts 160 and 164.

**Initial Term** means the initial term of this Agreement as set forth on the signature page below.

**Mail Service Pharmacy** means a pharmacy, where prescriptions are filled and delivered to Eligible Persons via the United States Postal Service, United Parcel Service or other delivery service, and which has entered into an agreement with Navitus to dispense Covered Products to individuals including Eligible Persons.

**Material Breach** means a breach such that a reasonable person in the position of the nonbreaching party would wish to terminate this agreement because of that breach.

**Navitus Maximum Allowable Cost ("MAC")** means maximum allowable cost determined by Navitus and updated quarterly based upon review and analysis of current pricing in the marketplace.

**Non-Participating Pharmacy** means a pharmacy that does not have an agreement with Navitus to dispense Covered Products to individuals including Eligible Persons.

**Participating Pharmacy** means a pharmacy, or a company authorized to represent one or more subsidiary, affiliated, or franchised pharmacies, which has entered into an agreement with Navitus to dispense Covered Products to individuals including Eligible Persons. For purposes of this Agreement, a "Participating Pharmacy" shall not be considered a representative, subcontractor, or agent of Navitus and may include the Mail Service Pharmacy and the Specialty Pharmacy.

**Pharmaceutical Care Incentive Program** means a program that may be furnished by a Participating Pharmacy to Members and that is intended to (a) assure, with respect to such Members, that Covered Products are utilized in a manner that will optimize therapeutic outcomes through improved medication use; and (b) reduce costs through the use of generic Covered Products whenever safety and efficacy allow.

**Plan** means Client's self-funded Plan, which provides pharmacy benefits to Eligible Persons.

**Plan Guidelines** means a description of Client's Plan related to pharmacy benefits and limitations thereto, including the framework of policies, interpretations, rules, practices and procedures applicable to such benefits, required and signed by Client and submitted to Navitus. The Plan Guidelines shall not include any amendments except as provided in Section 3.02 of this Agreement.

**Practitioner** means a physician or other health care provider authorized to prescribe medication to Eligible Persons.

**Prior Authorization** means a prospective review to verify that certain criteria required by Client are satisfied for specific Covered Products prior to processing the claim for such Covered Products.

**Protected Health Information or PHI** means individually identifiable health information related to the past, present, or future physical or mental health or condition of an Eligible Person; the provision of health care to an Eligible Person; or the past, present or future payment for the provision of health care to an Eligible Person, as more fully defined in 45 CFR§164.501 or otherwise deemed confidential under federal or state law.

**Rebates** mean rebates or discounts received by Navitus pursuant to a contract with a pharmaceutical manufacturer, and directly attributable to the Formulary and Covered Product utilization by Eligible Persons.

**Renewal Term** means the time period as defined in Article VI of this Agreement.

**Specialty Pharmaceuticals** means those biotech and other Covered Products identified as specialty pharmaceuticals from time to time. A then-current list of Specialty Pharmaceuticals may be obtained at any time by contacting Navitus.

**Specialty Pharmacy** means a pharmacy that has entered into an agreement with Navitus to dispense Covered Products including Specialty Pharmaceuticals to Eligible Persons.

**Usual and Customary Price** or **U&C** means the retail price, including any minimum price, charged by a Non-Participating Pharmacy or a Participating Pharmacy for a Covered Product in a cash or uninsured transaction on the date such drug is dispensed.

**Wholesaler Acquisition Cost** or **WAC** means the wholesale acquisition cost pricing data for a given pharmaceutical product, as published by Medi-Span or another national drug database reporting service used by Navitus.

## **Article II**

### **NAVITUS' RESPONSIBILITIES**

**Section 2.01. General Description of Duties and Obligations.** Navitus will process Claims, render clinical and Formulary services and provide Client standard management reports and consultative services, all in connection with Eligible Persons' Covered Product utilization and as more fully set forth in this Agreement. In connection with these services, Navitus will evaluate the status and performance of Client's pharmacy benefit program and advise Client on a regular basis of the results of such evaluation.

**Section 2.02. Implementation Services.** Navitus will assign to Client dedicated personnel to implement Client's account. The Navitus implementation team will facilitate the implementation of all aspects of the Client pharmacy benefit program and will provide Client the following standard implementation services: (a) Loading eligibility files that do not require conversion to be in Navitus' standard format; (b) Encoding Client's Plan Guidelines within the Navitus information services and claims processing systems; (c) Creating and encoding Client's Plan Guidelines within the Participating Pharmacy network active in the Navitus system; (d) Initiating for Client a standard reporting package, without modification, from Navitus' standard report library; (e) Implementing standard Navitus system edits; (f) Producing standard laminated identification cards with Navitus logo, or providing files to Client for production of a combined identification card by Client; (g) Enabling Client's connectivity through a virtual private network or file transfer protocol to Navitus' system; (h) Implementing standard Prior Authorization guidelines required by Client (when prior authorization services are purchased without customization); and (i) Producing standard prior authorization letters, from Navitus' standard library (when prior authorization services are purchased without customization).

**Section 2.03. Client Services.** Navitus will assign to Client an account manager to direct Client's pharmacy benefit program following implementation. The account manager, assisted by pharmacists and other Navitus personnel, will respond to general inquiries and requests from Client's benefit group and will provide general support and consultative services related to Plan design, Covered Products utilization and charges,

Participating Pharmacy network changes, Eligible Person communications and Formulary management and support.

**Section 2.04. Customer Service Call Centers.** Navitus will maintain call centers, which will be accessible through a toll-free telephone line, responsible for responding to inquiries from Participating Pharmacies, other providers, and Eligible Persons regarding the services provided by Navitus under this Agreement. Call center personnel will respond to questions related to eligibility of individuals, Plan Guidelines, Deductible status, Coinsurance and Co-payment levels, maximum benefit status, direct reimbursement, and in the case of Participating Pharmacies, online adjudication instruction. Navitus' toll-free help line shall be available to Client and all Participating Pharmacies and Providers during Navitus' regular hours of business. Navitus customer service will be available twenty four hours a day, seven days a week. Notwithstanding the foregoing, Navitus customer service will not be available on Christmas Day and Thanksgiving. Navitus reserves the right to change such hours of operation and Navitus shall notify Client and the Participating Pharmacies prior to any such changes.

**Section 2.05. Cardmember Materials.** Navitus will provide and mail (at its own expense) an identification card for each Cardmember, unless provided by a third party so designated by Client or by Client directly. If Client elects to use a third party to provide the identification card or to provide it directly, the cost will be the responsibility of the Client. Navitus will provide Direct Reimbursement Claim forms.

**Section 2.06. Pharmacy Network.** Navitus has created and shall maintain a network of Participating Pharmacies. Navitus shall cause Participating Pharmacies to perform pharmacy services for Eligible Persons according to their Participating Pharmacy agreement. Although the composition of the Participating Pharmacy network may change due to the addition or withdrawal of specific Participating Pharmacies, Navitus will use commercially reasonable efforts to ensure that the network includes Participating Pharmacies such that the network will provide reasonable access and availability to the Members.

(a) **Listing of Participating Pharmacies.** Navitus will make available an updated list of Participating Pharmacies in its network on-line via its website. In addition, Navitus shall make printed versions of the list of Participating Pharmacies or relevant portions of the list available upon request to Members through its Customers Service Call Center representatives.

(b) **Mail Service.** Navitus will provide Client, should it so choose in Exhibit 2, a mail service program through which the Mail Service Pharmacy will fill prescriptions for Eligible Persons and shall mail such prescriptions to Eligible Persons subject to the terms set forth in Exhibit 2.

(c) **Specialty Pharmacy.** Navitus will provide Client, should it so choose in Exhibit 2, a Specialty Pharmaceutical program which provides a distribution channel for certain Covered Products that are generally biotechnological in nature, are given by injection, or otherwise require special handling. The Specialty Pharmacy will dispense Specialty Pharmaceuticals to Eligible Persons.

(d) **Pharmacy audits.** Navitus shall maintain a pharmacy audit program, the criteria of which may be amended from time to time. The audit may be conducted by Navitus' internal auditors or its outside auditors, and at the Participating Pharmacy or at Navitus by a review of electronically submitted Claims. Any overpayments made to a Participating Pharmacy attributable to Client's Claims will be offset against future payments to that Participating Pharmacy from Client's account; if offset is not available, then any overpayment recovered from the Participating Pharmacy will be promptly remitted to Client. Navitus shall not be required to commence any litigation to recover any such overpayments.

**Section 2.07. Claim Processing.**

(a) **General.** Navitus will process Claims with dates of fill on or after the Effective Date, through and including Claims with dates of fill prior to the termination of this Agreement. Navitus will process all Claims according to the Prescription Pricing Schedule in Exhibit 2, Client's Plan Guidelines and HIPAA-required transaction code sets. Notwithstanding the foregoing, if Client requests that Navitus encourage a pharmacy to become a Participating Pharmacy by offering such a pharmacy reimbursement rates that exceed the rates set forth in Exhibit 2, then Navitus shall use such revised reimbursement rates for such pharmacy. Navitus will review all contractual Claims transmitted by Participating Pharmacies and the Mail Service Pharmacy and notify such providers on-line of the reason or reasons for denial of such Claims, including, but not limited to, missing or erroneous information. Likewise, Navitus will report to submitting persons the status of all denied Direct Reimbursement Claims in accordance with ERISA rules and regulations. Client will maintain an appeals process for review of Claims that have been denied by Navitus and appealed by an Eligible Person after such exhaustion of any appeals processes available to such Eligible Person that are maintained by Navitus. Subject to the terms and conditions herein, Client shall make the final determination regarding payment of all submitted Claims. Additionally, if Client notifies Navitus that a Eligible Person has a primary insurer other than the Plan, then Navitus will pay Claims for such Eligible Person as a secondary payor other than as a primary payor. Navitus does not assume responsibility for establishing coordination of benefits filing order for subsequent coverages, nor responsibility for coordination of benefits investigational efforts, subrogation, or coordination with Worker's Compensation.

Client hereby delegates to Navitus the authority, responsibility and discretion to (i) determine eligibility and enrollment for coverage under the Plan according to the information provided by the Client, (ii) make factual determinations and to interpret the provisions of the Plan to make coverage determinations on claims for Plan Benefits (iii) conduct a full and fair review of each claim which has been denied as required by ERISA, (iv) conduct the initial level of appeal determinations for all "Urgent Care" "Concurrent", "Pre-service" and "Post-service" claims (as those terms are defined in ERISA) and notify the Member or the Member's authorized representative of its decision. Client shall conduct final level(s) of appeal determinations for all "Urgent Care", "Concurrent", "Pre-service" and "Post-service" claims (as those terms are defined in ERISA) upon request by the Member following the initial appeal determination. Employer will ensure that all summary plan description materials provided to Members reflect this delegation.

(b) **Direct Member Reimbursement.** Navitus will provide an Eligible Person with a Navitus approved claim form that must be used when submitting a Claim for reimbursement for Covered Products provided by a Participating or Non-Participating Pharmacy. When such a Claim is submitted on the approved form, Navitus will process the Claim according to the Plan Guidelines and in the amount approved by the Client for payment. The Claim forms will be sent to: Navitus Health Solutions LLC, P.O. Box 999, Appleton, Wisconsin 54912-0999, or such other address designated by Navitus upon written notice.

**Section 2.08. Collection of Deductible, Co-payment, or Coinsurance by Pharmacies.** Navitus will contractually require Participating Pharmacies to collect from Eligible Persons or their representatives the amount of any applicable Coinsurance, Co-payment, or Deductible communicated by the online adjudication processing system prior to providing such persons any Covered Products to which such Eligible Person is or may be entitled. Navitus also will contractually require Participating Pharmacies to agree not to recover from Eligible Persons any unpaid balances due from Navitus and/or the Plan. Some Participating Pharmacy contracts may provide for the collection of an applicable Co-payment even when the amount of the Claim determined under Exhibit 2 is lower than the Co-payment; however, the other Participating Pharmacies, the Mail Service Pharmacy, and the Specialty Pharmacy will collect the lesser of the amount of the Claim determined under Exhibit 2 or the Co-payment.



**Section 2.09. Client Claims File.** Navitus will provide Client with an electronic file in Navitus standard format of all paid claims for the Client prescription drug program on a quarterly basis. Such data may also be provided from time to time, at the request of Client, to a Client designee for purposes of assisting in the implementation and management of Disease Management programs or other programs desired by Client.

**Section 2.10. Clinical and Other Services.** Navitus will provide Client and its Eligible Persons certain clinical and ancillary services to facilitate Eligible Persons' appropriate utilization of Covered Products.

(a) **Concurrent Drug Utilization Review.** Navitus will provide concurrent on-line drug utilization review to Participating Pharmacies for all Claims submitted on-line. Participating Pharmacies transmitting Claims will receive advisory messages identifying potential drug interactions and other circumstances, which may be indicative of inappropriate drug utilization.

(b) **Retrospective Drug Utilization Review.** Navitus will retrospectively review previously approved Claims for potential fraud or abuse, and clinical appropriateness. Navitus will analyze Eligible Persons' drug profiles and review one or more specific therapeutic categories or issues. Automatic algorithms will be employed to identify Eligible Persons receiving the profiling and targeted drug therapy. Navitus also will contact Practitioners and Participating Pharmacies as needed to discuss therapeutic issues and to offer suggestions for alternative therapy.

(c) **Treatment Alternatives.** Client agrees that consistent with the HIPAA Privacy Rule, Navitus may contact Eligible Persons to provide refill reminders or information about treatment alternatives, including, but not limited to, brand and generic drugs, or other health-related benefits and services that may be of interest to such Eligible Persons. In connection with these services, Navitus also may provide Participating Pharmacies and Practitioners information, electronic messaging, and communications about such alternatives and services.

(d) **Prior Authorizations.** Navitus will, as required by Client, confirm with Practitioners whether certain Covered Products are prescribed for medical conditions consistent with FDA-approved indications and labeling. In providing any or all such services, Navitus may rely upon information provided by the Eligible Person or such person's representative, the Practitioner, the dispensing pharmacist and other sources deemed reliable by Navitus. Navitus shall not determine medical necessity or appropriateness of treatment, although Navitus may rely upon protocols established and maintained by its Pharmacy and Therapeutics Committee (consisting of pharmacists and physicians) based upon factors such as safety, availability, potential for misuse and cost in its review of Claims submitted for payment of such prescription drugs. The standard Navitus prior authorization list will be made available to Client along with Navitus approved criteria for use. This list may change from time to time based upon the clinical determination of the Navitus Pharmacy and Therapeutics Committee and such changes will be communicated in advance to Client. Any customization or additions to the standard Navitus Prior Authorization list may result in additional fees payable to Navitus by the Client. Client acknowledges that Navitus may suspend processing of Claims for Covered Products subject to Prior Authorization in the event the Practitioner fails to provide missing information necessary for the processing of such Claims in compliance with such protocols.

(e) **Formulary Management.** Navitus shall provide a recommended drug formulary to Client. Client agrees to implement, administer, and cooperate with Navitus and to facilitate Eligible Persons' utilization of the Formulary.

(f) **Formulary Support Programs.** Navitus will offer Client Formulary support programs intended to assist in the transition of Client's Eligible Persons from their current drug utilization mix to a new mix of utilized products, which are better aligned with the Navitus Formulary.

(g) **Treatment Decisions.** Subject to Client's Plan Guidelines and the Prior Authorization process set forth in this Agreement, the decisions, in all circumstances, to prescribe and dispense any prescription drug shall be made solely by the prescribing physician or health care provider and the dispensing pharmacist, respectively.

(h) **Ninety Day at Retail.** Navitus will provide Client, should it so choose in Exhibit 2, a ninety day at retail program through which retail pharmacies will fill prescriptions for Eligible Persons subject to the terms set forth in Exhibit 2.

(i) **Pharmaceutical Care Incentive Program.** Navitus will provide Client, should it so choose in Exhibit 2, an incentive program through which retail pharmacies will provide educational interventions to improve care and to promote the use of generics, subject to the terms set forth in Exhibit 2.

(j) **Additional Services.** In the event that Client requests Navitus to provide services other than those described herein including, but not limited to, special research projects, reports, consultative services (e.g., HIPAA compliance consultation), Navitus system changes to accommodate changes in Client's pharmacy program or system, or other tasks to be specifically performed for or on behalf of Client, Client shall pay to Navitus an additional charge as set forth in Exhibit 1 or as otherwise mutually agreed upon by the parties in writing before the services are provided.

**Section 2.11. Eligibility and Claim Files.** Navitus will establish and maintain claim and eligibility files related to Eligible Persons and their Covered Product utilization. Maintenance of eligibility files (additions, terminations and updates) will be performed within five (5) business days of Navitus' receipt of Client's submission of such additions, terminations, and updates to files; provided that the information received from Client conforms with the specifications for such information reasonably requested by Navitus. Until expiration of such time period, Client will remain responsible for all Claims submitted on behalf of such affected individuals.

**Section 2.12. On-Line Access.** Navitus will provide Client, subject to the fees set forth in Exhibit 1, with on-line access to Navitus' eligibility and claim databases regarding Client's Eligible Persons for the purpose of allowing Client to update eligibility records and access claims data.

**Section 2.13. Core Reports.** Navitus shall prepare and deliver to Client core reports no later than thirty (30) days from the close of the month or quarter, as applicable. Client will receive Navitus' Standard Report Package. Additional or customized reports shall incur costs to Client as described in Exhibit 1. Upon receipt of Client's request for an ad hoc report, the parties will negotiate in good faith to agree on a due date for such ad hoc report.

### **Article III CLIENT RESPONSIBILITIES**

**Section 3.01. Plan and Other Information.** Client agrees to provide Navitus all information reasonably required by Navitus to fulfill its duties and obligations under this Agreement. Client agrees to review and analyze information provided by Navitus in a timely fashion and notify Navitus of any errors or omissions. Client represents and warrants that all information provided shall be true, accurate and complete and consistent with the Plan benefits available to Eligible Persons.

**Section 3.02. Plan Guidelines.** Client represents and warrants that its Plan Guidelines are true, accurate and complete descriptions of the pharmacy benefits available to Eligible Persons and acknowledges its status as

the plan administrator for purposes of this Agreement. Client shall retain its discretionary authority to manage, control and interpret its Plan and may, at any time, alter or amend the Plan Guidelines; provided, Client notifies Navitus in writing of all such changes not less than thirty (30) days prior to the effective date of any changes. Navitus will advise Client of the anticipated implementation dates of the proposed benefit changes, and the benefits that are implemented shall be deemed incorporated into this Agreement as of the date of implementation. Charges, as agreed upon by Navitus and Client in writing, for programming to implement any customized edits shall be borne by Client unless otherwise agreed by the parties. If Client modifies its Plan Guidelines in a manner that materially affects Navitus' duties, obligations or cost of performance under this Agreement, then at the request of Navitus, the parties will work toward a mutually acceptable modification of this Agreement, including, but not limited to, adjustments to the administrative charges in Exhibit 1 or the Prescription Pricing Schedule in Exhibit 2 of this Agreement. If Client and Navitus are unable to agree upon mutually acceptable modifications of this Agreement, then a final and binding decision on the modifications shall be made by a third party acceptable to both parties.

**Section 3.03. Eligibility.** Client represents that each individual's eligibility for benefits is determined by reference to criteria in its Plan. Client will provide Navitus eligibility information identifying each individual eligible for pharmacy benefits under Client's Plan. Such information shall include all information identified by Navitus so as to enable Navitus to process Claims in accordance with HIPAA and shall be provided in a mutually acceptable format. Client will provide Navitus regular updates of subsequent changes in enrollment, including, but not limited to, changes in eligibility status, additions and deletions of Cardmembers and Dependents, and termination of benefits, together with the effective date of any such changes if such changes occur after the effective date of this Agreement. If Client retroactively changes a Member's status under the Plan; Client shall be responsible for payment of all Claims related to such Member that are processed prior to Navitus processing the notification of the retroactive termination.

**Section 3.04. Eligible Person Authorizations and Consents.** Client represents and warrants that it has or shall obtain the Eligible Persons' consents and authorizations if required for the services provided in connection with this Agreement and to release Protected Health Information to Client if so required.

**Section 3.05. Contract Administrator.** If Client appoints a Contract Administrator, Client represents and warrants that the Contract Administrator is and shall be authorized to act as Client's agent and representative on any and all matters in connection with this Agreement, including, but not limited to, (a) additions, deletions, and modifications of eligibility listings provided to Navitus; (b) payment to Navitus of claims, services and fees; (c) plan design and coverage decisions; and (d) the provision and receipt of contractually required or permitted notices. Client acknowledges and agrees that Navitus shall be entitled to rely upon any and all such acts and omissions by Contract Administrator and, further, that any and all such acts and omissions shall be binding upon Client.

#### **Article IV FORMULARY PROGRAM AND REBATES**

**Section 4.01. Cooperation.** Client agrees to approve the Formulary and to allow Navitus to communicate with, and make available Formulary related literature to, Participating Pharmacies, Practitioners and Eligible Persons. Client agrees to cooperate with Navitus in the maintenance of the Formulary and to facilitate Eligible Persons' utilization of the Formulary.

**Section 4.02. Rebate Submissions.** Client further agrees that, consistent the HIPAA Privacy Rule, Navitus will submit Eligible Persons' Protected Health Information to pharmaceutical manufacturers in exchange for Rebates. Client acknowledges that Rebates are intended to be paid only once by manufacturers on Covered Product utilization and agrees not to participate in any other formulary, Rebate or discount program related to

Covered Product utilization by Eligible Persons in connection with this Agreement. Client agrees that if any manufacturer's audit reveals that Client has submitted Covered Product utilization in a duplicitous manner to pharmaceutical manufacturers for purposes of Rebates or calculating Rebates, then Client shall be solely responsible for the reimbursement of any Rebates improperly made based on such utilization and Navitus may terminate Client's participation in the Rebate program and adjust its administrative charges as provided Section 5.04 of this Agreement.

**Section 4.03. Rebate Calculation.** Navitus will calculate Client's share of Rebates on Covered Products. Client's share of Rebates will be in proportion to its pharmacy utilization of Covered Products as compared to all other Navitus clients with similar Plans, and as specified by the criteria established by the pharmaceutical manufacturer. Client will then be eligible to receive one hundred percent (100%) of this amount. Client's share of Rebates will be in proportion to its Members' utilization of Covered Products as compared to all other Navitus clients with similar plans and as specified by criteria established by applicable pharmaceutical manufacturers. Claims submitted directly by Eligible Persons may not be eligible for Rebates. Client acknowledges that its eligibility to receive payments for Rebates may change over time due to changes in laws governing prescription drug pricing (including Rebates), or changes in Navitus' contracts with pharmaceutical manufacturers. Client agrees that Navitus shall not have any liability or obligation to Client or its Eligible Persons for any failure by any manufacturer to pay any Rebates, any breach of an agreement related to the transactions contemplated by this Agreement by any manufacturer, or any negligence or willful misconduct of any manufacturer.

**Section 4.04. Payment of Rebates.** Navitus' payment to Client for Rebates will be on a quarterly basis and will include Client's portion of any Rebates collected and validated for accuracy during the applicable calendar quarter. Navitus agrees to pay Client its portion of received rebates within thirty (30) business days following the end of each calendar quarter in which such amounts are received, after final audit and validation of accuracy. Client acknowledges and agrees that it shall not have a right to interest on any Rebate payments received by Navitus, or to other manufacturer monies received by Navitus and not directly attributable to Covered Product utilization of Eligible Persons. Amounts due and owing Client in connection with such Rebates may be offset by Navitus against Client's overdue, outstanding balances.

## **Article V**

### **COMPENSATION; CLAIMS BILLINGS AND PAYMENTS**

**Section 5.01. Compensation.** Client acknowledges that it has had an opportunity to review Navitus' qualifications and services in relation to the marketplace and Client's Covered Product expenditures and has determined the reasonableness of Navitus' compensation in connection with the services provided under this Agreement. Client further acknowledges and agrees that Navitus, and third parties contracted to Navitus, may retain interest earnings not in excess of market rates pending clearance of electronic transfers and checks in connection with the payment of Covered Product claims under this Agreement.

**Section 5.02. Payments to Navitus.** Client agrees to pay Navitus the administrative charges as set forth in Exhibit 1 to this Agreement. Client also agrees to fund the payment of Covered Product Claims in accordance with the Prescription Pricing Schedule in Exhibit 2 to this Agreement and all applicable gross receipts, provider, sales, use and similar taxes. Client assumes all financial responsibility for funding the payment of Covered Product Claims submitted to Navitus with regard to Client's Eligible Persons, whether by Participating Pharmacies or Eligible Persons. Navitus will invoice Client for Claims at the amount Navitus pays for those Claims.

(a) **Timing of Payment.** Client selects the following payment timing option (Client initial one of the following options):

\_\_\_\_\_ *Prompt Payment Option.* Under the "Prompt Payment Option," invoices will be submitted between one (1) and three (3) days after the end of each invoice cycle, and Client agrees to pay Navitus for amounts owed thereunder within two (2) business days from the date of invoice.

\_\_\_\_\_ *Advance Payment Option.* Under the "Advance Payment Option," Client agrees to advance to, and maintain with, Navitus an amount equal to the sum of one (1) month's estimated Covered Product Claims and one (1) month's estimated administrative charges not later than fifteen (15) days prior to the Effective Date of the Agreement. Client agrees that Navitus may retain any earnings on these advances. Invoices will be submitted between one (1) and three (3) days after the end of each invoice cycle, and payment in full will be due fifteen (15) days from the date of invoice.

(b) **Payment Methodology.** Client selects the following payment methodology option (Client initial one of the following options):

\_\_\_\_\_ *Navitus Initiated ACH.* Under the "Navitus Initiated ACH," Client shall maintain a bank account from which Navitus will initiate ACH transfers in order to satisfy Client's obligations hereunder. Client shall be solely responsible for depositing funds and verifying that the account has sufficient funds to pay Covered Product Claims and Navitus' administrative charges.

\_\_\_\_\_ *Client Initiated ACH.* Under the "Client Initiated ACH," Client shall initiate ACH transfers from Client's bank account to Navitus' bank account in order to pay all amounts when due hereunder. Client shall authorize Administrator to pay Navitus from Client's bank account such that all amounts are paid when due, if Client delegates such responsibility to Administrator.

Client acknowledges and agrees that Navitus' account(s) into which money from Client's bank account is transferred may contain money from one or more other clients that have engaged Navitus to provide administrative services and further agrees that once such money is withdrawn from Client's Account, it is no longer a Plan asset.

**Section 5.03. Failure to Make Funds Available.** In the event that for any reason funds are not available on the date due and Client fails to provide the required funds within one (1) business day after that failure is brought to the attention of Client, Navitus may terminate this Agreement immediately and may provide notice of such termination to Participating Pharmacies and Eligible Persons. In the event that Client has at any time failed to make funds available to pay claims for Covered Products or has failed to pay fees to Navitus, in addition to any other remedies, Navitus shall have the right to offset any unpaid amounts against any amounts owed to Client by Navitus, or any entity affiliated with Navitus.

**Section 5.04. Notice of Change in Administrative Fees.** Navitus may change the administrative charges, effective on or after the close of the Initial Term or any Renewal Term of this Agreement upon not less than ninety (90) days prior written notice to Client. If any revision in the administrative charges is not acceptable, then Client shall so notify Navitus in writing not less than sixty (60) days prior to the expiration of the ninety (90) day period. In the event the parties cannot agree on the compensation adjustment on or before the expiration of the ninety (90) day period, then this Agreement shall terminate at the end of such time period.

**Section 5.05. Collections; Interest.** Client shall be responsible for all costs and expenses of collection of amounts due from Client to Navitus, and enforcement of judgments, and agrees to reimburse Navitus for such costs and expenses, including reasonable attorneys' fees. Any amounts not paid by the due date thereof shall bear the interest rate of twelve percent (12%) per annum; however, this interest rate shall not exceed the maximum rate allowed by applicable laws. The rights and remedies set forth in this paragraph are in addition to other rights and remedies available to Navitus under law or in equity.

## **Article VI TERM OF AGREEMENT**

This Agreement shall become effective on the Effective Date, shall continue in full force and effect for the Initial Term, and shall continue thereafter from year to year ("Renewal Term") unless sooner terminated as described below. If either Client or Navitus desires not to continue this Agreement beyond the Initial Term or any Renewal Term, then that party shall so notify the other party in writing not less than one hundred and twenty (120) days prior to the expiration of such term. If neither Client nor Navitus so notifies the other party, then this Agreement shall continue for an additional Renewal Term.

## **Article VII TERMINATION AND NOTICE**

**Section 7.01. Mutual Agreement.** This Agreement may be terminated at any time by mutual written consent of the parties.

**Section 7.02. For Cause.**

- (a) Either Client or Navitus may terminate this Agreement, at any time, upon not less than sixty (60) days' written notice if: (1) the other party makes an assignment for the benefit of creditors, is the subject of a voluntary or involuntary petition for bankruptcy or is adjudged to be insolvent or bankrupt, or a receiver or trustee is appointed for any portion of its property; or (2) the other party commits a Material Breach of this Agreement, unless the breach is cured prior to the expiration of such notice; or (3) a change in law occurs, as provided in Section 12.08 of this Agreement.
- (b) Navitus may terminate this Agreement immediately, in accordance with Section 5.03 of this Agreement, if Client fails to timely deposit funds in the Account sufficient to cover the cost of pharmacy claims and Navitus administrative services, or if Client does not provide Navitus the requested advance in accordance with Exhibit 1 of this Agreement.

**Section 7.03. Effect of Termination; Other Remedies.** Termination of this Agreement shall not affect Client's financial responsibility for Covered Product claims and Navitus' administrative charges pertaining to the period prior to termination. A party's right to terminate this Agreement shall not be exclusive of any other remedies available to such party under this Agreement, at law or in equity.

**Section 7.04. No Consent; Notice to Third Parties.** This Agreement may be terminated without the consent of, or notice to, any Eligible Person, any Participating Pharmacy or other third parties. Notwithstanding the foregoing, Navitus may advise Participating Pharmacies and pharmaceutical manufacturers of a pending or actual termination of this Agreement.

**Section 7.05. Run-Out Period.** Client shall continue to assume full responsibility for the funding of Covered Product Claims incurred prior to the effective date of termination of this Agreement and for the payment of Navitus' administrative charges. Client's obligation for payment for these services will continue as long as claims are being processed by Navitus, not to exceed a run-out period of ninety (90) days on the effective date of termination. Administrative charges for the run-out period will be based on per-transaction charges, calculated on the basis of the actual transactions related to the actual administrative charges incurred in the last full month prior to the termination of this Agreement. Navitus will return to Client any unapplied deposits or advances previously received from Client within thirty (30) days following such run-out period.

**Article VIII**  
**LIABILITY, INDEMNIFICATION, AND WARRANTY**

**Section 8.01. Limited Warranty.** Navitus warrants that it will perform the services described in this Agreement in accordance with the practices and standards generally established in the pharmacy benefits management industry. Except for the preceding sentence, Navitus makes no representation or warranty of any kind whatsoever, express or implied, and expressly disclaims any and all such warranties, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose with respect to the products or services provided hereunder. Navitus does not warrant that its services will be uninterrupted or error free.

**Section 8.02. Role of the Parties.** Client acknowledges that Navitus will administer Client's self-funded pharmacy benefit plan on behalf of Client. Navitus does not underwrite or insure liability of Client in connection with its prescription drug benefits, and Client retains the ultimate responsibility and final authority for its Plan. For purposes of applicable state legislation, Client is and shall be deemed the Plan sponsor of any applicable prescription drug benefit. Nothing in this Agreement is intended by the parties, or shall be construed, to confer upon Navitus the status of a fiduciary of Client or any benefit plan maintained by Client.

**Section 8.03. Insurance.** Navitus agrees, at its sole expense, to maintain commercial general liability insurance coverage in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Navitus also agrees to maintain errors and omissions insurance with coverage of \$5,000,000 in aggregate. Finally, Navitus warrants and represents that it has in place and will maintain any Workers' Compensation insurance required by applicable law.

**Section 8.04. Limitation of Liability for Covered Products.**

(a) Client agrees and acknowledges that the services provided by Navitus herein are not intended to substitute for or supplement the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care professionals in prescribing or suggesting pharmaceuticals or other products. The absence of a warning for a given drug, drug dosage, or drug combination shall not be construed to indicate that the drug, drug dosage, or drug combination is safe, appropriate, or effective for any Eligible Person.

(b) Navitus shall under no circumstances be liable (regardless of the basis for the action) for any damage, side effects or other injury suffered by any Eligible Person or other consumer of any pharmaceutical or any other product prescribed, dispensed or distributed by any health care provider, pharmacy, physician, Practitioner or pharmaceutical manufacturer or distributor. Without limiting the foregoing, Client agrees that Navitus shall not be liable to Client or any Eligible Person for losses, costs, claims, lawsuits, settlements, judgments or expenses, including attorneys' fees, arising as a result of the sale, compounding, dispensing, manufacturing, or use of any prescription drug or product dispensed by a Participating Pharmacy or a non-Participating Pharmacy whose claims are processed hereunder, or for any violation by such pharmacy of any applicable standard of care or applicable law, including, but not limited to, HIPAA or its implementing rules and regulations.

**Section 8.05. Limitations of Liability.**

(a) In no event shall Navitus' total liability for the entire term of this Agreement, regardless of the cause or form of action upon which any such liability is based, exceed the lesser of (i) the actual and direct damages incurred by Client; or (ii) the total administrative charges paid or to be paid to Navitus during the first year of this Agreement; or (iii) the amount of any applicable liability covered

by Navitus' errors and omissions insurance coverage, if such amount is greater than the amount determined under (i) or (ii), above.

(b) In no event shall either party be liable to the other party for any indirect, special, incidental, consequential, or punitive damages or lost profits, arising out of or related to the performance of this Agreement or a breach of this Agreement, even if advised of the possibility of such damages or lost profits.

(c) Neither party will have any negligence or other tort liability to the other arising from the performance or any breach of this Agreement, even if a breach is the result of acts or omissions that may arguably be characterized as negligence or other tortious conduct.

(d) Any controversy or claim arising out of or relating to this Agreement, regardless of the basis of the claim, must be filed within the earlier of (i) the applicable statute of limitations or (ii) one (1) year of the date the factual basis for the claim occurs. Failure to file such a claim within that time period shall bar a party from asserting that claim.

**Section 8.06. Indemnification.** Subject to the other limitations in this Article VIII and in consideration of Client's covenants, representations and warranties in this Agreement, Navitus agrees to indemnify, defend and hold Client harmless from any and all actions or claims arising from a material breach by Navitus of this Agreement. In consideration of Navitus' covenants, representations and warranties in this Agreement, Client agrees to indemnify, save, defend and hold Navitus harmless from any and all actions or claims arising from (a) a material breach by Client of this Agreement; (b) Client's plan design; (c) Client's coverage decisions; (d) actions based on matters in Section 8.04; or (e) the payment of fraudulent claims or filling of fraudulent prescriptions if the fraud is committed by an Eligible Person, or any party other than Navitus. The above indemnifications shall survive termination of this Agreement.

## **Article IX COMPLIANCE WITH LAW**

**Section 9.01. Compliance.** Navitus agrees to comply with all applicable federal and state laws, rules and regulations, including, but not limited to, ERISA and HIPAA and state laws, rules and regulations related to the licensure and registration of third party administrators. Client agrees to comply with all applicable federal and state laws, rules and regulations, including, but not limited to, ERISA and HIPAA. Client acknowledges that if its Plan is an employee welfare Plan for purposes of ERISA, Client is responsible for its own activities and duties (such as its duties as Plan Administrator) in connection with its Plan. Client acknowledges and agrees that it is responsible for disclosing to Eligible Persons all benefit information legally required to be disclosed, including information related to the calculation of Coinsurance, Co-payments, Deductibles, coverages and exclusions and eligibility requirements, and Rebates it receives in connection with this Agreement. Client will not identify or represent Navitus as a Plan administrator or a named fiduciary of Client's Plan as those terms are used in ERISA.

**Section 9.02. Business Associate Agreement.** The parties acknowledge that they have signed, or are signing contemporaneously with this Agreement, a Business Associate Agreement in compliance with HIPAA.

## **Article X RECORDS; CONFIDENTIALITY**

**Section 10.01. Maintenance of Records; Audits.** Navitus agrees to maintain true and correct books and records of Client's Covered Product expenditures in the standard Navitus format and for a period of not less



than seven (7) years from the date payment is made. Client may audit such books and records, using an auditor and methodology that is mutually agreed upon by the parties, upon reasonable prior written notice and during Navitus' normal business hours consistent with privacy and other limitations of applicable federal and state laws, rules and regulations and the provisions of this Agreement. The parties shall require any third-party auditor to execute a confidentiality agreement in a form that is reasonably acceptable to both parties, and which contains provisions intended to protect each party's Confidential Information that are substantially the same as the provisions set forth herein.

**Section 10.02. Use and Disclosure of Protected Health Information.** Client acknowledges that Protected Health Information will be obtained by Navitus and such Protected Health Information will be obtained from and/or distributed to Client, Participating Pharmacies, the Mail Service Pharmacy, Specialty Pharmacies, and Eligible Persons' Practitioners for drug utilization review and other purposes related to the services provided in connection with this Agreement. Subject to the remaining provisions of this Agreement and to the terms of the Business Associate Agreement, Client hereby permits Navitus to use and disclose such PHI in performance of its duties and obligations in connection with this Agreement.

**Section 10.03. Other Information.** Client grants Navitus permission during and after the term of this Agreement to use and/or transfer to third parties de-identified Protected Health Information for the purposes of rendering services to prospective and existing clients and developing ancillary data for programs complementary to the programs and services provided hereunder or new products and services that may be outside the scope of this Agreement. Navitus shall retain full ownership rights over all resultant data.

**Section 10.04. Confidential Information.** Client and Navitus agree not to disclose the other's proprietary and confidential information ("Confidential Information") to any third party, during or after the termination of this Agreement, except (a) as specifically contemplated by this Agreement; (b) with the other's prior written consent; (c) as required by local, state or federal law, rule or regulation, including any judicial or administrative interpretation thereof; or (d) to the extent such information becomes generally available to the public, through no action or fault of the receiving party. Such Confidential Information shall include, but not be limited to: (i) with respect to Navitus: the terms and conditions of this Agreement, the operations, procedures and strategies of Navitus; its software, reporting packages, user documentation and related information; its formulary and clinical services; and data and information owned by Navitus; and (ii) with respect to Client: its operations and strategies. Client and Navitus shall cease using the other's Confidential Information upon termination of this Agreement or a subsequent agreement between the parties and shall return or destroy such information at the disclosing party's written direction.

**Section 10.05. Disclosure.** Upon request by Client, Navitus will disclose to Client, (a) the existence of organizational arrangements that could potentially create a conflict of interest that affects clinical or financial decisions; (b) sources of revenue as it relates to the Client's contract; and (c) pricing structure for pharmacy benefit management services including rebate structure and administrative fees.

## **Article XI**

### **DISPUTE RESOLUTION PROCEDURES**

**Section 11.01. Resolution of Disputes.** The parties agree to work in good faith toward resolution of disputes arising during the term of this Agreement. If they are unable to resolve the dispute through informal discussions, either party may submit a written objection to the other party describing and proposing a manner of resolving that dispute. The party receiving such objection shall respond by accepting, rejecting, or modifying such proposal, in writing, within thirty (30) days of the date that it receives the proposal. If the proposal is accepted, then the acceptance shall be deemed an agreement between the parties. If the proposal is rejected or modified, then the parties shall resume good faith efforts to resolve the dispute for a period of thirty

(30) days after notice of the rejection or modification is given. Except for actions requesting equitable relief, no lawsuit or other adverse proceeding may be commenced until expiration of that thirty (30) day period.

**Section 11.02. Jurisdiction.** Any lawsuit arising out of this Agreement shall be brought in the state or federal court, as applicable, located where the defendant's principal office is located, and the parties consent to the exclusive jurisdiction of such courts.

## **Article XII MISCELLANEOUS**

**Section 12.01. Notices.** Communications in the ordinary course of performance of this Agreement, including communications regarding payment, may be conducted by any reasonable means, including but not limited to telephone, facsimile, or electronic mail. Any formal notice to be given in connection with this Agreement must be in writing and shall be deemed to have been given if sent by: (a) personal delivery or commercial courier; (b) certified or registered mail, return receipt requested, postage prepaid; or (c) a nationally recognized overnight delivery service, and addressed to:

Navitus Health Solutions, LLC  
Attn: President  
999 Fourier Drive  
Madison, WI 53717  
Phone: 608-827-7500  
Fax: 608-827-7527

Client: see signature page

Either Client or Navitus may change its address for receipt of such notice by providing like written notice to the other party.

**Section 12.02. Entire Agreement.** This Agreement, its Exhibits, the Plan Guidelines and any other documents incorporated by reference constitute the entire and complete understanding between the parties and supersede all discussions and writings between the parties that may have occurred before entering into this Agreement. There are no other agreements or undertakings, written or oral, in effect between the parties relating to the subject matter herein.

**Section 12.03. Impossibility of Performance.** Neither party shall be liable in any manner for any delay in performance of its obligations hereunder beyond such party's reasonable control, including, but not limited to, any delay or failure due to strikes, labor disputes, riots, earthquakes, storms, floods, or other extreme weather conditions, fires, explosions, acts of God, embargoes, terrorist acts, war or other outbreak of hostilities, government acts or regulations, or the failure or inability of carriers, suppliers, delivery services or communication providers to provide services necessary to enable a party to perform its obligations hereunder. Notwithstanding the foregoing, any of Client's obligations to pay Navitus under this Agreement, which occur prior to any such event, shall not be excused by reason of such event.

**Section 12.04. Exclusivity.** Client agrees that Navitus shall be the exclusive provider to the Client of the type of administrative services described in this Agreement. As applicable, the Mail Service Pharmacy shall be the exclusive provider of the internet and mail order pharmacy services described in this Agreement for the Client's Eligible Persons, and the Specialty Pharmacy shall be the exclusive provider of the Specialty Pharmaceuticals described in this Agreement for the Client's Eligible Persons.

**Section 12.05. Intellectual Property.** Except as expressly otherwise provided herein, Navitus retains all rights, title, and interest in and reserves the right to use and control the use of its intellectual property rights in

its assets including, but not limited to, its software, reporting packages, user documentation, operations, procedures, and trade marks and service marks. Client agrees not to use any such items except as expressly allowed under this Agreement, and also not to refer to Navitus or its trade name or marks in any publication without the prior written approval of Navitus.

**Section 12.06. No Third-Party Beneficiaries.** This Agreement is not intended, and shall not be construed, to create third-party beneficiary rights in any person, including, but not limited to, any pharmacy or other provider or Eligible Person.

**Section 12.07. Governing Law.** This Agreement shall be governed by and construed in accordance with applicable federal laws, rules and regulations, including ERISA and HIPAA. To the extent such laws, rules and regulations do not apply, the internal laws of the State of Wisconsin shall govern all claims arising out of or relating to this Agreement regardless of the basis of any such claims.

**Section 12.08. Change in Law.** In the event of any change in federal, state or local laws, rules or regulations, including any judicial or administrative interpretation thereof, which materially alters the rights, duties, obligations or cost of performance of either party under this Agreement, the parties will work in good faith toward mutually acceptable modifications of this Agreement. Such modifications may include but are not limited to changes related to benefit design, drug coverage, and, to the extent that these changes affect the cost of performance, changes to administrative charges. If Client and Navitus are unable to agree upon mutually acceptable modifications, then either Client or Navitus may terminate this Agreement upon not less than sixty (60) days' prior written notice.

**Section 12.09. Relationship of Parties.** This Agreement is not intended, and shall not be construed, to create any relationship between Client and Navitus other than that of independent contractors. Neither Client nor Navitus shall be construed to be the agent, partner, employee, fiduciary or representative of the other and neither party shall have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the other party.

**Section 12.10. Changes to Pricing Methodology.** At any time during the term of this Agreement, Navitus shall have the option, upon thirty (30) days' notice to Client, to convert the pricing methodology used under this Agreement and set forth in Exhibit 2, to another payment methodology that is economically equivalent, as determined by Navitus.

**Section 12.11. Amendment; Waiver.** This Agreement may be amended or modified solely through a writing signed by authorized persons on behalf of both parties. The waiver of any breach of any term or provision of this Agreement shall not constitute a waiver of any subsequent breach of the same term or provision or any other term or provision hereof.

**Section 12.12. Effect of Invalidity** In the event a provision of this Agreement is rendered invalid or unenforceable by state or federal statute or regulations or declared null and void by any court or agency of competent jurisdiction, that provision shall be deemed stricken, and the remaining provisions of this Agreement will remain in full force and effect.

**Section 12.13. Assignment.** No party may assign or transfer its rights or obligations under this Agreement, in whole or in part, without the other party's prior written consent, which shall not be unreasonably qualified or delayed. Any attempted assignment without that consent shall be void. Notwithstanding the forgoing, Navitus may assign this Agreement to any parent company or affiliate.

**Section 12.14. Construction.** This Agreement shall be construed and interpreted neutrally and without regard to the party that drafted it. The headings in this Agreement are used solely for the purpose of convenience and shall not be considered in the construction of any provision in this Agreement.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement on the day first written above.

**Client:** \_\_\_\_\_ **Navitus Health Solutions, LLC**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Terry Seligman  
Title: President

**Variables:**

“Cardmember” **shall / shall not** [strike one] include retired employees.

Contract Administrator: **None** or **Name:** \_\_\_\_\_ .

Effective Date: \_\_\_\_\_, 20\_\_\_\_

Initial Term: \_\_\_\_\_ years from the Effective Date

Notices to Client (12.01):      Attn: \_\_\_\_\_  
   Address: \_\_\_\_\_  
   \_\_\_\_\_  
   Phone: \_\_\_\_\_  
   Fax: \_\_\_\_\_

**Exhibit 1**  
**ADMINISTRATIVE SERVICES SCHEDULE**

Client agrees to pay Navitus an administrative fee of \$\_\_\_\_\_ per Member per month. At the beginning of the second full year of the Agreement and at the beginning of each full year thereafter, whether in the Initial Term or a Renewal Term, the amount of the administrative charge shall be increased by four percent (4%) for inflation. The administrative fee does not include fees for certain additional charges, described below.

The administrative fee shall include the following services, which are all set forth more fully in the Agreement:

- Account Management
  - Implementation Services
  - Eligibility Updates
  - Plan Changes and Support
  - Program Consultation
- Customer Service Call Centers
  - Members
  - Participating Pharmacies
  - Other Pharmacies
  - Practitioners
- Fulfillment Materials
  - Identification card for each Cardmember (unless provided by a third party so designated by Client)
  - Member handbook (unless provided by a third party so designated by Client)
- Retail Pharmacy Network Management
  - Network Development and Contracting Negotiations
  - Claims Processing (Electronic and Paper) and Related Services
  - Direct Member Reimbursement
  - Pharmacy Claims Submission
- Clinical and Ancillary Services
  - Standard Drug Utilization Review
  - Prior Authorization Services
  - Formulary Management
  - Formulary Support
- Pharmaceutical Company Relations
  - Rebate Contracting
  - Rebate Contract Management
  - Rebate Invoicing, Reconciliation and Payment
- Reports
  - Standard Reporting Package of Standard Reports
  - Electronic claims payment file

**Additional Charges.**

Ad Hoc reporting at a rate of \$150 per hour.

Additional Third Party Paid Claims file development and distribution at a rate of \$150 per hour.

Direct Member Reimbursement paper Claims volume exceeding 0.5% of the total Claims volume, at a rate of \$1.50 for each Claim in excess of that amount.

\$50 for each ERISA appeal for Claim re-determinations.

**Exhibit 2**  
**PRESCRIPTION PRICING SCHEDULE**

**General.** Client acknowledges that the discount rates and dispensing fees set forth below are target discounts established for the pricing distribution channels necessary to meet access requirements. Client acknowledges that 100% of the pricing will be passed through to Client from the participating pharmacies. Navitus agrees to negotiate to achieve or exceed these target rates. Any discounts obtained by Navitus that exceed the targets stated below will be passed through to Client. It is acknowledged by both parties that individual contracts may vary from the targeted rate based upon negotiation.

Navitus reserves the right to modify pricing for certain exclusive generics based on the demands of the marketplace and in the best interests of the Client.

**A. Retail Drug Program.** Reimbursement for each Covered Branded Product, not requiring compounding, dispensed by a Participating Pharmacy will be based upon the lower of (1) WAC, plus an average of \_\_\_\_%, plus an average dispensing fee of \$\_\_\_\_; or (2) such pharmacy's Usual and Customary Price; or (3) the amount submitted by the pharmacy. Reimbursement for each Covered Generic Product dispensed by a Participating Pharmacy will be lower of (1) the applicable Navitus Maximum Allowable Cost, plus an average dispensing fee of \$\_\_\_\_; (2) AWP, less an average of \_\_\_\_% plus an average dispensing fee of \$\_\_\_\_; (3) such pharmacy's Usual and Customary Price; or (4) the amount submitted.

**B. Mail Service Program.** Reimbursement for each brand Covered Product dispensed by the Mail Service Pharmacy will be based upon the lower of (1) WAC, plus \_\_\_\_%, plus a dispensing fee of \$\_\_\_\_, (2) such pharmacy's Usual and Customary Price, or (3) the amount submitted. Reimbursement for each generic Covered Product dispensed by the Mail Service Pharmacy will be based upon the lower of (1) Navitus Maximum Allowable Cost, plus a dispensing fee of \$\_\_\_\_, (2) AWP, less \_\_\_\_%, plus a dispensing fee of \$\_\_\_\_, or (3) the amount submitted.

**C. Specialty Pharmaceutical Program.** Reimbursement for each Specialty Pharmaceutical, not requiring compounding, dispensed by a Participating Pharmacy will be based upon the lower of (1) WAC, plus an average of \_\_\_\_% (discounts vary by drug); or (2) such pharmacy's Usual and Customary Price; or (3) the amount submitted by the pharmacy.

**D. AWP / WAC-Based Pricing.** Navitus is changing its pricing methodology from AWP-based pricing to WAC-based pricing. Many pharmacies have already executed agreements with Navitus to change reimbursement calculations from AWP to WAC, with some pharmacies requesting that Navitus continue using reimbursement rates based on AWP for non-MAC (maximum allowable cost) generic drugs until a later date. Navitus reserves the right to use (1) AWP-based pricing that is economically equivalent in aggregate to the WAC-based pricing listed in this Exhibit and (2) WAC-based pricing that is economically equivalent in aggregate to the AWP-based pricing listed in this Exhibit.

**THE FOLLOWING PROGRAMS ARE OPTIONAL, AND WILL APPLY IF CHECKED:**

**E. ☐ Compound Drug Program.** Compound medications will be reimbursed as follows: WAC plus the compounding fee (described below), minus the Co-payment/coinsurance. The criteria for reimbursement: (1) the compound medication must have at least two ingredients, and at least one

ingredient must be an FDA legend drug; (2) all active ingredients must be covered as part of the Navitus Formulary and the NDC for each must be submitted. Compound prescriptions costing over \$200.00 and compounds containing ingredients not on the Navitus Formulary require prior authorization.

|   |               |         |
|---|---------------|---------|
| Compounding Fee Time Reimbursement Rates: | 1 - 5 minutes | \$10.00 |
|   | 6-15 minutes  | \$15.00 |
|   | 16-30 minutes | \$20.00 |
|   | 31+ minutes   | \$25.00 |

**F. [ ] Ninety Day At Retail Program.** This program provides Eligible members to obtain a ninety (90) day supply of maintenance medications through participating retail pharmacies. Reimbursement for each brand maintenance product dispensed by a Participating Retail Pharmacy will be based upon the lower of (1) WAC, plus an average of \_\_\_\_%, plus an average dispensing fee of \$\_\_\_\_; or (2) such pharmacy's Usual and Customary Price; or (3) the amount submitted by the pharmacy. Reimbursement for each Covered Generic Product dispensed by a Participating Pharmacy will be lower of (1) the applicable Navitus Maximum Allowable Cost, plus an average dispensing fee of \$\_\_\_\_; (2) AWP, less an average of \_\_%, plus an average dispensing fee of \$\_\_\_\_; (3) such pharmacy's Usual and Customary Price; or (4) the amount submitted.

**G. [ ] Pharmaceutical Care Incentive Program.** This program forms a unique partnership between Participating Pharmacies, Practitioners, and Navitus to improve the overall level of care and, therefore, the outcome for each Eligible Person. Inherent in the program are incentives to maximize the education of the Eligible Person as well as to promote the use of generics whenever safety and efficacy allow. Reimbursement for the following interventions will be made to those Participating Pharmacies who provide the outlined interventions to those Eligible Persons eligible for Pharmaceutical Care Incentive Program.

#### **Pharmaceutical Care Incentive Program Reimbursement Schedule**

|   |               |
|---|---------------|
| Therapeutic Interchange.....  | \$12.00       |
| Formulary Interchange.....  | \$4.00        |
| Change of Dosage.....   | \$5.00        |
| Patient over/under Utilization (requires notification of Practitioner) .....    | \$10.00       |
| Disease State Management (training of monitoring devices and/or inhalers) ..... | \$1.00/minute |

|                                     |                  |
|-------------------------------------|------------------|
| Glucose Monitors                    | (Max 30 minutes) |
| Asthma Inhalers or Peak Flow Meters | (Max 10 minutes) |
| Blood Pressure Monitors             | (Max 15 minutes) |
| Nasal Inhalers                      | (Max 5 minutes)  |

Notwithstanding anything in the Agreement to the contrary, reimbursement for the above interventions is subject to change upon notice from Navitus to Participating Pharmacy, and Navitus may at any time, on thirty (30) days' written notice, terminate the Pharmaceutical Care Incentive Program in its entirety. Further, a Participating Pharmacy's eligibility may be terminated by Navitus at any time if Navitus determines, in its sole discretion, that the interventions are not being reported accurately by that Participating Pharmacy.